Federal Judicial Center

Annual Report

1983

1983 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

THE FEDERAL JUDICIAL CENTER
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August 22, 1983

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 Annual Report of the Federal Judicial Center for fiscal 1983. The report summarizes the Center's activities since the last annual report and describes the work projected through the end of the current fiscal year. My colleagues and I would be pleased to make further details concerning any aspect of our programs available to you on request.

The Center's annual reports attempt to relate current projects to the work that has preceded, and this is particularly true this year. Thus, the introduction to this report focuses on the 1983 amendments to the Federal Rules of Civil Procedure, which were approved by the Conference a year ago and which became effective on August 1. Center research reports have been cited extensively in the Advisory Committee notes to these amendments. The research on which these reports are based was undertaken under the leadership of Judge Walter E. Hoffman during his tenure as director of the Center, and that work continues to be influential. We count ourselves privileged to be involved in projects that are of interest to the Advisory Committee on Civil Rules as well as to other committees of the Judicial Conference of the United States.

Both the range of our activities and their quality owe much to the sustained interest and substantial contributions of the members of the Center's Board. Their dedicated service is reflected throughout the pages of this report. We are also indebted to the members of the Judicial Conference and its committees, and to the courts, including judges, magistrates, and supporting personnel. 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 the Executive Branch, 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

Expense, Delay, and the 1983 Amendments to the Federal Rules of Civil Procedure

The current literature on litigation is replete with references to the concomitant evils of expense and delay associated with practice before the federal bench. At the heart of much of this dissatisfaction is the misuse and abuse of the discovery process.

It should be emphasized that abuse of the discovery provisions of the Federal Rules of Civil Procedure is not to be found in every case in the federal courts. Indeed, a Federal Judicial Center research report based on over 3,000 terminated cases, with 7,000 docketed discovery entries, concluded that

> discovery abuse, to the extent it exists, does not permeate the vast majority of federal filings. In half the filings, there is no discovery—abusive or otherwise. In the remaining half of the filings, abuse—to the extent it exists—must be found in the *quality* of the discovery requests, not in the quantity, since fewer than 5 percent of the filings involved more than ten requests.

That the process functions as smoothly as it does is a tribute to the judiciary as well as to the members of the bar. Nevertheless, where overdiscovery or evasion of discovery does exist, the problem can be acute.

Although there exists a dearth of hard data as to the actual amount of money expended by plaintiffs and defendants on the discovery process, there is evidence that discovery is a major culprit in the escalation of litigation costs. To quote Professor Wayne D. Brazil, a leading authority in the area of discovery abuse:

> Even litigators who frankly admitted that they were becoming wealthy primarily because of fees attributable to discovery expressed amazement and concern about the rapid escalation of the expense of conducting and complying with discovery.

The legal community is rife with anecdotal examples of the expense of discovery. Petitions for the award of attorneys' fees reflect

the order of magnitude of the cost of some large cases. One judge notes, for example, a petition requesting $1 million for paralegal services alone. Another judge complains, in a case involving requests for fees of more than $20 million, of wasteful duplication of attorney effort.

The expense of discovery is not limited to the so-called "megabuck" cases. Although on the whole discovery plays a less dominant role in the litigation of less complex cases, where it does surface it remains a concern both to the bench and to the bar. A federal trial judge complained, "I've had cases in which the cost of taking depositions, travel and hotel expenses has exceeded the amount in controversy." Whether or not the statement was exaggerated, the underlying truth remains: The cost of discovery in some cases is disproportionate to what is at stake in the litigation.

A prominent West Coast lawyer, who has been very active in the Litigation Section of the American Bar Association, aptly summarized the concern with discovery in the following manner:

> By the mid-1970s discovery abuse emerged as a major area of concern. It took no great wisdom to realize that while the quantity of discovery was increasing, there was no corresponding qualitative improvement in the expeditious delivery of judicial services. The converse was obviously true. Discovery—unfocused, unthoughtful, often massive, and always expensive—was used as a tactical weapon for offense or defense, rather than as a professional tool for the discovery of facts relevant to the disposition of a dispute.

