Federal Judicial Center Annual Report 1981

1981 ANNUAL REPORT

FEDERAL JUDICIAL CENTER

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Honorable Walter E. Hoffman, Director Emeritus
Senior Judge, United States District Court for the
Eastern District of Virginia
October 27, 1974 to July 18, 1977

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A. LEO LEVIN
DIRECTOR

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August 24, 1981

TO THE CHIEF JUSTICE AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Pursuant to the provisions of 28 U.S.C. § 623(a)(3), I respectfully submit the Federal Judicial Center's Annual Report for fiscal 1981. The report summarizes our activities since the last annual report and describes the work projected through the formal end of this fiscal year. Further details on any aspect of our programs will, of course, be made available to you on request.

This report is designed to provide more than a mere description of what the Center has done in the preceding twelve months; it places those activities in the context of the Center's work over the last several years. In one sense, this is necessary because much of the Center's work extends over long periods of time, but beyond that, a broader compass provides perspective and helps illumine how the Center undertakes to fulfill its mission.

The Center's program owes much to the sustained interest and substantial contributions of the members of its Board. The range of our activities and their quality both reflect the dedicated service of those who have served and those who are serving as Board members. A major contribution is also made to the Center by the Judicial Conference and its committees and by the judges and the supporting personnel in the courts themselves. Their contributions to our programs, requests for our services, and suggestions on how our work might be improved are invaluable. Similarly, we have continued to benefit from the interest in our work shown by Members of Congress and their staffs.

It is a privilege to be of service to the federal judicial system. We will continue our efforts in the next year with no less dedication.

Sincerely,

A. Leo Levin

A. Leo Levin

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INTRODUCTION

Among the statutory missions of the Federal Judicial Center, the Center's programs of continuing education and training are probably its best known. The Judicial Conference of the United States asked Congress to create the Center in order that programs of continuing education and training, and of research and development, could be carried out more systematically than was possible under ad hoc Conference sponsorship. Research and continuing education both offer the federal courts means of enhancing the effectiveness of operations—of administering justice as expeditiously and as economically as possible.

The goals of the Center's programs of continuing education and training are often characterized in terms of "cost effectiveness." The phrase has two interrelated meanings in this context. It refers not only to the Center's efforts to provide educational programs at the lowest cost level consistent with quality. It refers also to the ability of continuing education programs to help the courts achieve economies and improved performance in the administration of justice. The Center has long been concerned with the cost effectiveness of its educational programs, a concern that antedates the current national emphasis on limiting public spending.

The contribution of continuing education and training is perhaps most obvious when viewed in terms of specific examples, such as eliminating the need for even one jury trial. It is not easy, however, to cost account the expenditure of public funds involved in adjudicating a single case, and the comparatively miniscule size of the budget of the federal judicial system makes it difficult to appreciate that significant sums can indeed be involved. As is well known, the total appropriation for the federal judicial system—including the cost of appellate review, probation services, and the processing of hundreds of thousands of petty offenses not typically considered part of the federal judicial caseload—is approximately one-tenth of a percent of the national budget.

On the other hand, the potential for savings in the administration of justice can be considerable. Every working day of every judge, including the cost of staff and chambers, courtroom and courthouse, not to mention supporting services, must by even the most conservative calculation run into costs in four

figures, and the cost of a day of jury trial is certainly higher. (Reliable data show these estimates to be quite low and comparative data demonstrate them to be reasonable.) In this context, the potential contribution of a seminar becomes clear. A seminar for, perhaps, thirty district judges might be responsible for one judge's avoiding one reversal and substantial retrial, or enable a single judge to achieve settlement rather than trial. Or, it might enable each judge present to shorten one trial by a single day. In either case, the cost of the seminar would be more than offset by savings to the government, not to mention the savings to the litigants. Moreover, much of a judge's time is devoted to motions, to conferences, and to pleas. Again, any slight saving by even some of those in attendance can go far to offset the cost of the seminar.

In this context, it is well to recognize that continuing education can make a special contribution to judges when it offers insights concerning the interplay of substance and procedure. In every case, one of the judge's goals is to guide the case to disposition as expeditiously as possible, by limiting discovery to the issues in dispute and perhaps even helping the parties to avoid trial altogether. It can be very helpful to a judge to be aware early in a case how the resolution of a subtle legal issue may, without prejudice to either side, shorten the preparation time and expense of both parties and reduce court time as well. In an antitrust case, for example, early identification of the relevant market may serve such a purpose. The judge, in other words, can increase expedition by being able to identify the key legal issues on which the case will turn and, with that identification, taking the case management steps best designed to sharpen and resolve them.

The cost effectiveness of the Center's education and training programs is affected not only by the substance of the programs but by the variety of forums by which the substance is disseminated. The seminar or workshop is the typical forum and serves several purposes. Information is, of course, transmitted and exchanged among the participants, primarily in the formal presentations. The seminar also provides for informal exchange that can be achieved only when judges—or other personnel—have the opportunity to be together over several days. Nor should one ignore the opportunity for renewed dedication, for the reaffirmation of shared aspirations that personal contact facilitates.

The Center's educational programs are also served by audio and video cassettes. The Center's media library contains presentations offered at Center programs as well as programs prepared by continuing legal education organizations. Tapes of Center programs not only allow participants to review a seminar they may have attended, they also have the multiplier effect of reaching personnel unable for reasons of cost or schedule to attend the seminar.

Educational seminars and workshops can have another by-product in the form of manuals and handbooks. In several areas, such as guidelines for docketing clerks, the Center has produced manuals derived mainly from materials prepared by field personnel for presentation at the seminar.

A caveat is in order, implied by the reserve with which some receive the very notion that educational programs are "cost-effective." Cost accounting the value of a disseminated idea is a frustrating and indeed unachievable task. The intellectual spark that may be provided by a new idea can have effects that are quite real but virtually unmeasurable. Henry Adams once wrote, "A teacher affects eternity; he can never tell where his influence stops."

And for all the emphasis on efficiency and economy, we must always remember that it is a judicial system with which we are dealing. Chief Justice Burger said it well when he said, in the context of seeking solutions for the new and difficult problems that beset the courts in profusion, "We must experiment and search constantly for better ways, always remembering our objective is fairness and justice, not efficiency for its own sake."

I. TRIAL COURTS

The trial tier of the federal judicial system includes more than 500 active district judges, in addition to about 150 senior judges performing substantial judicial service, 430 part-time and full-time magistrates, and about 10,500 supporting personnel. In 1980, more than 168,000 civil cases and almost 30,000 criminal cases were terminated by these courts. In addition, 235 bankruptcy judges, working with almost 2,200 supporting personnel, processed more than 360,000 filings in 1980. There is great variation in the operations of the federal trial courts, given the broad scope of their jurisdiction. Thus, the Federal Judicial Center's work in support of the trial courts is multifaceted, drawing upon the work of personnel in each of its divisions. The Center's programs of continuing education, research, and systems development in support of the United States district judges, bankruptcy judges, magistrates, and supporting personnel are described in this chapter, in chapter two (which deals with sentencing and probation), and in chapter four (which describes system-wide Center programs).

Requests and suggestions for Center work come from numerous sources, including the Center's Board, committees of the Judicial Conference of the United States, and the courts. These various sources are described in further detail throughout this report. Other projects are generated within the Center, building upon previous work and reflecting needs articulated by the courts.

The Center's work with the trial courts benefits in a unique way from its relationship with the Conference of Metropolitan District Chief Judges, which the Center has served since the conference was created in 1971. The conference is composed of the chief judges of the thirty-one federal district courts with six or more authorized judgeships. In the 1980 statistical reporting year, these courts accounted for over 60 percent of the total case filings in federal district courts. The director emeritus of the Center, Senior Judge Walter E. Hoffman of the Eastern District of Virginia, is the chairman of the conference, and Charles W. Nihan, the Center's deputy director, serves the conference as its secretary.

The conference has suggested a wide range of research, educational, and development activities for the Center's agenda, and it is a valuable forum for feedback and commentary on the Center's plans and programs. Addi-

tionally, the conference's semiannual meetings make available an opportunity to provide the larger courts, through their chief judges, with timely information on subjects such as equal employment opportunity programs, the General Services Administration's procedures for courthouse construction, and the changes effected by the Bankruptcy Reform Act of 1978. These topics and others were on the program of the two conference meetings held in fiscal 1981.

A. Continuing Education and Training Programs

The Federal Judicial Center's seminars for newly appointed district judges, probably the best known of its activities, represent only one facet of the Center's programs. In fact, they are only one aspect of its educational programs. District judges, bankruptcy judges, and magistrates, as well as supporting personnel, participate in the full range of educational services the Center has developed for the entire judicial system. Those services, described throughout this report and summarized in chapters four and five, include seminars and workshops, printed instructional materials, local programs, and a library of videotapes, films, and audio cassettes to serve specific local court needs. Trial court personnel also benefit from the Center's program of support to attend specialized courses relevant to their work that are offered by other educational institutions.

Orientation Programs for Newly Appointed District Judges. The Center's seminars for newly appointed district judges, held at the Dolley Madison House in Washington, D.C., provide an intensive week-long treatment of topics crucial to the new federal trial judge. Techniques of trial processes, the management of civil and criminal cases, the Federal Rules of Evidence, sentencing, and special problems of the jury and nonjury trial are all included. The seminars also offer a framework for analyzing such subjects as class actions, Title VII of the Civil Rights Act of 1964, and judicial ethics.

Seminars are held when the number of new judges is large enough to constitute a class of approximately thirty—normally, about once a year. In fiscal 1981, one seminar for new judges was held, in February. By contrast, two seminars were offered in fiscal 1979 and three in fiscal 1980 to accommodate appointments to the 117 new district judgeships created by the 1978 Omnibus Judgeship Act, as well as to vacancies created by normal attrition.

To be helpful to the judge as soon as possible after appointment, and because the judge may and indeed should serve for several months before a seminar is offered, the Center has also developed an "in-court orientation program" designed to help the district courts fulfill their traditional role in assisting newly appointed district judges. A committee of district judge members of

the Center's Board has prepared suggestions and checklists that are provided to each newly appointed judge and each chief judge.

Other Educational Programs for United States District Judges. In addition to orientation for newly appointed district judges, the Center provides continuing education programs for the judges of the United States district courts. (These are in addition to several desk and research aids that the Center maintains for district judges and others, discussed in section B of this chapter.)

The most prominent among the Center's continuing education programs are the workshops in the various circuits. These are generally two-day seminars, held primarily for district judges but open to circuit judges as well. The agenda for each circuit's workshop is typically developed by a planning group of judges of the circuit. The director of the Center's Division of Continuing Education and Training provides the planning group with a list of available topics and nationally recognized experts from which the planning group can choose. Special topics may also be developed in response to specific requests from a circuit. The division also provides planning and logistical assistance in arranging the workshops, some of which are held at the time of the annual circuit judicial conferences.

Although orientation seminars typically stress managerial and administrative subjects, the workshops for the last several years have increasingly emphasized developments in substantive legal areas, such as constitutional torts and antitrust, and they include more law school professors as faculty than do the orientation seminars. The workshops also address a wide range of special topics, from implementing equal employment opportunity plans in courts to dealing with stress. In fiscal 1981 as in 1980, several circuits heard Dr. Walter Menninger, a nationally known psychiatrist, discuss stress as it affects those in high-pressure positions, such as federal judges.

The Center introduced a new type of educational program in 1981—a week-long seminar on both legal and case-management aspects of federal antitrust cases—for district and circuit judges. The program was held the week of July 27 on the campus of the University of Michigan. It was planned by a committee of the Center's Board, which was chaired by Judge Donald Voorhees of the Western District of Washington, and included Judge William Hughes Mulligan of the United States Court of Appeals for the Second Circuit, and Bankruptcy Judge Lloyd George of the District of Nevada. The chairman of the seminar was Judge Milton Pollack of the Southern District of New York. The program included three days of analysis of antitrust law by Professor Phillip Areeda of Harvard Law School, and—primarily for the district judges—two days on antitrust case management, presented by a panel of federal judges.

Bankruptcy Judges. The Bankruptcy Reform Act of 1978 mandated the creation of separate bankruptcy courts in each of the federal judicial districts, effective October 1979. The act provides that numerous changes be implemented in phases through 1984. The Center has continued to develop in-depth seminars and workshops to familiarize bankruptcy judges with the provisions of the new legislation and to equip them to meet their responsibilities. The Center provided intensive training in this area in fiscal 1979, and held one such program in 1980.