Delay, attributable to misuse of the discovery process, has accompanied the escalating expense. If excessive discovery can prove a tactical weapon, so can the obdurate refusal to disclose. Both serve to lengthen the time from commencement of an action to its termination by either settlement or trial.

The new 1983 amendments to the Federal Rules of Civil Procedure, which became effective on August 1, 1983, have addressed these concerns. Drawing upon several empirical studies by the Federal Judicial Center, among other things, the amendments to two rules seek to deal with expense and delay by providing for more judicial control over cases, asserted at early stages of the litigation.

The amendment to Rule 16—the first such amendment since the rule was promulgated in 1938—makes judicial management of pretrial procedures, especially discovery and motions, an expressed

goal. Section 16(b) requires the court, after consultation with counsel for the parties and with unrepresented parties (except in exempted cases), to enter a scheduling order that includes, inter alia, a time limit for the completion of discovery. The purpose of this provision is to avoid the use of the discovery mechanism as a means of procrastination and delay. The Advisory Committee Note to the rule states that subdivision (b) serves to assure that:

> the judge will take some early control over the litigation, even when its character does not warrant holding a scheduling conference. Despite the fact that the process of preparing a scheduling order does not always bring the attorneys and judge together, the fixing of time limits serves
>
> > to stimulate litigants to narrow the areas of inquiry and advocacy to those they believe are truly relevant and material. Time limits not only compress the amount of time for litigation, they should also reduce the amount of resources invested in litigation. Litigants are forced to establish discovery priorities and thus to do the most important work first. *Report of the National Commission for the Review of Antitrust Laws and Procedures* 28 (1979).

A Center report on discovery also found that imposition of early discovery controls resulted in time savings:

> We conclude that discovery timing controls result in closer conformity to rule provisions specifying time limits for responses to requests, and reduce the time between requests . . . a matter not governed by any federal rule. The time savings are not achieved at the cost of observable interference with quantity or choice of discovery requests.

The amendment to Rule 26 is also designed to reduce expense and delay that now characterize discovery in the protracted, "megabuck" cases, and to a lesser extent in other actions as well.

The amendment to Rule 26 is directed to curbing discovery abuse, which includes discovery avoidance or resistance as well as overdiscovery. Rule 26 contemplates greater judicial involvement in the discovery process and thus acknowledges the reality that discovery cannot always operate on a self-regulating basis. Judicial time, of course, remains one of our most scarce resources.

Rule 26, as amended, permits a court, on its own motion or in response to a party's initiative, to limit discovery on what have been characterized as cost-benefit principles. The rule permits a judge to deny discovery where the benefits to be derived would not be cost-justified in terms of the amount in controversy and "the importance of the issues at stake in the litigation," among other factors.

The rule is intended to permit courts "to apply the standards in an even-handed manner that will prevent use of discovery to wage a war of attrition as a device to coerce a party, whether financially weak or affluent."

Subdivision (g) of Rule 26 imposes a new obligation on the lawyer. The lawyer's signature on a discovery request, for example, certifies that the lawyer has concluded after reasonable inquiry that the discovery is "not unreasonably or unduly burdensome or expensive," under all of the circumstances. The amendments to the various rules are interrelated; they reinforce each other. Together they represent a serious effort to cope with the perceived problems.

These amendments come only a few years after the 1980 amendments, which were also concerned with discovery. They attest to a continuing and persevering concern with solving the problems of expense and delay in civil litigation. There is good reason to believe that the changes that took effect earlier this month will in fact make a significant contribution to the realization of the ends articulated in Rule 1, "[t]he just, speedy, and inexpensive determination of every action." It is well to remember, however, that the Congress has imposed upon the Judicial Conference the obligation to "carry on a continuous study of the operation and effect of the general rules of practice and procedure." 28 U.S.C. § 331. The process is never-ending.