In fiscal 1981, one week-long orientation seminar for newly appointed bankruptcy judges treated such topics as fundamental bankruptcy concepts (for example, the debtor, fees and allowances, and creditors), select sections of the bankruptcy code, judicial ethics, the administration of the bankruptcy court system, and effective case management. Three continuing education seminars for bankruptcy judges focused on chapters eleven and thirteen of the bankruptcy code, the trial of the civil jury case, and consumer-related problems.

Magistrates. When Congress created the position of United States magistrate, it specifically directed the Center to provide educational programs, including introductory programs within one year of the magistrate's appointment (28 U.S.C. § 637). Combined orientation seminars for newly appointed full-time and part-time magistrates in all circuits were held in February 1981. The Center held seven advanced seminars for magistrates in fiscal 1981, one at the same time as the orientation seminar. These seven seminars collectively reached magistrates in all eleven circuits. Holding concurrent programs for full-time and part-time magistrates, with some joint sessions, allows a more effective and efficient use of the faculty and provides the magistrates an opportunity to discuss common problems, while preserving an opportunity for sessions tailored to more specific needs.

The subjects at the orientation seminars included the magistrates' managerial and administrative duties and a review of federal criminal procedural rules, with discussion of recent court decisions. The advanced courses dealt with such topics as the Federal Rules of Evidence; new developments in discovery and other procedural rules; review of Social Security cases; the conduct of jury trials; case management techniques; and the operation of Central Violations Bureaus, which process notices and ticketing for minor federal offenses, such as traffic violations on federal land.

Clerks of Court and Other Supporting Personnel. The Center's educational services for administrative and operational support personnel are necessarily diverse, because the many management and administrative func-

tions required to maintain the federal judicial system are affected by changing conditions, as well as by requirements imposed by statute and by directive of the Judicial Conference. About half the support personnel in the federal judicial system have some direct contact with one or more of the Center's educational programs each year.

In 1981, a significant portion of the Center's resources for continuing education for supporting personnel was committed to six regional workshops for the equal employment opportunity coordinators in the various courts. These coordinators are responsible for helping the courts implement the equal employment opportunity program promulgated by the Judicial Conference in 1980. Equal employment opportunity had been a subject at past years' programs for supporting personnel; in 1981, programs were dedicated specifically to that subject. The seminars not only dealt with the general theory and objectives of equal employment opportunity programs, but also provided specific information on many practical details associated with the implementation of an equal opportunity program (such as a job advertising, recruiting, and hiring), training and cross-training, grievance procedures, and examples of specific discriminatory practices.

The Center also provided seminars in fiscal 1981 for clerks of court, which were designed to assist the clerks with their executive and managerial responsibilities. The topics at these seminars included various aspects of administrative, supervisory, and managerial techniques and procedures, including personnel and records management and managerial control practices. Technical and procedural matters, such as court security and the Judicial Salary Plan, were also covered.

Federal Public Defenders, Assistants, and Investigators. Federal public defenders, assistants, and investigators are compensated by funds administered within the federal judicial budget and are part of the Center's training responsibility. In fiscal 1981, seminars to which all federal public defenders were invited dealt with various aspects of the administration of the Criminal Justice Act, matters related to the effective assistance of counsel, and new approaches to the law of conspiracy. Two seminars were held for assistant federal public defenders, one at the same time and site as the federal public defender seminar, which dealt with the law of conspiracy, immigration and alien litigation, effective representation at and beyond the sentencing stage, and eyewitness identification. A November seminar for all federal public defender investigators east of the Mississippi River dealt with financial investigation techniques in white-collar crime cases, the law of evidence, interviewing techniques, and forensic science. (The Center makes these seminars available to federal community defenders when appropriate.)

B. Desk and Research Aids for United States District Courts

Bench Book and Bench Comments. Several years ago the Center undertook the production of a new *Bench Book for United States District Court Judges,* designed to replace one issued early in the Center's history. The *Bench Book* is designed to include information federal district judges have found useful for immediate bench or chambers reference. Thus, it has or will have sections on such topics as assignment of counsel, taking guilty pleas, model sentencing forms, standard voir dire questions, findings and conclusions, standard jury instructions at the beginning and end of a case, and oaths. To date, twenty-seven of the projected forty-four sections have been distributed.

The *Bench Book* is published in loose-leaf format, with each page dated to facilitate supplementation and revision. The Center's Board has determined that it should be provided only to federal judges and magistrates.

A committee composed of present and past district judge members of the Center's Board is supervising the preparation of the *Bench Book.* The committee, in turn, has sought the assistance of experienced judges throughout the system in preparing various sections of the book. This project is a responsibility of the Center's Division of Inter-Judicial Affairs and Information Services.

In fiscal 1981, the Center began another service, *Bench Comment,* to assist federal district judges and magistrates. The Board approved the *Bench Comment* project on an experimental basis, based on its view that trends in appellate treatment of practical procedural problems do not always come to the attention of busy federal trial judges as quickly as would be desired. Some of these problems are crucial, and their proper handling could prevent reversal and, accordingly, the time and expense of another trial, particularly with respect to problems of criminal procedure. Some *Bench Comments* are prepared by the staff of the Center's Inter-Judicial Affairs and Information Services Division; others are prepared by judges. For each *Comment,* however, the division solicits the help of several federal judges, regarded as especially knowledgeable in the particular topic, to review the draft. *Bench Comments* in no way represent official policy; they are provided to federal judges for their information only. *Comments* in fiscal 1981 dealt with such topics as balancing the probative value of the proof of a witness's prior conviction against its prejudicial effect before admitting the proof at trial under the Federal Rules of Evidence; the need to identify contempt proceedings as either civil or criminal; and the problems of conducting voir dire out of the presence of defendant, counsel, the public, or the press.

Manuals and Handbooks for Supporting Personnel. The Center occasionally publishes procedural manuals as training and reference resources to assist support personnel in their tasks. *Guidelines for Docket Clerks,* for example, published in 1979, drew on a series of docket clerk workshops to share ideas and provide specific recommendations useful in processing both civil and criminal cases. Since 1977, the Center has also provided judges with the *Law Clerk Handbook* for their law clerks' use. In 1980, it produced a *Handbook for Federal Judges' Secretaries.*

C. Criminal Litigation Research and Development

Criminal cases constitute a relatively small proportion of the federal court caseload. The importance of expeditious and fair treatment of all criminal cases, however, is difficult to overstate. Thus, the Center has provided a range of services to the courts to assist in criminal case processing, as well as in the sentencing function, discussed in chapter two. Criminal, and even civil, case processing in the federal courts has been profoundly affected, furthermore, by the Speedy Trial Act of 1974, as amended. The act itself directs the Center to "advise and consult" with the district courts in their administration of the act (18 U.S.C. § 3169). Pursuant to this mandate, the Research Division has worked closely with the Administrative Office of the United States Courts to provide extensive assistance to the various district courts, in the form of training seminars, mail advisories, and individual consultation.

As described below, other Center divisions have also devoted considerable resources to helping the courts meet the planning, reporting, and monitoring requirements imposed by the Speedy Trial Act.

Legislative History of the Speedy Trial Act. Early in fiscal 1981, the Center published a legislative history of Title I of the Speedy Trial Act. (Title I deals with case processing; Title II authorized experimental pretrial services agencies in certain districts.) In anticipation of the final date in July 1979 for implementation of the Speedy Trial Act, the Research Division began in late 1978 to prepare a legislative history of the relevant sections of Title I of the act to assist judges called upon to interpret the act's provisions. When the act was amended in the summer of 1979, the changes were taken into account in the legislative history, which was then in production.

The 384-page book begins with the bill introduced in 1969 by Representative Abner J. Mikva (now a judge of the Court of Appeals for the District of Columbia Circuit) and ends with the enactment of the Speedy Trial Act Amendments of 1979. It is organized in three parts. Part 1 is a twenty-four page introductory essay about the genesis and development of the act. Part 2 consists of excerpts from congressional hearing records and committee

reports, reproduced verbatim and arranged according to the sections of the statute to which they pertain. Part 3 includes the full text of Title I as it appeared in successive versions of the bill. In parts 1 and 2, the book calls attention to relationships between statutory provisions and the American Bar Association's *Standards Relating to Speedy Trial.*

Copies of this legal research reference tool were sent to federal judicial personnel, to public and community defenders, and, through the Department of Justice, to federal prosecutors. The volume is available for purchase by others from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. (A. Partridge, Legislative History of Title I of the Speedy Trial Act of 1974, GPO Stock No. 028-004-00037-1, $6.50.)

Computer Support for Criminal Case Management—A Part of the Courtran Program. Courtran is a general reference term for a wide range of computer-based applications for federal court and case management and for administrative support. Courtran is the major effort of the Center's Division of Innovations and Systems Development. Specific Courtran applications are in various stages of development and testing. The Center and the Administrative Office of the United States Courts, the operational arm of federal judicial administration, have prepared detailed plans for the gradual transfer of certain Courtran applications (when they are no longer in the development stage) from the Center to the Administrative Office. Summary information on the overall Courtran system is provided in chapter five. Specific Courtran applications are described in this report under the particular components of the judicial system that they are designed to serve.

In fiscal 1981, sixty-six courts—six of the eleven appellate courts and sixty of the ninety-five district courts—were testing one or more Courtran applications. Thirty-five of the district courts actually have Courtran hardware, while the other twenty-five are served by one or more of the other thirty-five courts. (These consolidated operations are explained in the following pages.) However, the extent of Courtran coverage is best measured by the percentage of the entire federal caseload that it serves, rather than the number of courts, because the caseloads of the district and appellate courts vary significantly.

Two Courtran applications were developed specifically to assist the courts in felony criminal case processing, with special attention to the requirements of the Speedy Trial Act. The first-developed and best-known, though not the most widely used, Courtran application is the Criminal Case-Flow Management System, developed in cooperation with a users group of district court clerks. Its primary utility has been in assisting eleven specially chosen Courtran pilot courts to implement the Speedy Trial Act; the pilot courts have also tested Courtran innovations in docketing and statistical reporting. The eleven pilot courts' filings in fiscal 1981 accounted for about 24 percent of the criminal caseload and over 30 percent of the national criminal defendant

felony filings. The second Courtran application is the Speedy Trial Act Accounting and Reporting System (STARS), which is in experimental use in fifteen courts. In 1981, these two Courtran applications provided automated case management assistance to courts accounting for 39 percent of federal criminal felony case filings. The vast bulk of the remaining federal felony defendant caseload is found in a large number of small courts in various parts of the country.

The Criminal Case-Flow Management System's pilot courts were selected to allow the Center to test the effect of automation on courts that differ in size, geographic dispersion, and management methods. Deputy clerks in each pilot court enter all docket sheet information into the main Courtran computers in Washington, D.C., using terminals in their courts that are connected by high-speed transmission lines to the Courtran computers. Each court's input can then be processed rapidly to meet the court's requests for information and for a variety of reports indicating the status of that court's—and each judge's—criminal cases in terms of Speedy Trial Act deadlines.

As the system is further developed and more courts are included, the data base stored in the Courtran computers will facilitate the quick and accurate generation of planning and management reports on national case-flow activity.

Ten of the pilot courts, with Judicial Conference approval, have eliminated the need for clerical personnel to record docket sheet information on paper stored in the courthouse. Instead, the information is electronically recorded in the main Courtran computers in Washington, D.C., thus creating the official dockets of their cases. The Courtran system can provide instant paper printouts of the docket on demand. In addition, the docket information maintained in the computer is regularly provided to the courts on microfiche, from which paper dockets can be generated at any time.

In a second development continued in fiscal 1981, nine of the pilot courts are having the computer automatically prepare their official criminal case statistical reports to the Administrative Office. This promises significant economies both in the courts and in the Administrative Office.

The Speedy Trial Act Accounting and Reporting System (STARS) is a simplified Courtran application designed to provide assistance specifically with Speedy Trial Act matters. It was developed to supplement standard court procedures in meeting the reporting and monitoring requirements of the act. STARS was developed in 1979 and offered to the thirty courts that had processed more than 250 felony defendants the previous year and that were not supported by the Criminal Case-Flow Management System. Thus, the system was made available to the courts most needing automation as the final implementation dates for the Speedy Trial Act drew near. To date, fifteen courts are using the STARS system.

INDEX, another Courtran application, allows courts to replace card or other paper means of inventorying their caseloads. INDEX is easy to operate, readily producing analytical reports useful to court personnel. INDEX accepts information not only on criminal cases, but also on civil, magistrate, and bankruptcy cases filed in a given district. INDEX records such basic information as parties' names, case filing dates, the number of defendants in any specific case, and the judge to whom the case has been assigned. Additional information, such as termination date and judge reassignment, can also be entered into the INDEX system. The information is used to prepare monthly statistical reports on case activity and judges' pending cases.

INDEX has thus far been implemented or is being implemented in thirty-eight district courts, which account for nearly 60 percent of the total federal criminal and civil caseload. Five additional courts plan to implement INDEX later this year. Also, six bankruptcy courts have their INDEX data entered by the corresponding district court.

Courtran Support for Central Violations Bureaus. Additional assistance to federal trial courts, especially magistrates, is provided by the automation of several large courts' Central Violations Bureaus (CVBs). The CVBs handle hundreds of thousands of petty offenses, such as traffic violations on federal lands, that are processed by federal courts. Indeed, the volume of such cases dwarfs what is usually reported as the federal caseload. For the twelve-month period ending December 30, 1980, well over 470,000 such tickets were issued, and payments to the CVBs totaled almost $6 million.

Eight districts—Eastern Virginia, Maryland, Eastern New York, Western Kentucky, Colorado, Central and Northern California, and Western Texas—are successfully using the Courtran CVB system to monitor petty offense citations issued by federal agencies. To serve courts too small to need their own installations, and to achieve economies in deployment of computer hardware, the CVB operations in the smaller courts are being processed in a consolidated fashion in courts with automated CVB operations. The Central District of California is providing this service for the Southern District of California, and before the end of fiscal 1981, it is expected to assume this task for the Districts of Arizona, Western Washington, Oregon, and Eastern California. Colorado is providing this service for the seven other districts of the Tenth Circuit, as well as for Nevada, Montana, Alaska, and Idaho in the Ninth Circuit, and for Eastern Arkansas in the Eighth Circuit. The Western District of Texas is providing service for the Northern and Southern Districts of Texas and is expected to assume the service for the several districts in Mississippi and Louisiana by the end of fiscal 1981. The Eastern District of New York will offer the service to all courts in the First, Second, and Third Circuits. Western Kentucky will do the same for the districts of the Sixth and Seventh Circuits, and Eastern Virginia will provide the service for the Fourth Circuit.

Based on these plans, it is anticipated that by the end of fiscal 1983, over 80 percent of the courts will be using the Courtran automated Central Violations Bureau service.

D. Civil Litigation Research and Development

In fiscal 1981, the Center continued to develop its research and development program on civil litigation. The program has built upon the Center's District Court Studies Project, which produced, between 1977 and 1980, three empirical reports, one dealing with case management generally, one with discovery, and one with motions practice. The Center continues to analyze the extensive data base collected for that project, but has since expanded its civil litigation research considerably. The Center coordinates its research program in this area with the Judicial Conference Advisory Committee on Civil Rules, which is currently reexamining the federal procedural rules in light of concern over abuse of procedures and high litigation costs.

Research on Discovery and Pretrial Procedures. The Center continued work in fiscal 1981 on several projects related directly to the processing of civil cases.

One outgrowth of the District Court Studies Project is a case-study analysis of the discovery process in one of the project courts, the District of Maryland. The analysis focuses on eighteen cases, each of which generated a high volume of discovery activity (cases defined as having more than ten requests). The objectives of this additional research are to explore further the dynamics of the use of discovery in civil litigation, and to assess the intensity of discovery contained within individual requests.

Commonly heard in the debate over federal courts' civil case management is the assertion that the more frequent and forceful invocation of available sanctions on the part of the judge would go far to cure discovery abuses. For this reason, the Center asked the Thomas J. and Alberta White Center at Nortre Dame Law School to analyze federal case law to determine how available sanctions have been used by federal district judges in efforts to contain excesses in the discovery process. The report, *Sanctions Imposable for Violations of the Federal Rules of Civil Procedure,* by Professors Robert E. Rodes, Jr., Kenneth F. Ripple, and Carol Mooney, completed in 1981, is, in essence, a catalog of the sanctions authorized by the Federal Rules of Civil Procedure, annotated by extensive reference to the case law to describe how the sanctions have been used.

Federal Rules of Evidence. In May 1981, a small working conference convened with the Center's assistance to allow a selected number of judges, law

professors, and practicing attorneys to review the experience under the Federal Rules of Evidence since the recent codification of those rules. The conference did not meet to propose rule changes—a duty entrusted to the rulemaking mechanism of the Judicial Conference—but rather to provide the Rules Committees with additional insights on whether changes to the evidence rules might merit examination. The conference was chaired by Judge Charles Joiner, a former member of the Standing Committee on Rules of Practice and Procedure, and included the current chairman of that committee, Chief Judge Edward Gignoux.

Attorneys' Fees. Two reports on attorneys' fees, undertaken as reports to the Center at its request, were published in fiscal 1981.

One report was *Attorneys' Fees in Class Actions,* by Professor Arthur Miller of Harvard Law School. The subject is of particular concern to courts that are charged with fixing attorneys' fees in a variety of complex cases. Based on extensive analysis of the case law, examination of case files, and selected interviews with judges and lawyers, Professor Miller's study sought to learn how courts use available methods of calculation to determine fee awards. Professor Miller's recommendations deal in specific terms with procedures, fixed early in the litigation, designed to avoid problems when the requests for fees are submitted. Judges have reported that the information and analysis in the report has proven useful even in non-class action cases.

In another report to the Center, *Attorney-Client Fee Arrangements: Regulation and Review,* Professor Robert Aronson of the University of Washington School of Law analyzed both federal and state statutes, decisions, and other rules concerning the awarding or setting of attorneys' fees, and explored the role of the court in the fee-setting process. The study focuses on the four problem areas that have engendered the greatest amount of interest and debate from within and without the judicial community and legal profession: valuation of legal services, division of fees between attorneys, contingent fee arrangements, and funding of public interest litigation through awarding of attorneys' fees.

Manual for Complex Litigation. The Center has supported the work of the Board of Editors of the *Manual for Complex Litigation* since the *Manual's* inception. In 1981, the Center continued two different projects, begun in 1980, concerning the *Manual.* First, a draft of the fifth revision has been prepared and circulated for comment. The Board of Editors is currently reviewing the comments received to produce a revised manuscript based on this material. Perhaps more significant is a two-year effort to analyze the use and effect of the *Manual,* in order to determine whether major restructuring is warranted. The Center's Research Division is working with Professor Arthur Miller of Harvard Law School on this project.

Research on Arbitration and Other Alternatives to Traditional Civil Litigation Processes. The Center has been asked to conduct experiments and evaluations of efforts in the district courts to use alternatives to the typical trial to dispose of civil cases. There has been, at least since the mid-1970s, substantial national interest in alternatives to normal trial court litigation processes, both court-annexed and otherwise. Most proposals for alternative methods of dispute resolution have been implemented in the state courts, due in large measure to their broader jurisdictions, but there is increasing interest in alternatives in the federal system as well. Both the Western District of Washington and the Southern District of New York, for example, have sought to learn if attorneys serving as mediators, arbitrators, or special masters can help prepare appropriate cases for trial or achieve settlement.

The common objectives of alternative-to-litigation programs in both state and federal courts are to reduce the burden on litigants and judges, shorten the time to disposition, and even improve the quality of the result. In actual operation, however, such alternatives tend to have effects more varied and complex than their simple objectives would suggest. The Center has been asked to undertake evaluations of two innovations in the federal courts.

Evaluation of Court-Annexed Arbitration in Three Federal District Courts, published in 1981, reported on the Center's two-year evaluation of three district courts' local rules providing for court-annexed, nonbinding, mandatory arbitration in certain classes of civil cases. The Center undertook the evaluation in cooperation with the three courts and at the request of the Justice Department.

The three districts participating in the experiment—Connecticut, Eastern Pennsylvania, and Northern California—adopted generally similar rules. The stated purposes of the rules are to reduce the time and costs to litigants and to lessen the need to deploy the full panoply of judicial resources in certain cases. The rules provide that certain classes of cases—generally personal injury or contract actions in which no more than $100,000 is demanded—be submitted to a panel of one or three arbitrators, chosen from the local bar. The arbitrators' judgment on the merits (their "award") is entered as the judgment of the court unless, within prescribed time limits, a party rejects the award by filing a demand for trial de novo.

The Center's report is based on information collected in the course of approximately two years' experience with these rules. In two of the courts, the Center gathered caseload data from the arbitrated cases and similar cases processed prior to initiation of the rules. In one court, the Center was able to conduct a controlled experiment, whereby some cases were assigned to the arbitration procedures, while others (a control group) proceeded through the

normal litigation process. In all courts, the caseload data were supplemented by questionnaire data to provide the views of judges, counsel, and arbitrators. A draft report was also circulated to certain of the participants in the programs.

The evaluation produced strong evidence that the arbitration rules have decreased time from filing to disposition of arbitration cases in two of the three districts, attributable almost exclusively to settlement of cases prior to the arbitration hearing. In the third pilot court, no such effect was found, probably because of that court's procedures for the scheduling of arbitration hearings. Court-annexed arbitration apparently can serve as an effective deadline for case preparation; it serves the trial's role as a stimulus to settlement.

About 40 percent of arbitrated cases were disposed of by the arbitration process; in the other 60 percent, the arbitration award was voided by a demand for trial de novo. The extended period required for termination of a case after a demand for trial de novo prevented the availability of adequate data concerning what happens after such a demand. The Center plans to continue to collect data on this question. Counsel in cases disposed of by arbitration were strongly supportive of the rules' success in achieving a faster, less expensive disposition.

Overall, the results of the evaluation paint a promising picture, although only modestly promising and unavoidably incomplete. There is clear promise for court-annexed arbitration to expedite litigation for many cases. But it remains uncertain whether the rules will result in a decrease in the incidence of trials.

In a much more modest project, the Center, at the invitation of a judge in the Northern District of Ohio, is documenting the procedures and the effects of a "summary jury trial" procedure instituted by the judge's local order. Under the procedure, in certain cases that otherwise appear destined to go to trial, the judge provides counsel a jury to which they may present summary arguments. The stated purpose of the procedure is to give attorneys and parties a sense of how a real jury might react were the case to go to trial, and thus provide a more accurate basis for comparing the advantages of settlement and the costs of a trial. The attorneys may, and sometimes do, stipulate that the jury's findings will be binding. Trial de novo, of course, is otherwise available.

Courtran Civil Case Management Support. As indicated previously, development and testing of Courtran programs for trial court case management first focused on criminal litigation, given the special reporting and accounting requirements imposed by the Speedy Trial Act of 1974. The Division of Innovations and Systems Development has also, however, responded

to the requests of various chief judges and court clerks for automated support in the area of civil case management. For example, the INDEX system, described previously, supports aspects of civil case management. INDEX contains summary information on civil as well as criminal cases, and produces a variety of reports both for the court as a whole and for individual judges.

In addition, test operations of a comprehensive civil case management system began in two courts in fiscal 1981. The civil case management system was developed through the preparation of a functional description, written in the language of court personnel, that defines thoroughly the support that the system will provide, including the reports it will produce, the data elements it will contain, and the procedures to be followed by court personnel in making use of the system. In 1981, after its approval by the users group of district court personnel who assisted the Center in producing it, the functional description was used to develop the precise technical configurations that constitute the system. The full range of the civil case management system's implementation is contingent upon adequate funding.

E. Jury Projects

The jury is a vital institution in the administration of federal justice, and thus the Center, working closely with committees of the Judicial Conference, has devoted considerable research and continuing education resources to help ensure its effectiveness and its efficient management.

First, the Center has been asked to develop means to help the courts ensure the statutory mandate that juries be "selected at random from a fair cross section of the community in the district or division wherein the court convenes" (28 U.S.C. §1861). Second, the Center has worked with the courts in the effort to achieve efficient "juror utilization"—that is, to have a sufficient number of jurors available to allow trials to start when the participants are ready, without calling many more citizens than will be used promptly. Otherwise, jurors must wait days before serving, if they serve at all. Finally, the Center has been asked to undertake research to help answer such basic questions as how best to select and instruct the jury, and even whether traditional juries are suited to the full range of tasks presently assigned to them. This perennial question is especially timely in the context of complex litigation.

Education and Training. The seminars for newly appointed district judges include presentations on the conduct of jury trials. The subject is also presented at seminars for United States magistrates and for bankruptcy judges, since Congress has recently empowered both to conduct jury trials in certain cases. Techniques of juror utilization are a common topic at the

Center's seminars for clerks of court and deputy clerks. Special training on juror utilization has been provided in recent years for bankruptcy clerks, in anticipation of their new responsibilities for jury trials under the Bankruptcy Reform Act of 1978. The Center's media library also includes seminar presentations on juror utilization, which are circulated on request to court personnel.