One of the functions of the Center specified by the Congress at the time it established the Center is to provide research and planning assistance to the committees of the Judicial Conference. The Advisory Committee Notes to the 1983 amendments reflect the relevance of past Center research to the concerns of the committee and of the Conference. Current projects, described in the pages that follow, are also designed to be of assistance to the Conference and to its committees.

I. TRIAL COURTS

The Federal Judicial Center currently serves ninety-four district courts, which together have 515 judgeships. Although these trial courts share many traits, they also present striking differences. For instance, the geographic composition of these courts varies remarkably, from those that cover only one section of a single metropolitan area to those that comprise entire states. The courts not only vary in their caseloads, but they also reflect dramatic differences in the rate of change as those caseloads rise and fall over time. For the twelve-month period ending June 30, 1982, for example, two district courts experienced increases of more than 100 percent in the number of new civil cases filed, while three others had sharp decreases of more than 13 percent. Overall civil filings, totaling 206,193 for the relevant period, increased by 14.2 percent over filings a year before.

Comparable statistics for criminal cases reveal that five districts reported increases in criminal filings of approximately 50 percent or more, while, in marked contrast, two trial courts reported decreases in criminal filings of more than 41 percent for the same twelve-month period ending June 30, 1982. Total criminal cases filed nationwide rose 4.2 percent over criminal filings the previous year. Similarly, civil terminations, while increasing nationally by 6.5 percent—rising from 177,975 for the twelve-month period ending June 30, 1981, to 189,473 the following year—continued to rise in sixty-seven district courts. Four of these courts disposed of at least 55 percent more cases than they disposed of in the previous year. Of the twenty-eight district courts showing decreases in civil terminations, some reported substantial declines.

Moreover, courts vary not only in caseloads and in the number of district judges, but also in other important aspects. Currently, there are 241 bankruptcy judges, with twelve full-time bankruptcy judges authorized in one district and none in others. The number of authorized full- and part-time magistrates for fiscal 1983 was 483. Some courts have no full-time magistrates; others have as many as seven. As of June 30, 1982, there were 15,328 individuals in the fed-

eral judicial system, distributed among the various components of the system according to need.

Center programs are designed to meet the needs of the entire system. Some are national in focus; they seek to meet needs found generally in all district courts. Other programs are more particularized. Thus, some Center programs of continuing education are national seminars designed to meet national needs, but many training sessions are designed to meet particular needs in particular courts. The same is true of the Center's various research efforts. Finally, the computerized court and case management systems the Center has developed can be tailored to individual districts, and the specific hardware configuration in individual courts varies with local needs and practices. The Eleventh Circuit provides a helpful example. This year a heavy concentration of death penalty cases in that circuit created an urgent need for specialized computerized support. The Center met this need by including the Eleventh Circuit in the first group of courts of appeals to receive decentralized hardware compatible with plans for the development of the New Appellate Information Management System (New AIMS). In addition to supplying the Eleventh Circuit with computer equipment, the Center also furnished that appellate court with commercial software, which when used at the local level will permit the Eleventh Circuit to manage its death penalty cases efficiently.

In short, the mission of the Center is to serve the entire federal judiciary while remaining sensitive to particular local needs and conditions.

A. Continuing Education and Training Programs

A wide range of educational services is provided to district judges, bankruptcy judges, magistrates, and supporting personnel. Seminars and workshops, printed instructional materials, local programs, and a circulating collection of videotapes, films, and audio cassettes treat problems of national scope in some instances and meet specific local needs of courts in others. Trial court personnel also benefit from the Center's program of support for attendance at courses offered by other educational institutions, which supplement the programs that the Center develops itself. A high priority is placed upon the education of judicial officers, with the expectation that every judge will have an opportunity to attend at least one

program each fiscal year. Given the much larger number of supporting personnel and limits on the Center's staff and resources, this is not possible, however, with respect to all judicial personnel. Of course, some form of continuing education, whether by audiovisual materials or the printed word, is available for every full-time member of the federal judicial system.