Jury Representativeness. To help ensure that federal juries are demographically representative of the population in which they serve, the Judicial Conference requires the districts periodically to submit information to the Administrative Office showing the composition by race and sex of samples of prospective jurors (those who returned the juror qualification forms and those persons certified by the court as qualified for jury service). The analysis is by district, or by division in districts with divisions. The Administrative Office analyzes these data and provides reports to the courts that allow them to compare the demographic composition of these two samples with Census Bureau data on the overall demographic composition of the jurisdiction.

Analysis of this statistical information can be a difficult task, especially in large districts, even more so given the difficulty of isolating census data by court division. Consequently, the Center's Research Division was asked by the Judicial Conference Committee on the Operation of the Jury System to develop computer programs for Administrative Office use in constructing the necessary tables from the information supplied by the courts, and for analyzing the information provided by the court, both for internal comparisons and for comparison with relevant census data. The program produces for each district or division a brief report stating the date and source of the jury wheel analyzed and presents three tables, with general explanation.

The Center developed the computer program by which these reports could be generated and tested them over an extended period. Their transfer to the Administrative Office was effected in 1981, along with a detailed instructional manual developed by the Center to guide Administrative Office personnel in the operation of the various programs.

Summoning of Jurors. The Research Division has completed a project analyzing experiments undertaken in eight districts to test the effectiveness and economy of different methods of summoning jurors. The project compared the use of ordinary mail to certified mail, as well as differing procedures to include the juror questionnaire with the summons or to send the two forms separately.

A report describing the results of the experiments and identifying certain statutory changes that may be necessary to implement the indicated improve-

ments was submitted in 1981 to the Judicial Conference Committee on the Operation of the Jury System and is now awaiting publication.

Research on Voir Dire Activity. In recent years the Center's work with the Committee on the Operation of the Jury System has produced two reports on voir dire activity. This work has led to interest on the part of the committee and others in the feasibility of a judicial training program on the conduct of the voir dire, and the Center's Research Division has been working to develop such a program.

A related but more immediate effort, also growing out of the Center's accumulated expertise in the voir dire process, has been the development of a judges' manual on conducting voir dire and managing challenge activity. The Center is working with several judges, including members of the Jury Committee's voir dire subcommittee and two district judges on the Center's Board with a special interest in voir dire, to prepare brief descriptions of the judges' voir dire practices. These descriptions will be combined with results from other Center research based on observation of voir dire in practice and will be published in the manual. The procedures described in the manual are consonant with the policies of the Jury Committee.

Jury Instructions. For the past three years, the Center's Research Division has been providing assistance to a Center committee appointed to consider revisions in criminal jury instructions used in federal courts. The committee was initially appointed to plan for the major task of preparing jury instructions that would be consistent with the then-anticipated revision of the federal criminal code; passage of the proposed code revisions would render many currently used instructions obsolete.

Given the uncertainty of code revision, however, the committee undertook to develop pattern instructions in areas not dependent on the fate of the proposed revision. Those areas include credibility of witnesses, appropriate inferences from established facts, matters not to be considered by the jury, and a number of miscellaneous matters, such as instructions concerning jury deliberation itself.

The purpose of the effort has been to devise instructions that are comprehensible to laymen; for that purpose, the Center has advised the committee about the results of psycholinguistic research on jury instructions and has arranged for a law professor and a journalism professor with experience covering courts to work as a drafting team for the committee. The committee's product has also benefited from various circuits' efforts to develop pattern instructions.

The committee is reviewing the draft instructions, and publication is anticipated in fiscal 1982. The volume will include explanatory materials that describe the standards used in preparing the instructions.

Possible Alternatives to Juries in Protracted Litigation. During fiscal 1980 and 1981, the Center's Research Division has provided staff assistance to the Judicial Conference Subcommittee on Possible Alternatives to Jury Trials in Protracted Civil Cases. The subcommittee, appointed by the Chief Justice in 1979, is considering, among other subjects, whether service in protracted cases poses undue hardship on jurors; jurors' ability to comprehend complex matters presented in protracted civil litigation; and possible alternatives to the traditional jury. The utility of alternatives, of course, will depend in part on the developing case law on the Seventh Amendment's provision for right to trial by jury in civil cases. Even if the courts determine that juries cannot be denied even in complex civil cases, litigants and judges may be interested in alternatives to use on a voluntary basis.

The Center's support for the subcommittee includes interviews with judges, lawyers, and jurors who have participated in protracted cases; determination of the meaning of "complexity" in the context of this subject; analysis of specially qualified juries and administrative or legislative tribunals; and assessment of literature on group problem solving as it relates to jury operations. In its research for the subcommittee, the Center has sought to identify any differences between jurors who serve on protracted cases and other jurors and to explore other possible distinguishing characteristics of protracted litigation in the context of the jury question.

Two publications in this area of research were made available by the Center in fiscal 1981. In one study undertaken for the Center, Professors William Luneburg and Mark Nordenberg of the University of Pittsburgh Law School analyzed the use of specially selected, or "blue-ribbon," juries as a possible alternative to the conventional jury in complex, protracted civil cases. The authors developed several recommendations for adapting the blue-ribbon jury concept for such cases; their research report, "Specially Qualified Juries and Expert Nonjury Tribunals: Alternatives for Coping with the Complexities of Modern Civil Litigation," was published in the June 1981 issue of the *University of Virginia Law Review;* the Center has made reprints available. The second study, *Small-Group Decision Making and Complex Information Tasks,* written at the Center's request by Professor Michael Saks of Boston College and the National Center for State Courts, is a review of the social science literature on small-group decision making to identify any findings that might be directly relevant to the work of the subcommittee. Although no research data directly applicable to the practical questions the subcommittee faces were discovered, the report did provide a basis for further empirical analysis designed to explore the role of the jury as decision maker.

F. Implementation of Judicial Orders in Institutional Reform

For several years, the Center has been studying the role played by special masters appointed by the courts to oversee the implementation of their orders in cases involving large-scale, systematic changes in institutions such as prisons and mental hospitals. The implementation of the orders, issued to redress widespread violations of constitutional rights, often requires unique and innovative procedures. The courts have sought the help of the Center's Research Division to assist both the courts and those persons appointed as special masters in effecting the implementation of the decrees.

One judge suggested that the Center document the experience in a case before him involving a state prison. That study has led to a larger project analyzing the many aspects of implementation of judicial decrees directed at institutions of total confinement. The project is expected to produce two further reports in addition to "The Use of Masters in Institutional Reform Litigation" (*Toledo Law Review,* 1979) by Professor Vincent Nathan, an attorney with considerable experience as a master. The first will be a manual to assist judges and special masters; it will include an overview of the theory and practice of implementation of court orders in extended-impact cases, with emphasis on reform in institutions of total confinement. The second will be a documented study of the single case the division has been observing; it will not be published until the case is no longer in the courts.

G. Management and Administration of the District Courts

Almost all of the Center's research and continuing education has implications for the management of the trial courts. Certain projects, however, focus directly on how the district courts, and to a lesser degree, the bankruptcy courts, are managed.

Research and Analysis of Federal District Court Management. At its October 1980 meeting, the Conference of Metropolitan District Chief Judges reviewed a Research Division study that described and analyzed the varying administrative needs and practices in federal district courts with ten or more authorized judgeships. The study, based on extensive interviews and observations, was designed to provide basic information on varying court management patterns and is due to be published as a Center report. The conference requested the study to inform its consideration of various proposals, since put into place on an experimental basis, to provide district court executives in the larger metropolitan courts. (As noted below, the Conference of Chief

Judges, composed of the chief judges of the circuit and national appellate courts, has requested a somewhat similar study on the appellate level, citing the value of the district court study.)

Orientation for Newly Elevated Chief Judges. One result of the Metropolitan Chief Judges Conference's discussion of the study was its recommendation that the Center Board authorize development of an orientation program for newly elevated district chief judges. The Board approved that recommendation at its December 1980 meeting. As part of the orientation program, the Center's director invites each new chief judge to visit the Center, to become familiar with its operations and personnel. (The director of the Administrative Office of the United States Courts issues a similar invitation.) The Center hopes to be able to expand the scope of these visits to allow the chief judge, if he or she wishes, to meet with more experienced chief judges from other courts, thereby complementing the informal orientation received from the presiding chief judge in each individual court.

The conference also suggested that the Center develop a manual for district chief judges, based in part on its survey of administrative practices in the district courts. The manual will not only describe the statutory and other regularly performed duties of chief judges, but it will also indicate the range of management approaches that other districts have found helpful. It will include a section to allow the current chief judge in any particular district to describe the functions which that chief judge has performed in that district.

Peremptory Challenge Rules. In 1981, the Center published *Disqualification of Judges by Peremptory Challenge.* This report grew out of research that the Center began at the request of the Judicial Conference Advisory Committee on Criminal Rules. The committee had before it proposals to amend the Federal Rules of Criminal Procedure to allow each party in a criminal case one peremptory challenge of the judge assigned to the case. Subsequently, legislation was introduced in the Ninety-sixth Congress and again in the Ninety-seventh Congress to allow challenges to district judges, magistrates, and bankruptcy judges in both civil and criminal cases. The Center's study treats the issue in this broader context.

Peremptory challenge provisions are found in various state rules and statutes, which are cited by proponents as an effective means of ensuring fairness to the parties. Others believe that peremptory challenge provisions are unnecessary and indeed a threat not only to the litigants' rights but also to well-administered, expeditious case processing. The Center's study reviews the operation of the various state provisions and assesses the potential consequences of the enactment of similar provisions on the federal level. It suggests, for example, that peremptory challenge rules might be much more deleterious to federal court case management than to state courts. Because

federal courts tend to be smaller—for example, a six-judge federal court is considered large—they would have to turn more frequently to visiting judges. Also, federal cases tend to be multiparty cases, often with parties added during the course of litigation. Either some way of grouping parties into "sides" for challenge purposes would have to be developed or all parties would be allowed a challenge, greatly increasing their frequency and further compounding administrative problems. Finally, the paper notes the special impact of such a provision where courts use individual calendars, as is typical in the federal courts.

H. Improvement of Advocacy in Federal District Courts

At its meeting in September 1979, the Judicial Conference authorized an Implementation Committee on Admission of Attorneys to Federal Practice. The committee, chaired by Judge James Lawrence King of the Southern District of Florida, is charged with overseeing the implementation, on an experimental basis in a limited number of pilot courts, of the major recommendations put forth by the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, known as the Devitt Committee. These recommendations include a system of peer review of lawyers, entrance examinations to test knowledge needed for practice in the federal courts, and a trial experience requirement.

Representatives of the fourteen district courts that are working with the Implementation Committee as pilot courts attended a September 1980 seminar at the Center. The seminar provided an opportunity for the committee and the pilot courts to review the recommendations, identify how the courts might put them into actual operation, and learn the role the Center could play in observing and documenting the implementation.

The Center will continue to serve the committee and the pilot courts by monitoring the efforts in the courts, collecting copies of local rules and other relevant documents, and serving a clearinghouse function for them. Should the courts request it, the Center will provide such technical assistance as it can in the development of federal practice examinations. The Center provided its first report to the committee and the pilot courts in June 1981.

Research on Computer-Aided Transcription. In response to the interests of federal judges and administrators in the potential for computer-aided transcription (CAT) to speed transcript production, the Center undertook a survey of the sixty official federal court reporters who used CAT technology in 1980 and 1981. The survey was designed to determine why the reporters adopted CAT and to learn their assessments of both its strengths and weak-

nesses. The Center staff paper, *Computer-Aided Transcription: A Survey of Federal Court Reporters' Perceptions,* reported mixed results. For example, equal numbers (about 40 percent of the respondents in each case) said that they thought CAT increased or made no change in transcription production time, and the remaining one-fifth of the respondents said that they thought it increased production time. The Center study, like that by other organizations, suggests that time savings achieved by CAT reporters relate to the skills of the court reporters rather than to the transcription methods employed.

II. FEDERAL SENTENCING AND PROBATION

The Center has long worked closely with the federal district courts, their probation offices, and the Judicial Conference Committee on the Administration of the Probation System to provide assistance to those charged with the sentencing function and with the supervision of convicted defendants who are not incarcerated. Indeed, one of the Center's earliest research reports analyzed sentencing disparity at the request of the judges of the Second Circuit; that report has frequently been cited in congressional and professional debates over restructuring the sentencing process. Similarly, training of probation officers was one of the educational missions anticipated for the Center at the time of its creation.