Orientation Programs for Newly Appointed District Judges. Newly appointed district court judges are offered three different types of orientation programs to help them meet the demands of their new office: (1) a local in-court orientation program; (2) a video orientation program held regionally or locally; and (3) a week-long seminar in Washington, D.C. The best-known orientation program is the week-long seminar that is held when the number of new judges is large enough to constitute a class of approximately thirty—normally, about once a year, unless special circumstances such as an omnibus judgeship act dictate otherwise. The week-long orientation seminar, in which the Chief Justice participates, is traditionally held at the Center's Dolley Madison House headquarters in Washington, D.C.

The May 1983 seminar, which was also attended by five new judges serving on the recently created United States Claims Court and one new judge of the Court of International Trade, provided an intensive six-day treatment of topics crucial to the new federal trial judge. The curriculum included information on trial and pretrial management of civil and criminal cases, special problems of jury and nonjury trials, the federal rules of evidence, technology and the law, and judicial ethics. The seminar also offered a framework for analyzing such subjects as antitrust litigation, class actions, employment discrimination, civil and criminal contempt, and the law of search and seizure. A special panel on "the trial judge and the correctional system" highlighted the perspectives brought to the sentencing process by seasoned trial judges. In addition, the director of the Bureau of Prisons, the chairman of the Parole Commission, and the chief of the Probation Division of the Administrative Office of the United States Courts provided information concerning the operation of their respective organizations in the sentencing process.

The regional video seminars for newly appointed judges are relatively new. Starting in fiscal 1982, groups of four or five new judges have met, as soon after appointment as possible, under the tutelage

of an experienced judge to view and to discuss a series of videotapes, most of which are based on earlier seminars.

Eight such video orientation programs were held this year. In addition, the Center provided a video orientation seminar, focusing primarily on case management, to the judges of the new United States Claims Court. The atmosphere is relatively informal and questions are encouraged. The small group makes it feasible to interrupt the tapes and to focus discussion on topics of particular interest to the participants. Providing the new judges with a portion of past orientation seminars held in Washington, D.C., has made it possible for new subjects to be added to the week-long seminar and for other topics to be treated in greater depth. Moreover, the early video orientation seminar gives the participants some familiarity with their colleagues in nearby districts.

At its meeting on July 15, 1983, the Center's Board approved extending the three-day orientation seminar another day to allow judges to spend one day visiting a nearby federal correctional facility at the conclusion of the video portion of the program. Such prison visits are to be under the guidance of an experienced judge and will include participants from the Judicial Conference Committee on the Administration of the Probation System, the Bureau of Prisons, the Parole Commission, and a local chief probation officer. This change is designed to make it possible for a new judge to visit a correctional institution early in his or her career, and, given the regional basis of the video orientation programs, it will likely be a visit to an institution to which that judge will sentence defendants. This accords with the 1976 Judicial Conference resolution "that the judges of the district courts, as soon as feasible after their appointment and periodically thereafter, shall make every effort to visit the various Federal correctional institutions that serve their respective courts."

The one-day extension of the video orientation program is expected to be an effective and efficient mechanism of providing newly appointed judges with meaningful orientation in the area of sentencing. It obviates the need to invite new judges to regular sentencing institutes outside their own circuits; it adds only minimally to the time during which the new judges are away from their court for training. Finally, because it will not be necessary to alter the pattern of regular sentencing institutes to accommodate new judges' needs, it will be possible to preserve the regular schedule of two

sentencing institutes each year with a curriculum designed for optimal effectiveness.

Experienced judges, sitting in the district to which the new judge is appointed, continue to provide significant help to the new judge, as they always have, and the Center has tried to assist this process in several ways. An in-court orientation program was developed in 1978 by district judge members of the Center's Board. These judges developed a checklist of items with which new judges might be unfamiliar, designed to be used by the new judge and the chief judge of the district in structuring the court's informal orientation program. Copies of the checklist are provided promptly after nomination both to the new judge and to the chief judge of the court.