As described below, the Center's work in sentencing and probation relies on a high degree of cooperation among personnel in the Division of Continuing Education and Training, the Research Division, and more recently, the Division of Innovations and Systems Development. The Research and Education Divisions work jointly to provide continuing education on sentencing and probation to judges and probation officers, and the Research and Systems Divisions are both involved in the effort to meet the Judicial Conference's request for an automated Probation Information Management System (PIMS).

During the past several years, the Research Division has given close attention to congressional interest in revising the federal criminal code, including proposals for restructuring the sentencing discretion of federal judges.

A. Continuing Education and Training

Sentencing Institutes. In 1958, Congress authorized the Judicial Conference to convene sentencing institutes at the request of either a circuit's chief judge or the Department of Justice (28 U.S.C. § 334). Since 1974, the Center, at the request of the Judicial Conference Committee on the Administration of the Probation System, has been involved in the planning, administration, and evaluation of the institutes. The Center, primarily through its

Research Division, works with planning committees in the circuits for which the institutes will be held, assisting them in developing agendas and locating qualified speakers. The costs of attendance for judges and other judicial branch personnel are included in the Center's education and training budget.

In fiscal 1981, the Center organized and presented a sentencing institute for the judges of the Seventh and Ninth Circuits. The institute included a one-day tour of the federal correctional facility at Pleasanton, California, panels on the effect of various approaches to sentencing and on probation supervision, and workshops in which judges met with members of the United States Parole Commission.

Justice Department Policies Affecting Judges' Sentencing Options. One of the objectives of both the sentencing institutes and the Center's orientation seminars for newly appointed district judges is to keep judges abreast of the current policies of the Parole Commission and the Bureau of Prisons. Those Justice Department agencies are responsible for many offenders after sentencing, and their policies—especially those of the Parole Commission—can have a major effect on the actual sentences served, regardless of the sentences imposed.

A major contribution to the dissemination of this information is a Center report, which is revised as necessary to reflect the agencies' policy changes. The report, *The Sentencing Options of Federal District Judges,* was most recently revised at the time of the February 1981 seminar for newly appointed district judges. The Center periodically informs judges of the revisions in the report. The Probation Division of the Administrative Office and the Department of Justice distribute the revised reports to probation officers and United States attorneys' offices.

Seminars and Workshops for United States Probation Officers. The Division of Continuing Education and Training sponsored a series of seminars for probation officers and supporting staff during fiscal 1981. The series included one orientation seminar for newly appointed probation officers, one advanced seminar, one management seminar for chief probation officers, and thirteen regional seminars. The programs shared some common curriculum elements, adapted to the needs of the officers in attendance, including such topics as the Administrative Office's *Planning and Supervision Monograph 106,* employment placement practices, presentence financial investigations, sentencing alternatives, drug abuse, parole guidelines and procedures, and white-collar crime. The Center also sponsored three management seminars for chief probation clerks.

The Center continued its cooperation with a Fordham University program in which qualifying probation officers participate in a three-year program

leading to a master's degree in sociology. The program, conducted primarily by correspondence, includes a one-week residential seminar each semester at a geographically convenient site. Twenty-seven officers have graduated from the program with a master of science degree; the first graduated in fiscal 1979. During fiscal 1981, twenty-one probation officers participated in the degree program.

B. Probation and Sentencing Research

The Center's research on aspects of federal sentencing and probation is influenced by the agenda and objectives of the Judicial Conference Committee on the Administration of the Probation System. The Research Division also maintains a close working relationship with the Probation Division of the Administrative Office.

Implementation of Statistical Risk Classification System. A major probation research project has been to validate a "base expectancy" or "risk prediction" scale for probation officers to use as a caseload classification tool. Implementation of such a classification system will allow for a more accurate allocation of probation office resources, because officers can know with greater certainty the services that probationers under their supervision will need.

The Committee on the Administration of the Probation System recommended system-wide use of a specific device the Center had developed, called the Risk Prediction Scale 80 (RPS 80). All probation offices began use of the device in January 1981.

In 1981, the Research Division continued to collect and analyze data on the initial implementation of the RPS 80 in selected probation offices. The division participated in a number of RPS 80 training sessions as part of the Center's ongoing seminars for probation officers. The Center expects to continue to assist the Probation Division on this project by conducting periodic validity and reliability studies of the RPS 80.

Prisoner Litigation. Last year's annual report noted the completion of the work of the Center's Committee on Prisoner Civil Rights, for which the Center's Research Division had provided logistical and research assistance. Since then, a Judicial Conference Ad Hoc Committee on Prisoner Litigation has been appointed, and the Center has been asked to continue its research and logistical assistance to that committee.

Also in fiscal 1981, the Center published an update of the *Compendium of the Law on Prisoners' Rights,* by Magistrate Ila Jeanne Sensenich, a member

of the Center's Committee on Prisoner Civil Rights, and amended the main volume's table of contents to allow reference to both documents. Magistrate Sensenich's update has been distributed to judges and others in the federal judicial system, and its availability has been announced to others by the Government Printing Office.

Drug Aftercare Services Evaluation. The Center's last several annual reports have noted that recent legislation transferred responsibility for providing aftercare services to drug-dependent probationers and parolees from the Bureau of Prisons to the Administrative Office. These aftercare services include counseling, urinalysis, ambulatory detoxification, and methadone maintenance.

At the request of the Probation Division, the Center has undertaken a long-range formal evaluation of the aftercare program. The ultimate evaluation objective is to determine the overall effectiveness of the various service delivery modalities.

In 1981, the initial phases of the evaluation were undertaken and completed. Specifically, the initial tasks are aimed at determining the extent to which the Probation Division's minimum requirements for aftercare service have been met. Much of the data generated during the initial phases of the evaluation will be used to assist the Probation Division in its efforts to keep Congress informed of the program's progress.

Other Sentencing and Probation Research. The Probation Committee continues its interest in the impact of Federal Rule of Criminal Procedure 32(c)(3); the Center's research for the committee on this subject was published in fiscal 1980. The report revealed that while the courts have been making significant efforts to meet at least the threshold requirements of the rule for disclosure of the presentence report to the defendant and counsel prior to sentencing, there are still widespread practices that defeat full compliance with the spirit of the rule. The Center continues to advise the Probation Committee on this topic; in 1981, the Center published in *Federal Probation* a summary of the data that underlie the longer article on presentence report disclosure that had been published in 1980 in the *Harvard Law Review.*

A Center report on the effects of sentencing councils describes a device by which district judges in a court can discuss their sentencing intentions in an effort to curtail unwarranted disparity in sentences handed down within the court. More extensive data from the Center study are available for review through the Research Division.

C. Probation Information Management System

In fiscal 1981, both the Center's Research and Systems Divisions continued to work with personnel from the Administrative Office's Probation and Information Systems Divisions, as well as personnel from selected probation offices, to design a Probation Information Management System (PIMS). PIMS is an automated management information system recommended by the Probation Committee and approved for development by the Judicial Conference. The Center's role in its development was approved by the Board at its meeting in June 1979, and the effort has been coordinated regularly among the Center, the Administrative Office, and the Probation Committee.

When completed, PIMS will contain nationwide information on sentences imposed for various offenses and kinds of offenders. Judges may consult this information when considering a sentence to impose. PIMS will also provide essential planning and management information for probation officers to use in analyzing their caseloads; for probation office administrators' budget and personnel needs; for management planning; and for research.

Center personnel have worked throughout 1980 with a PIMS users group consisting of probation officers from eight districts and staff from the Administrative Office to develop a functional description of the system. The functional description will define the services that its potential users want PIMS to provide, including the reports it should produce, the data elements it will need, and the procedures to be followed in entering the data and generating the reports. The description is a necessary first step to the technical design and implementation of the system. The Probation Committee has been kept fully informed of the development of the system at each stage.

III. APPELLATE COURTS

The Center's work in support of the appellate courts has been shaped by two objectives. The first is to provide educational services for judges and others to help the courts keep abreast of new areas of law and techniques of case management. The second objective is to facilitate, to the maximum extent possible, the devotion of energies to the appropriate disposition of all appeals. This the Center attempts to achieve by developing and assessing both technological and procedural innovations that promote efficiency in the appellate process.

The United States Courts of Appeals have in one sense borne a much heavier burden of increased caseload than have the district courts. Ten years ago, for example, in 1971, there were 136,553 civil and criminal filings in the federal district courts, or 341 cases for each of the 401 judgeships. In 1980, there were 197,710 filings, 383 for each of the 516 judgeships. By contrast, even though the number of authorized appellate judgeships increased by an even greater proportion, from 97 to 132, the proportionate increase at the appellate level far outstripped filings at the trial level. In 1971, the 12,788 appellate filings amounted to 361 cases per appellate panel; the 23,200 appellate filings in 1980 amounted to 527 cases per panel. Thus, despite the Omnibus Judgeship Act of 1978, the cases per appellate panel soared 46 percent in one decade. This disproportionate increase in workload as compared to judgeships reflects in part the judicial and congressional realization that large increases in the federal appellate bench pose a potential threat to collegiality essential for federal appellate review, as well as to the maintenance of the national law's uniformity. Accommodating that increased workload thus requires developing different procedures appropriate for different types of cases, as well as technological innovations to conserve judicial time. For example, earlier annual reports described the Center's work with the judges and support personnel of the Third Circuit to test the impact on opinion preparation of the use of word-processing equipment in each judge's chambers. Furthermore, an electronic mail capability, as part of Courtran, allowed the judges to circulate draft opinions electronically (rather than by mail or other facsimile transmission device) between the word-processing equipment in their various chambers.

Two comprehensive Center studies documented that these innovations increased secretarial productivity by up to 300 percent, reduced the time re-

quired by the court to prepare written opinions by 52 percent for per curiam opinions and by 25 percent for signed opinions, and reduced the delivery time of court documents by almost 85 percent compared to postal service delivery. Furthermore, judges reported that the quick turnaround in clean opinion drafts and in comments from colleagues made it easier for them to focus on the opinion, when earlier it was necessary to take time to refamiliarize themselves with the matters presented. This Center project will soon be ready for transfer to the Administrative Office for operation.

A. Educational Programs

There were no seminars specifically for circuit judges in 1981, although circuit judges were invited, as always, to attend the various circuit workshops described in chapter one. The Center conducts conferences for circuit judges at intervals of several years, and in 1980 the number of newly appointed circuit judges was sufficient to warrant a seminar exclusively for them, the only such seminar the Center has offered.

In November 1980, the Center sponsored a seminar for the clerks of the courts of appeals and the national appellate courts. The seminar provided an opportunity for reports on Administrative Office activities, Center research and development (including the Pre-AIMS Courtran system and the Appeals Expediting Systems, both described below), and status reports by the attendees. Additionally, the clerks heard presentations on the Judicial Conference equal employment opportunity program and proposed changes in the Federal Rules of Appellate Procedure.

A March 1981 seminar for the courts of appeals' senior staff attorneys included a discussion on treating prisoner petitions, a symposium on legal writing, a presentation on the senior staff attorney's role as personnel manager, and a discussion by Judge Alvin Rubin of the Fifth Circuit, the seminar chairman, on "reasoning of appellate judges."

B. Research and Development on Appellate Court and Case Management

Appeals Expediting Systems. The Center has undertaken several projects in response to appellate court requests for help in developing and documenting programs to expedite the movement of cases in the interval between filing and oral argument or submission for decision. It is in this interval that the greatest amount of time from filing to disposition tends to occur.

In 1981, the Center completed a project, undertaken at the request of the Eighth Circuit Judicial Council, to document and evaluate the appeals expediting system it had developed, whereby an employee of the clerk's office monitored the progress of appeals up to the point of submission to the court. One project product consists of a documentation and set of manuals and forms—for use primarily by the Eighth Circuit but available for review by other courts. Also, the Center will publish in fiscal 1982 its comparison of the Eighth Circuit's appeals expediting system with the Second Circuit's somewhat similar plan to expedite the processing of appeals.

The Tenth Circuit Judicial Council, aware of the Center's work in the Eighth Circuit, asked for similar support. Unlike the Eighth Circuit, the Tenth Circuit did not have an appeals expediting program in place; it wished to build on the Eighth Circuit's experience to design its own appropriate expediting system. Furthermore, the Tenth Circuit is serving as one of the two pilot courts for the Courtran Appellate Information Management System (AIMS) described in section C of this chapter. The presence of AIMS in the Tenth Circuit was an additional incentive for designing an expediting system for the circuit.

The Center is now providing support to the Tenth Circuit in analyzing its appeals process and developing an expediting system. This support has included the development of a computer simulation system that allows testing various case management innovations to determine the effect they would have if they were implemented.

Experiments Involving Preargument Case Disposition and Oral Argument. Federal and state appellate courts in the 1980s have sought to adapt the underlying principles of the supervised pretrial conference for use in the appellate setting. The Second Circuit's Civil Appeals Management Plan (CAMP) was the first such effort. Since then the Seventh and Eighth Circuits have devised their own preargument conference plans; the Ninth Circuit is in the process of devising one. The Center has been involved in several of these efforts.

In 1977, the Center published its first report on CAMP, which was instituted as an experimental program with the Center's support in 1974. The plan assumes that a preargument conference with a settlement attorney might allow a case scheduled for argument to be disposed of without submission, thus preserving judicial resources for cases in which oral argument is necessary. In cases that went to argument, it was believed that the settlement attorney could contribute to a sharpening of the issues and to more rapid processing of the appeal.

The Center's evaluation concluded that the program reduced the disposition time for appeals that were settled or withdrawn, but not for appeals that went to argument, and that it effected a small improvement in the quality of the appeals argued. With regard to the effect of CAMP on settlements, it found the results inconclusive.

The Second Circuit Court of Appeals continued the operation of the plan and hired a second staff attorney. In 1978, the court began a second controlled experiment, in which, for a period of six and one-half months, appeals were randomly divided among the two staff counsel and a control group. Early in fiscal 1981, the Center was asked by the court to analyze the data that had been collected. This analysis shows that the plan has had a statistically significant effect in reducing the number of appeals that reach argument. Although the data do not permit precise measurement of the magnitude of that effect, they suggest that programs of this type may have the potential for dramatically reducing the number of appeals that reach argument. Analysis of other possible effects of the program is continuing, and a report will be completed in fiscal 1982.

Also in 1978, the Seventh Circuit instituted a preargument conference program as a controlled experiment, with the evaluation component sponsored by the Center. This program differed in a number of ways from the Second Circuit's program. The major difference was that encouraging settlement was not regarded as a primary objective; rather, the principal benefits to the court were expected to be a reduction in motions practice and a reduction in the size of briefs and appendixes. The program was also expected to expedite consideration of appeals. The Center's evaluation, which is now being prepared for publication, shows a reduction in motions practice and that consideration of appeals was expedited. However, it indicates that settlements were not in fact fostered by the program and that the expectation of reduced brief size was not achieved.

The Ninth Circuit Court of Appeals is planning to implement a preargument conference program at one of its locations in the latter part of this year. The Center will provide advice in the establishment of this program and may conduct an evaluation of it.

Several years ago, the Ninth Circuit began to explore a voluntary "appeals without briefs" project and asked for the Center's help in devising and evaluating the procedure. Judges of that court thought that extending the oral argument period and limiting written submissions could lessen the amount of judge time consumed by a substantial number of the appeals filed each year, with substantial cost savings for litigants. The project applies only to certain types of cases, and only to those filed from certain district courts and administrative agencies. Counsel who are advised by the court that their

cases qualify for the project are asked to submit, in lieu of traditional briefs as required by the Federal Rules of Appellate Procedure, "preargument statements" no more than five pages long.

The project commenced on June 1, 1980. The Center has constructed an evaluation plan and is using a computer program that it developed for the project to analyze the data. The experimental phase of the project is expected to run at least through 1981.

Automated Appellate Court Calendaring Systems. A pervasive case management problem faced by courts of appeals is the assignment of cases to the three-judge panels that hear the great majority of cases. The Ninth Circuit Court of Appeals, like other courts, designed a scheme by which cases could be categorized according to subject matter and difficulty, to ensure that particular panels did not receive a disproportionate share of either routine or exceptionally difficult cases. Moreover, the categorization would allow cases with similar subject matter to be argued before the same panel, if the court so desired.

In 1977, at the court's request, the Center's Research Division developed a computer program that automatically assigns cases to the panels, employing the court's criteria. The program, called CALEN9, was designed to group cases into panel calendars based primarily on the cases' difficulty and subject matter, and secondarily, according to the district court from which the appeal was taken. CALEN9 also summarized and tabulated appeals according to the assignment criteria. CALEN9 was never used to assign judges to the various panels, although the program had that capability; the circuit executive continues to assign judges.

In 1981, the Research Division designed a major revision of the calendaring system, which was implemented by the Ninth Circuit's Office of Staff Attorneys and renamed the Staff Attorneys Data Base (SADB). SADB provides such additional capabilities as consistency in the order in which cases are heard, without regard to the division of origin, and compatibility with the Appellate Record Management System, which the Center developed for use in the Ninth Circuit clerk's office. This calendaring capability will eventually undergo further development within the broader framework of the Courtran Appellate Information Management System, described in section C of this chapter.

Opinion Publication. Another Center project examined a different aspect of appellate opinions: nonpublication of opinions in cases in which the court believes an opinion would not contribute to the body of the law. Working with a contractor, the Research Division examined appellate cases with unpublished opinions in two circuits, applying to those cases preestablished

criteria to assess whether the needs of the appellate process were met without publication of an opinion.

The contractor's report, published as an article in the summer 1981 issue of the *University of Chicago Law Review,* concluded that the principal benefit of limited publication is swifter justice; cases with unpublished opinions had shorter disposition times than cases in which the court's opinion was published. However, this increased speed in the production of unpublished opinions, the authors suggest, can affect the quality of the opinions. Moreover, precedents can be submerged. The authors developed a model local rule, building in part on existing circuit publication rules, that attempts to maximize the benefits and minimize the negative aspects of limited publication.

Impact of Administrative Agency Appeals. For several years there has been legislative interest in enlarging the circuit courts' scope of review of administrative agency appeals. Relevant to that interest is the Center's study of the burden imposed on judges by administrative agency appeals compared to those imposed by other types of cases.

Initial research, completed quickly during the summer of 1981, involved empirical analysis of briefs and other materials in cases filed in the United States Court of Appeals for the District of Columbia Circuit, a court that receives a large number of administrative agency appeals. The study found that direct appeals from administrative agency rulings place burdens on the court that are significantly greater than the burdens placed by cases of other types. On the average, for example, agency cases had five briefs filed, as compared to an average of less than three for all other case types examined, except for United States civil cases (3.9); the briefs averaged 182 pages, compared to less than 100 in all other cases, except for United States civil cases (126). These are only two of many of the comparative burdens analyzed in the research to date.

Chief Judge Administrative Duties. The Conference of Chief Judges (composed of the chief judges of the circuit appellate courts and the national appellate courts) asked the Center to undertake a description and analysis of how the chief judges in the various courts exercise their administrative roles and duties. The request was prompted by the somewhat similar study, described above, that the Center had undertaken in 1980 in the larger district courts at the request of the Conference of Metropolitan District Chief Judges.

The Conference of Chief Judges sought the Center study to help chief judges learn more of how their colleagues exercise their administrative duties and to identify particular administrative techniques within the various courts that might be candidates for adoption in other courts.

C. Automated Appellate Information Systems

Courtran's Appellate Information Management System (AIMS) has been designed in cooperation with the personnel of the courts of appeals. The test of an initial version of AIMS continues in the Second and Tenth Circuits. The use of AIMS in these courts has increased, with direct support provided to address a spectrum of case management problems. In 1981, the Seventh Circuit began implementation of AIMS.

The Appellate Record Management System (ARMS) was developed specifically on a priority basis for the Ninth Circuit to help that court deal with an especially pressing caseload. As AIMS is implemented in the Ninth Circuit, it will replace ARMS.

IV. CENTER ACTIVITIES WITH SYSTEM-WIDE IMPACT

Most of the Center's work described in the preceding chapters is directed at a specific function or level of court. Some activities, however, are best understood as directed toward the federal judicial system as a whole.

A. Continuing Education and Training

The diversity of skills and procedures needed for the management and administration of various courts produces a spectrum of education and training needs. Not all of these can be met by the Center's programs of seminars and workshops. In some cases, the training needs affect only a few personnel, and holding seminars for them, with the attendant costs, would be uneconomical. Moreover, the Center's annual appropriation for travel has not risen commensurately with the spiraling increase in the costs of travel, or with the increase in size of the federal judicial system. Thus, even with judicious site selection for regional seminars, and with careful attention to the availability of reduced fares, the search for alternative training forums is all the more important.

In-Court Training and Education Programs. In-court training refers to educational programs in which the personnel participate in the program in their local court. The Center structures in-court training sessions at the request of the particular court or court unit; at times, the Center will alert the court to an area needing improvement, which has come to its attention through a variety of sources. In fiscal 1981, the Center's in-court programs provided training on crisis intervention, judgment and commitment orders, monitoring records and files, and supervision of drug-dependent offenders. Typically, an experienced official from another court is brought in to conduct the training, or an expert in the subject area from the academic or professional community will be made available. Other programs are designed for the acquisition of additional skills and expertise. In 1981, the Center conducted fifty in-court workshops, treating such topics as effective time management and improved communication. Three sequential programs to improve managerial and supervisory skills are also available.

To coordinate local training services and maintain close contact with the courts, the Center has sought to have a training coordinator appointed in every large and medium-sized federal trial court. The coordinators are appointed from the court's staff and perform their training coordination responsibilities in addition to their regular duties. They structure and promote training programs for the various categories of personnel within their courts. The Center helps them with information on new training techniques and methods. A monthly Center newsletter, *What's Happening?,* alerts training coordinators to new materials and programs available through the Center.

Media Services. In 1972, the Center established a media library in its Division of Continuing Education and Training so that federal court personnel, using equipment in their own courts, could hear lectures of special interest to them at their convenience. Most of the library's holdings are recordings made at Center seminars and workshops.

Originally the library maintained and distributed audio cassettes only. In recent years, the library has expanded its lending resources in both number and kind, adding new titles and discarding items that have been rendered obsolete or that have been replaced by current offerings. More than 1,000 audio cassettes covering a wide range of specialized topics are currently available. In addition, the collection includes approximately 100 films and 165 video cassettes. In late 1979, a revised *Educational Media Catalog* was published. More recent acquisitions are listed in *The Third Branch* and in supplemental bulletins included in the *What's Happening?* newsletter.

The value of the media library has grown as the costs of bringing people to seminars have increased. Also, as the Center's seminars and workshops treat more complex subjects, participants increasingly value the opportunity to review, in a more leisurely setting, programs they heard in person. Videotapes of seminars on the Bankruptcy Reform Act of 1978, for example, have been circulated to various courts and have been used as a nucleus for programs for both judges and the local bar. In 1981, the Media Services Unit videotaped such Center programs as the seminars for newly appointed bankruptcy judges and seminars on management for chief probation officers. It also videotaped a seminar that the United States District Court for the Eastern District of Pennsylvania helped develop on effective representation at the sentencing stage in federal court, which was designed primarily for federal defenders and other lawyers representing the indigent.

The Center has also developed specific training modules for supporting personnel in the courts. In 1981, the Center produced videotapes on such subjects as developing position descriptions, employment interviewing, probation officer safety, and team building. The Center's network of training coor-

dinators is responsible for the use and distribution of those materials. The Center's videotaping capability has other uses as well. For example, at the suggestion of the Board, the Center began to produce videotapes describing the work of the Center and its various divisions. These will be available at circuit conferences and other gatherings for those who wish to learn to utilize the Center's resources more effectively.

Specialized Training. Another Center program gives all qualifying personnel the opportunity to receive tuition support to attend courses in job-related subjects at local or national educational institutions. These may include courses of two or three days' duration in specific office management skills, specialized courses for probation officers, or even special substantive legal courses. Through July 1981, the Center had provided tuition support to 1,392 individuals, who attended 1,435 courses, at an average tuition per course of $163.96. Total funds obligated were $235,281, or about 9.1 percent of the total education budget. The funds were distributed as follows to the various categories of personnel.

TUITION SUPPORT PROGRAM

	Percentage of Funds
Offices of Clerks of Court	25.3
U.S. Probation Officers	24.0
Bankruptcy Courts	16.9
Federal Public Defenders	11.4
Secretaries	10.3
Judges	4.0
Staff Attorneys	2.6
Magistrates	2.5
Librarians	1.2
Other	1.8

B. Committee on Experimentation in the Law

In 1981, the Center published the report of its Advisory Committee on Experimentation in the Law. The committee's work is in response to growing attention to the use and potential misuse of controlled experiments in the legal setting.