The Center's Research Division recently completed a study of in-court orientation programs in federal courts, including the use of the checklist. The study developed a number of suggestions designed to enhance the program, which have been implemented. The study's findings that are of general interest will be published in a Center staff paper, *In-Court Orientation Programs in the Federal District Courts.* In addition to these various orientation programs, the Center provides newly appointed district judges with a wide range of printed and audiovisual materials. The resources of the Center's media library, available to new judges as well as to others, supplement the Center's extensive list of publications and make it possible for the new judge to fulfill his or her individual needs and to pursue his or her individual interests.

Continuing Education Programs for United States District Judges. In establishing the Federal Judicial Center, Congress included the statutory charge that the Center develop and conduct "programs of continuing education and training for personnel of the judicial branch of the Government." This provision reflects the recognition by Congress of the need to provide continuing education for judges as well as for supporting personnel. In the effort to be faithful to that mandate, the Center has offered regional workshops for United States district judges, organized by circuit. Planning groups of district judges, appointed by the chief circuit judge, work with the Center to develop the programs for the workshops, some of which are held in conjunction with the annual circuit conferences and, in a few cases, held jointly with judges of another circuit. The programs are designed to be responsive to the needs and interests of the participants. Typically, the judges are sent a list of available presentations well in advance of a scheduled workshop,

and each judge has the opportunity to indicate his or her preferences. The response rate is high and the interests reflected are central in the development of workshop curricula. Increasingly, the judges have indicated a preference for substantive law topics. Workshops also offer the opportunity to present information on such subjects as juror utilization and equal employment opportunities within the federal courts, subjects that the Judicial Conference of the United States has identified as deserving of special consideration by the federal judiciary, nationwide.

In 1983, the Center undertook several programs that brought judges together with clerks of court, among others, to focus on problems requiring their joint action. The Center, for example, sponsored a joint seminar for chief district judges and clerks of court of the Seventh and Eighth Circuits. In almost all districts, the chief district judge and clerk of court comprise a "management team." The seminar was designed to help these teams deal more effectively with problems of space procurement, automation, juror utilization, case management, and court reporter management.

The Center, working with the Clerks Division of the Administrative Office, also sponsored five civil case management workshops, attended by federal trial judges, magistrates, clerks of court, and chief deputy and deputy clerks. These workshops provided a forum for the discussion of techniques that had proved successful in case management and, more generally, for the exchange of information. They were undertaken in response to the directive of the Judicial Conference in March 1982 that federal courts be provided with the means of assuring the expeditious processing of civil litigation.

Conference of Metropolitan District Chief Judges. The Conference of Metropolitan District Chief Judges, an integral part of the Center's educational program, consists of the chief judges of district courts with six or more authorized judgeships. The conference meets semiannually to provide its members the opportunity to consider problems peculiar to large district courts. Among the subjects considered by the conference in fiscal 1983 were the Victim and Witness Protection Act of 1982, court reporter management plans, court security, court-annexed arbitration programs, and alternative management structures used in various courts. The chairman of the conference is the Center's director emeritus, Judge Walter E. Hoffman of the Eastern District of Virginia. The Center's deputy director serves ex officio as the conference's executive secretary.

Special Summer Programs. Since 1979, the Center has sponsored the attendance of district and circuit judges at summer programs on law school campuses. For the most part, the judges participated in the regular summer instruction programs organized by the law schools themselves. In 1983, participating schools included Harvard, Columbia, and Northwestern universities. Each of these schools waived the tuition of the federal judges attending, although the Center helped defray some administrative costs.

In 1983, the Center also cosponsored, with Brigham Young University's J. Reuben Clark Law School, a special seminar, "Federal Remedies for Private Wrongs in the 1980s," designed for and limited to a relatively small number of federal judges. This program focused on judicial interpretations of traditional civil rights legislation, the case law in the area of constitutional torts and federal governmental immunity, and available remedies, as well as problems of judicial administration and state-federal relations that are associated with litigation in these areas.

In the past, the Center has also undertaken to develop its own summer program limited to federal judges. Thus, in 1981, the Center arranged a week-long program devoted entirely to antitrust, including consideration of both the substantive law and techniques appropriate for managing antitrust cases; the program took place on the campus of the University of Michigan. For the summer of 1984, the Board has approved an experimental one-week seminar on the problems confronting judges in dealing with litigation involving economic issues. The primary focus will be on the problems facing the trial judge, from techniques of dealing with expert witnesses to the limits of judicial notice. Some material on economics and statistics is, of course, to be included. A planning committee, appointed by the Chief Justice as chairman of the Center's Board, is chaired by Chief Judge Howard C. Bratton of the United States District Court for the District of New Mexico and includes Chief Judge Warren K. Urbom of the United States District Court for the District of Nebraska and Judge Louis H. Pollak of the United States District Court for the Eastern District of Pennsylvania.

Education and Training Publications. In 1983, the Center published the third edition of its *Manual on Employment Discrimination and Civil Rights Actions in the Federal Courts,* prepared for federal judges by Judge Charles R. Richey of the United States District Court for the District of Columbia. The manual, an outgrowth of Judge Richey's presentations at Center seminars and workshops,

includes separate chapters on various types of employment discrimination, with analysis of the relevant statutes and extensive citations to the case law; selected jury instructions appropriate for use in related civil rights actions are also included. The *Manual on Employment Discrimination* is one of a growing number of publications based on seminar presentations or commissioned to meet special educational needs.

Monographs are available on such topics as the rule of reason in antitrust cases, an overview of class actions, legal issues arising under the so-called "Black Lung Act" of 1969 as amended, and recurring problems in the trial of a criminal action.

Beginning in 1982, the Center commissioned a series of "annotated bibliographies/monographs" on a variety of subjects, including fraud and civil liability under the securities acts, appeals in social security benefits cases, employment discrimination, and statistics and their use in litigation. Publications in this series, some of which are due for release late in 1983 and early in 1984, are designed to provide judges with a quick overview of the particular topic along with a guide to more extensive literature.

Bankruptcy Judges. This past year the Center was faced with a particularly acute need to keep federal judicial personnel, especially district court judges, apprised of developments in the field of bankruptcy. In the wake of the Supreme Court's 1982 decision holding unconstitutional certain jurisdictional provisions of the 1978 Bankruptcy Reform Act (*Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S. Ct. 2858 (1982)), the Judicial Conference of the United States approved a model rule to ensure the efficient operation of the bankruptcy courts in the absence of congressional action. Promptly thereafter, the Center produced and distributed a two-part videotape program, "*Marathon* and After—A Review of Bankruptcy Today." One part, featuring Chief District Judge Manuel L. Real and Bankruptcy Judge Robert L. Ordin, both of the Central District of California, described the *Marathon* decision and the emergency rule. In the second part, Professor George Triester provided an overview of the 1978 Bankruptcy Reform Act for district judges called upon to interpret its provisions under the reallocation of jurisdiction necessitated by *Marathon*. (In addition, district judges were advised of the availability of approximately twelve hours of more specialized video presentations dealing with various substantive provisions of the 1978 act.) Over sixty copies of the "*Marathon* and After" program

were distributed in audiotape and videotape format, some to meet individual requests and others to accommodate groups of judges who viewed the presentations as part of local educational sessions or during circuit judicial conferences.

The *Marathon* decision and the emergency rule that followed, for all their impact on the system, affect only a relatively small segment of the jurisdiction of bankruptcy judges. Much remains for these judges to do, and their workload continues to be heavy. Accordingly, the Center continues to provide orientation and continuing education to bankruptcy judges and, as described below, to other bankruptcy personnel as well.