On occasion, Center research has employed the method of controlled experimentation to assess the changes that may be attributed to a particular innovation. Analysis of the arbitration rule in one of the three pilot districts, as well as the evaluations of both the Second and Seventh Circuits' preargument case management projects, has involved subjecting one group of cases to the treatment under study and allowing another group of otherwise identical cases to proceed through the system without that treatment. The controlled experi-

ment is perhaps the most reliable means of identifying whether changes may legitimately be attributed to an innovation. Such identification is important in avoiding the serious harm or waste of resources that can come from "reforms" supported by little more than rhetoric. Especially when human subjects are involved, however, the differential treatment necessary for a controlled experiment presents problems of fairness, which are compounded in legal institutions with their promise of equal protection.

The legal community has not been as vigorous as other professions in undertaking controlled experimentation or in evaluating the problems that experimentation represents. Both the courts that the Center serves in its research and the Center itself have been interested in a careful exploration of the ethical tensions inherent in the use of controlled experimentation in legal settings. In 1978, the Chief Justice, as chairman of the Center's Board, appointed a special Center committee of judges, law professors, practicing attorneys, and social scientists to undertake that exploration.

The committee's report, *Experimentation in the Law,* provides detailed analysis of the variety of ethical factors that arise when experiments are conducted within the actual operation of the courts and of the justice system in general. These factors include not only disparity in treatment of subjects, but also privacy and confidentiality of research data. The report also deals with the problem of deception; to ensure the validity of experimental results, it is sometimes necessary that participants not be aware of some, or all, of the aspects of the experiment of which they are a part. The report analyzes the dilemma faced by those who feel they must either adopt a program without resolving uncertainties about its consequences, or forgo a program that might have improved the operation of the justice system. Although the report provides practical guidelines where feasible, the committee recognizes that the problems must ultimately be decided on a case-by-case basis, with more specific guidelines developing from evolving precedent. The report also recognizes and discusses the analogies and distinctions between experimentation in the law and research in fields such as medicine and psychology. The report will be distributed on request within the federal judiciary and its availability noted in the research community, in the hope that it can foster greater sophistication in law-related research of an experimental nature.

C. Analysis of Federal Court Rulemaking

In his 1979 address on the state of the judiciary, Chief Justice Burger expressed the view, shared by others within and outside the judiciary, that a reexamination of the federal rulemaking process may well be in order. "With the vast increase of burdens on the Justices over the past 20 years," the Chief Justice noted, "there are valid questions as to whether Justices can give proposed

rules the kind of close study needed, and whether the Court's approval is really meaningful. Perhaps the time has now come to take another look at the entire rulemaking process." In response to this call, the Center undertook a broad analysis and description of the current rulemaking system, inviting comment as appropriate from members of the Judicial Conference Rules Committees and other participants in the process.

In 1979, the Center asked then-Dean Roger Cramton of the Cornell Law School to prepare a modest "think piece" on the subject, which was subsequently discussed at a small conference of judges, lawyers, and law professors, all of whom had voiced opinions on the current rulemaking process. Representatives of the Rules Committees attended the conference as observers. On the basis of Dean Cramton's paper and the conference discussion, the Center produced a more lengthy description of the current rulemaking process, as well as proposals for change. The report, *Federal Rulemaking: Problems and Possibilities,* published in 1981, includes a thorough treatment of the evolution of the rulemaking process; a description of the current procedures by which the Judicial Conference and its committees, the Supreme Court, the Congress, and the bar participate in creating or amending the rules; and a review and assessment of criticisms of the process. The very nature of the call for the report meant that the report's focus is on those aspects of the process that had been singled out for criticism and might benefit from change. The Center's research on the rulemaking process has benefited from the support of the present chairman of the Standing Committee on Rules of Practice and Procedure, Chief Judge Edward T. Gignoux, and of his predecessor, Judge Roszel C. Thomsen.

The report was made available to the Standing Rules Committee at its June 1981 meeting and subsequently distributed within and without the judiciary.

D. Assessing the System's Future Needs for Judgeships and Other Resources

In fiscal 1981, the Center began or continued several efforts to refine the dual processes of predicting the need for and creating federal judgeships. Creation of judgeships is, of course, a duty of the Congress. Congress, however, seeks recommendations from the Judicial Conference, whose Subcommittee on Judicial Statistics undertakes a biennial survey of the workload of the district and appellate courts to identify where increased workload appears to justify increases in judgeships. The Congress and the Conference have also been interested in ways to anticipate the trends of future case filings, in order to allow improved planning.

Case Weights. In 1981, the Center published its report on case weights, *The 1979 Federal District Court Time Study*. The report presents the revised set of case weights that the Center had developed at the request of the Subcommittee on Judicial Statistics for use in analyzing relative workload in the various federal district courts. The report also explains the research method by which the weights were determined and explains the methodological and theoretical considerations involved in case weighting.

Applying case weights to the filings in the various courts provides a more accurate measure of the relative burden of the courts' caseloads than the raw filings themselves. For example, although an antitrust case and a truth-in-lending case each appear as a single filing, an antitrust case typically requires far more judicial resources than a truth-in-lending case. Assigning properly determined weights to the raw filings is a means of differentiating that relative burden.

The case weights were derived from data received from a sample of 100 judges, who completed time sheets for the Center over a four-month period, recording the time spent every day on the various cases on their calendars. The case weights used by the Judicial Conference in recommending new judgeship positions to the Congress were last revised more than ten years ago. The more recent survey was designed to be much less burdensome to the judges than the earlier surveys.

In 1981, the Center began a study to develop weights for bankruptcy cases, in order to measure the bankruptcy judge time required to dispose of a given caseload. The primary purpose of this study is to provide a basis for determining the number of bankruptcy judges that will be needed in the judicial districts after the new bankruptcy code becomes fully effective in 1984. This study is very similar to the 1979 district court time study; it also involves a sample of 100 judges keeping records of their time expenditures, for a twelve-week period. The bankruptcy study, however, will produce absolute, rather than relative, measures of the time consumed by particular types of cases—that is, measures of the number of judge hours consumed by an average case of a given type, rather than measures of the ratio of time consumed by cases of a particular type to that consumed by the average case. It will also produce information regarding the amount of time that bankruptcy judges spend on different types of activity, such as administrative duties, travel, and working on cases. The study is to be completed in the fall of 1981.

The projects on case weights tie into the Center's long-standing interest in developing a method for estimating the size of future federal caseloads and their specific case mix. In earlier years the Center had sought a method to predict the number of filings of various case types (and therefore of various weights) that would occur in each district during specified periods in the

future. That goal turned out to be beyond the current state of the art in forecasting technology. The Center is thus presently pursuing shorter-term predictions for the system as a whole. If that can be accomplished with satisfactory accuracy, it may be possible to make reasonable estimates for smaller units within the overall system. Such efforts may contribute substantially to a related objective of assessing the impact of certain legislation on court burdens.

Judgeship Creation. The current method of congressional judgeship creation has tended in recent years to produce new judgeships in large numbers at one time after long intervals when needed judgeships were not created. This has meant an understaffed judiciary for extended periods and, when judgeships are created, caused logistical and orientation problems. In 1981, the Center published *Judgeship Creation in the Federal Courts: Options for Reform* by Professor Carl Baar. The report reviews various state provisions under which some portion of the authority for judgeship creation is delegated to the judiciary; it notes conditions that appear to characterize the procedures that run most smoothly; and it considers how delegation to the judiciary might be structured in the federal system. Over the last several decades, adding only twelve judgeships each year would have increased the size of the judiciary by less than the seemingly large increases effected by the omnibus and emergency judgeship bills. Consequently, the report suggests more modest delegation of authority to allow the judicial branch to create a small number of judgeships annually, no more than eight. Such a delegation, the report notes, would be subject to external congressional checks, and, Professor Baar recommends, subject also to internal judicial branch procedures to facilitate public scrutiny of the process.

E. Information and Liaison Activities

The Center maintains contact in a variety of ways with other organizations that have similar interests or objectives. The Center's director is a statutory member of the Advisory Board of the Justice Department's National Institute of Corrections. Center staff work with other Justice Department projects, including its Council on the Role of Courts and major projects studying the cost of civil litigation and federal judges' sentencing practices. The Center maintains regular contact with such organizations as the National Center for State Courts, the Institute for Court Management, and the Institute of Judicial Administration, as well as the National Judicial College, the National Association of State Judicial Educators, and other judicial continuing education organizations.

Much of the Center's interorganizational and liaison work is the responsibility of its Division of Inter-Judicial Affairs and Information Services. The direc-

tor of that division, for example, has served as the secretary-treasurer of the National Center for State Courts since its founding, and she is also active in the American Bar Association's Judicial Administration Division.

Other examples of the division's informational, liaison, and interorganizational work are described in the remainder of this chapter.

The Third Branch. The Center bears major responsibility for *The Third Branch,* a monthly bulletin for the federal courts copublished by the Center and the Administrative Office. This bulletin reports to the federal judicial community and other interested parties on the work of the Judicial Conference and its committees, policies and projects of the Center and the Administrative Office, innovations undertaken in various courts, and legislative developments. In fiscal 1981, *The Third Branch* continued its special emphasis on a series of in-depth interviews with chief judges of the courts of appeals, other jurists, officials of the Justice Department, and members of the House and Senate Judiciary Committees, seeking their views on subjects of particular concern to the federal judicial system.

Information Services. The Center's Information Services—not a "library" in the usual sense of the word—is a research service and clearinghouse possessing a specialized collection of judicial administration materials relevant to federal courts. Its collection includes standard periodicals and texts, and local rules of federal courts; it also embraces an extensive array of "fugitive materials" on federal judicial administration—unpublished and otherwise difficult-to-obtain materials such as speeches and reports. These materials are of potential interest to federal court personnel preparing a speech or article, or learning about specific innovations in various courts.

The Center's Division of Innovations and Systems Development has designed for the Information Services its own automated data retrieval system, Information Services Index System (ISIS), to allow more accurate, precise, and complete responses to information requests. ISIS allows indexing and cross-referencing of the collection. The Information Services staff has constructed a list of subject headings sufficiently detailed to identify references to topics in major addresses and reports that are not revealed in the item's title. ISIS allows members of the Center's staff to enter items into the ISIS data base and to search the data for specific subjects, or combinations of subjects. Bibliographical printouts of the material under the requested subject headings can be produced.

Library of Congress Liaison. Under a cooperative arrangement between the Center and the American-British Law Division of the Law Library of the Library of Congress, federal judges have been offered special research services to provide materials not available at their local libraries, for example,

legislative histories. The Library of Congress continues to welcome federal judges' requests for research, which may be made directly or through the Center.

Foreign Visitor Service. Official visitors from abroad—judges, legislators, government ministers, and others—are frequently referred to the Center during tours arranged and financed by the United States International Communications Agency and other organizations. They typically seek information concerning aspects of the federal judicial system that have relevance to particular matters related to their own judiciaries. The Division of Inter-Judicial Affairs assembles appropriate materials, conducts briefings, and, when necessary, arranges meetings elsewhere. This year, visitors to the Center included appellate judges from Argentina, Guyana, and Korea; the chairman of the Judiciary Committee of the West German Parliament; a public prosecutor from Bolivia; state judges and ministers from Nigeria; six members (including the president and secretary-general) of the Egyptian Council of State; and law professors from China and the Philippines.

V. THE ORGANIZATION OF THE CENTER AND ITS FOUR DIVISIONS

A. The Board of the Center

The Federal Judicial Center, established by statute in 1967, is governed by general policies established by its Board. The Board includes the Chief Justice, who serves as chairman by statute, and the director of the Administrative Office, who also serves ex officio. Six other judicial members are elected by the Judicial Conference—two from the courts of appeals, three from the district courts, and one from the bankruptcy courts. By statute, the Board selects the director of the Center.

In fiscal 1981, the Judicial Conference elected Judge Cornelia Kennedy of the Sixth Circuit Court of Appeals to the Board of the Center, to replace Chief Judge John C. Godbold of the Fifth Circuit Court of Appeals. The Conference also elected Judge John Butzner of the Fourth Circuit Court of Appeals to fill the remaining two years of the term of Judge William Hughes Mulligan of the Second Circuit Court of Appeals, who resigned from the bench in April 1981.

For most of its history, the Center has carried out its work through four divisions; summary information on each is provided in the subsequent sections of this chapter.