In fiscal 1983, two video orientation seminars for newly appointed bankruptcy judges treated such basic bankruptcy topics as debtors, creditors' fees and allowances, the administration of the bankruptcy court system, and effective case management. Video orientation seminars, viewed under the guidance of an experienced bankruptcy judge or law professor, will continue as the primary means of introducing new bankruptcy judges to the bankruptcy court. However, beginning in 1984, these video orientation seminars will be supplemented by a biennial national seminar for newly appointed bankruptcy judges, to be held in Washington, D.C.

In 1983, five regional seminars for bankruptcy judges focused on Chapters 11 and 13 of the Bankruptcy Code, consumer-related problems, attorneys' fees, the Federal Rules of Evidence, and judicial ethics.

Magistrates. When Congress created the position of United States magistrate in 1968, it specifically directed the Center to provide both full-time and part-time magistrates with "periodic training programs and seminars," and further provided that an introductory training program be offered within one year of the magistrate's appointment (28 U.S.C. § 637). In accordance with that directive, the Center held four seminars in fiscal 1983 for full-time magistrates, covering such diverse topics as the rules of evidence, the use of sanctions, problems that arise in cases under 42 U.S.C. § 1983 filed by prisoners pro se, and social security disability cases.

In fiscal 1984, the Center will begin holding two video orientation seminars for newly appointed full-time and part-time magistrates. In the past, orientation seminars have included consideration of

the magistrates' managerial and administrative duties, a review of federal criminal procedural rules, and discussion of recent court decisions. Advanced courses typically dealt with such topics as the Federal Rules of Evidence, new developments in discovery and other procedural rules, review of social security cases, sentencing techniques and options, the conduct of jury trials, case management techniques, attorneys' fees, and the use of sanctions.

Clerks of Court and Other Supporting Personnel. Approximately half the supporting personnel in the federal judicial system have some direct contact with one or more of the Center's educational programs each year. Such programs are required for personnel to keep abreast of new legislation, such as the Federal Courts Improvement Act of 1982, of requirements imposed by directives of the Judicial Conference, and of the implications of changing patterns of civil litigation and criminal prosecutions.

In 1983, the Center sponsored nine seminars or workshops for clerks of court, chief deputy clerks, and deputy clerks of the district and bankruptcy courts. Included among these were "overlapping" seminars, a technique that allows different groups to meet separately for a portion of the program and to meet jointly on matters of mutual interest. These seminars dealt with matters of general administration, such as personnel management, and the role of automation and technology in judicial administration. A series of more specialized seminars and workshops were held to address specific needs of district court appeals clerks and pro se deputy clerks and, in the bankruptcy courts, fiscal clerks and estate administrators. Also, as noted above, clerks of district courts and, in some cases, chief deputy clerks attended joint workshops with district judges for training in various aspects of case and court management.

During this fiscal year, the Center also sponsored seven meetings of clerks' office personnel who are primarily responsible for operating the several computerized case management systems that have been developed by the Center.

Federal Public Defenders, Assistants, and Investigators. Federal public defenders, assistants, and investigators are supported by funds administered within the federal judicial budget and they fall within the scope of the Center's training responsibilities. (By contrast, assistant United States attorneys are provided intensive in-

struction in trial advocacy by the Department of Justice.) Where it is feasible and convenient, the Center also allows community defenders to attend seminars of interest to them.

In December 1982, the Center presented a seminar for assistant federal defenders at the Federal Law Enforcement Training Center at Glynco, Georgia. The program, developed in cooperation with a planning group of federal and community defenders, was a rigorous and comprehensive five-day treatment of federal criminal investigation and defense, including, but not limited to, preliminary hearings, discovery, motions to suppress, the Federal Rules of Evidence, jury trials, sentencing, and posttrial motions.

The Center also sponsored the attendance of twenty-three assistant federal defenders at summer sessions of the National College for Criminal Defense in Houston. These institutes, in addition to providing traditional instruction, place participants in mock trial situations to improve advocacy skills.