The budget for the Federal Judicial Center in fiscal 1981 was $9 million, plus an additional sum of $222,000 provided for statutorily mandated cost-of-living increases. The Center had 117 authorized personnel positions in fiscal 1981. Assuming congressional approval of a transfer of certain Center computer operations to the Administrative Office, the Center will have 98 authorized positions in 1982. Its ratio of professional to clerical staff is approximately three to one. Under its governing statute, the Center's professional employees are not subject to standard civil service regulations.

B. Division of Innovations and Systems Development

The largest of the Center's four divisions is the Division of Innovations and Systems Development, although this will no longer be true after 1981, when a significant portion of the division's personnel and responsibilities will be transferred to the Administrative Office because certain of the Courtran systems have become operational. For most of the Center's history, the division's major responsibility has been research and development to create Courtran, a diversified computer-based information system for federal case and court management. Courtran has been developed in compliance with the congressional directive that the Center "study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States" (28 U.S.C. § 623(a)(5)). Courtran in fact describes both the Center's computer hardware facilities and the numerous software applications that the Center has developed.

For the Center, Courtran is a research and development project. As the various Courtran applications reach the point at which they can be declared operational, they will be removed from the Center's development agenda. Early in fiscal 1980, the directors of the Center and the Administrative Office appointed a Joint Development Planning Committee to address the conditions under which Courtran applications can be certified as operational and the implications of such certifications. As a consequence of the Joint Development Planning Committee's work, the Center's Board approved the transfer of certain aspects of Courtran to the Administrative Office. The Board took preliminary action on the transfer in 1980 and gave final approval in 1981 when it approved the Center's proposed fiscal 1982 appropriation request to the Congress. Assuming congressional approval of the transfer as it is reflected in the fiscal 1982 budget requests for the United States Courts, the Center, and the Administrative Office, the Center will transfer in fiscal 1982 much of the computer hardware that provides operational Courtran support to the courts, the personnel responsible for the operation of that hardware, and significant budgetary responsibility for computer operations and maintenance. In fiscal 1983, again assuming congressional approval, responsibility for maintaining six major Courtran applications will be transferred, with additional Center personnel, to the Administrative Office. The Center and the Administrative Office have further agreed to a variety of principles by which future computer-based court and case management systems will be developed by the Center in anticipation of eventual operation by the Administrative Office.

Courtran currently consists of twelve major applications—such as Criminal Case-Flow Management, STARS, INDEX, CVB, AIMS, and Word Processing and Electronic Mail, described previously—as well as more than thirty-six minor applications. Six of the twelve major applications are slated for transfer to the Administrative Office in fiscal 1983.

In addition to the major applications, Courtran includes a number of local programming applications. For example, the arbitration project in the Northern District of California relies upon a Courtran computer program, developed in that court, to select the names of attorneys who are eligible to serve as arbitrators and automatically generate letters to the parties informing them of the ten attorneys from whom they are to select a three-member panel. The system also monitors case flow according to time limits established by local rules. Courtran also provides general research support to other divisions of the Center and the Administrative Office.

The Systems Division, in cooperation with the Division of Continuing Education and Training, trains personnel throughout the courts to use the various Courtran applications available to them.

C. Division of Continuing Education and Training

The Division of Continuing Education and Training will become the largest of the Center's four divisions when the Systems Division transfers part of its current responsibilities to the Administrative Office. The Education and Training Division is responsible for a wide variety of educational services and support to more than 14,000 individuals who constitute the federal judicial system. The Center's most well-known educational programs are its formal seminars and workshops; less publicized are its regional, local, and in-court programs. These are developed to address training needs that are regional and/or local rather than national in scope. A typical program may be limited to a single court, bringing together persons with similar job responsibilities from the court's various offices. Some programs under this classification may extend to cover several districts, while others may be limited to the personnel employed at a small divisional office. In each instance, the program is tailored to address a specific training need and to provide instruction for those who share that need.

The chart below lists the classification of the training programs developed by the Center in fiscal 1981. Unlike similar charts in previous annual reports, programs for this year have been separated into the two general categories described above.

SEMINARS AND WORKSHOPS

No.	*Category*	*Participants*	*Faculty*	*Total*
12	Federal Circuit and District Judges	794	112	906
5	Federal Bankruptcy Judges	201	47	248
9	Federal Magistrates	258	44	302
3	Clerks of Court, Chief Deputy Clerks, Deputy Clerks	175	31	206
4	Federal Public Defenders, Community Defenders, Defenders' Investigators	166	20	186
1	Senior Staff Attorneys	10	5	15
15	Probation Officers	702	78	780
6	EEO Coordinators	234	54	288
5	Magistrates' Staffs	158	35	193
1	Court Librarians	34	6	40
3	Chief Probation Clerks	95	34	129
2	Training Coordinators	54	5	59
66		2,881	471	3,352

REGIONAL, LOCAL, AND IN-COURT PROGRAMS

No.	*Category*	*Participants*	*Faculty*	*Total*
33	In-Court Training Programs	977	40	1,017
17	On-the-Job Technical Training Programs	234	22	256
50		1,211	62	1,273
116	GRAND TOTAL	4,092	533	4,625

In planning its seminars and workshops, the Center makes extensive use of planning groups composed of representatives of the personnel categories to be served. Members of the appropriate divisions of the Administrative Office are also included in the planning groups. Senior Judge William J. Campbell serves as senior chairman of the Center's seminar programs.

The planning process is part of a four-phase cycle the division uses to develop, implement, and assess its seminars and workshops. Needs are identified through the work of planning groups, from suggestions from the field, and from staff review of data that the courts provide regularly to the Center and the Administrative Office. The division then prepares programs to meet those needs, in consultation with the planning groups and others. After implementation of the workshop or seminar program, the division uses a variety of evaluation devices, including questionnaires administered during the program, to measure its success. For appropriate personnel categories, follow-up questionnaires are distributed some months after the program to measure changes in personnel performance over time, and supervisors are contacted to learn of any observable changes in the employees' performance.

In light of escalating travel costs, the division continued to experiment with computer-aided instruction for judges. Groups of newly appointed federal trial judges, while at the Center, received interactive computer-generated instruction dealing with character evidence and hearsay based on the Federal Rules of Evidence. Positive reactions led the Center to enter into contracts to have additional exercises to be used by judges, magistrates, and federal public defenders prepared. Existing Courtran computers and terminals are used for the experimentation, making computer-aided instruction especially cost-effective.

The division has also explored the potential of satellite teleconferencing. It held one experimental videoconference, for pretrial services, in fiscal 1981. Faculty convened in Washington, D.C., and their presentations were telecast simultaneously to participants assembled in eight locations throughout the country.

D. Division of Research

The Division of Research undertakes a wide variety of support services and research and development activities for federal court personnel. Only a portion of the division's work fits into what the academic or research communities might characterize as typical "research," in the sense of exploration and analysis of questions formed in terms appropriate for empirical study. Members of the Research Division staff work regularly with members of Judicial Conference committees to provide not only requested research of various types, but also advice and information. Members of the division staff also respond to numerous short-term inquiries from individual courts, as well as from personnel in the Administrative Office and other organizations.

The work of the Center's Research Division often involves matters that are subjects of legislative consideration—for example, criminal code revision, the Speedy Trial Act, or proposals to restructure judges' sentencing discretion or authorize peremptory challenges of judges. In those instances, the division provides comment to the Judicial Conference committees, the Administrative Office, and, upon specific request, to members of Congress and legislative staff.

E. Division of Inter-Judicial Affairs and Information Services

In addition to liaison and coordination with other court-related organizations and the provision of information services to the federal courts, the Inter-Judicial Affairs Division is responsible for a number of major, continuing projects, including *Bench Comment,* the *Bench Book for United States District Court Judges,* and *The Third Branch.*

VI. CENTER PUBLICATIONS

The Center disseminates the results of its work through many channels, including individual consultation with the courts themselves, formal presentations to such groups as the Conference of Metropolitan District Chief Judges, and videotapes of educational programs. Publications also play a vital role. Most of the publications listed below, and earlier publications listed in the Center's *Catalog of Publications* (second edition 1980), may be obtained by either writing to the Center's Information Services Office or calling that office at (202) 633-6365 (also FTS). (Although the Center seeks the widest appropriate dissemination of its publications, some are produced in limited quantities for specific audiences or are available only on a loan basis. Others, such as the *Bench Book,* are by Board policy available for distribution only to certain groups within the federal judicial system.)

There are four basic categories of Center publications. Center reports contain the results of major research projects. Staff papers include the description of short-term research efforts in response to specific inquiries, as well as works of Center staff that appear, for example, in professional publications and are reproduced as staff papers because of interest in the subject matter. Publications in the Education and Training Series make available selected lectures and other materials presented at Center seminars and conferences. Manuals and handbooks are produced as reference materials for federal court personnel; when appropriate, they are provided to a wider audience, usually on a loan basis.

The various publications produced by the Center in 1981 are listed below. Other publications mentioned in this report will not be available for distribution in fiscal 1981, but are expected to be available early in fiscal 1982. *The Third Branch* will announce those publications when they are ready for distribution.

Research Reports and Staff Papers

Computer-Aided Transcription: A Survey of Federal Court Reporters' Perceptions, by Michael Greenwood

Disqualification of Federal Judges by Peremptory Challenge, by Alan J. Chaset

Evaluation of Court-Annexed Arbitration in Three Federal District Courts, by E. Allan Lind and John E. Shapard

An Evaluation of Limited Publication in the United States Courts of Appeals —The Price of Reform, by William L. Reynolds and William M. Richman, 48 U. Chi. L. Rev. 573 (1981)

Experimentation in the Law, Report of the Federal Judicial Center Advisory Committee on Experimentation in the Law (Copies are available for sale to the general public through the Government Printing Office; GPO Stock No. 027-000-01148-9.)

The 1979 Federal District Court Time Study, by Steven Flanders

Federal Rulemaking: Problems and Possibilities, by Winifred R. Brown

Judgeship Creation in the Federal Courts: Options for Reform, by Carl Baar

Legislative History of Title I of the Speedy Trial Act of 1974, by Anthony Partridge (Copies are available for sale to the general public through the Government Printing Office; GPO Stock No. 028-004-00037-1.)

Research in Judicial Administration: The Federal Experience, by A. Leo Levin, 26 N.Y.L.S. L. Rev. 237 (1981)

Small-Group Decision Making and Complex Information Tasks, by Michael J. Saks

Specially Qualified Juries and Expert Nonjury Tribunals—Alternatives for Coping with the Complexities of Modern Civil Litigation, by William V. Luneburg and Mark A. Nordenberg, 67 U. Va. L. Rev. 887 (1981)

Education and Training Series

The "Black Lung" Act: An Analysis of Legal Issues Raised Under the Benefit Program Created by the Federal Coal Mine Health and Safety Act of 1969 (as amended), by Ernest Gellhorn

The "Rule of Reason" in Antitrust Analysis: General Issues, by Phillip Areeda

The Sentencing Options of Federal District Judges (1981 revision), by Anthony Partridge, Alan J. Chaset, and William B. Eldridge

Other

Compendium of the Law on Prisoners' Rights (February 1981 supplement), by Magistrate Ila Jeanne Sensenich (Copies of the *Compendium,* GPO Stock No. 027-000-00792-9, and the supplement, GPO Stock No. 027-000-01093-8, are available for sale to the public from the Government Printing Office.)

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Public Law 90-219
90th Congress, H. R. 6111
December 20, 1967

An Act

To provide for the establishment of a Federal Judicial Center, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FEDERAL JUDICIAL CENTER

SEC. 101. Title 28, United States Code, is amended by inserting, immediately following chapter 41, a new chapter as follows:

"Chapter 42.—FEDERAL JUDICIAL CENTER

"§ 620. Federal Judicial Center

"(a) There is established within the judicial branch of the Government a Federal Judicial Center, whose purpose it shall be to further the development and adoption of improved judicial administration in the courts of the United States.

"(b) The Center shall have the following functions:

"(1) to conduct research and study of the operation of the courts of the United States, and to stimulate and coordinate such research and study on the part of other public and private persons and agencies;

"(2) to develop and present for consideration by the Judicial Conference of the United States recommendations for improvement of the administration and management of the courts of the United States;

"(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government, including, but not limited to, judges, referees, clerks of court, probation officers, and United States commissioners; and

"(4) insofar as may be consistent with the performance of the other functions set forth in this section, to provide staff, research, and planning assistance to the Judicial Conference of the United States and its committees.

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