Federal Court Interpreters. The Center sponsored three workshops for federal court interpreters in the summer of 1983. The goal was not to teach interpreting skills, but rather to familiarize those who interpret in the federal courts with the courts' basic organization, processes, and terminology. The workshops were located in areas with a high incidence of bilingual proceedings. While the Center met the expenses only of those interpreters who were full-time federal employees, the workshops were open to all other individuals certified as interpreters for the federal courts.

B. Desk and Research Aids for United States District Courts

Bench Book for United States District Court Judges. The work on the *Bench Book for United States District Court Judges* continued during fiscal 1983 and is now near completion. Additional chapters were completed and distributed and a number of previously completed chapters were revised to reflect the provisions of the Victim and Witness Protection Act of 1982. The loose-leaf format readily accommodates both new material and revisions with dated pages and a dated table of contents indicating that the materials are current. At the present time, forty-two of the fifty-one chapters that are projected have been distributed. This manual is designed for

ready reference by federal district judges and magistrates on the bench or in chambers during the course of litigation. It includes, for example, model sentencing forms, a model charge to a grand jury, useful data on Bureau of Prisons institutions, forms of oaths, mortality tables, and a number of checklists covering such procedures as taking pleas of guilty or nolo contendere, setting bail, and assigning counsel or allowing pro se representation. Preparation of the *Bench Book* is supervised by a committee of five trial judges who have served or presently serve on the Board of the Center. The committee is chaired by Chief Judge William S. Sessions of the Western District of Texas and includes Chief Judge Frank McGarr of the Northern District of Illinois, Judge Donald S. Voorhees of the Western District of Washington, Judge Robert H. Schnacke of the Northern District of California, and Chief Judge Aubrey E. Robinson, Jr., of the District of Columbia. This project is a responsibility of the Center's Division of Inter-Judicial Affairs and Information Services.

Bench Comments. In fiscal 1983, the Center continued to provide federal district judges and magistrates with *Bench Comments*. This service, which was first approved by the Board in 1981 on an experimental basis, attempts to bring to the immediate attention of busy trial judges and magistrates trends in appellate treatment of practical procedural problems. The proper handling of these problems—particularly problems of criminal procedure—can prevent reversal and, accordingly, the time and expense of another trial. Some *Bench Comments* are prepared by judges; others are prepared by the staff of the Center's Inter-Judicial Affairs and Information Services Division. For each *Bench Comment*, however, the division seeks review of the draft by several judges regarded as especially knowledgeable about the particular topic. *Bench Comments* do not represent official policy; they are provided to federal judges for information only.

Bench Comments distributed in fiscal 1983 dealt with such topics as instructing defendants on the waiver of the right to counsel, the right to a jury trial in criminal contempt proceedings, and the quantum of proof required for the admission of a coconspirator's statement.

Chambers to Chambers. The first issue of this new service was mailed to district court judges, bankruptcy judges, and magistrates during the past year. The series is intended as a means by which trial judges can learn of techniques and procedures relevant to case

management and to office management that other judges have found helpful. It is, in a sense, the management analogue to *Bench Comments*. Every issue of *Chambers to Chambers* is reviewed prior to distribution by a number of federal judges who have particular interest in the subject matter and relevant experience. Like *Bench Comments*, *Chambers to Chambers* does not represent official Center policy. Subjects discussed in *Chambers to Chambers* during fiscal 1983 included use of teleconference calls as an alternative to oral arguments in court in civil litigation, including, for example, discovery motions and status calls, informal orientation for litigants and witnesses in advance of trial, and processing premature requests by indigents for trial transcripts. Where appropriate, sample orders were included.

Manuals and Handbooks for Supporting Personnel. The various manuals and guidelines the Center has developed since 1977 reflect the reality that continuing education can take many forms. Continuing demand for these publications, including the *Law Clerk Handbook* and the *Handbook for Federal Judges' Secretaries,* attests to their utility. Some of these publications are specially commissioned. *Guidelines for Docket Clerks,* however, was an outgrowth of a successful series of workshops. It outlines practices and procedures shown to have been effective in processing civil and criminal cases.

C. Automated Case and Court Management Support for District Courts

In establishing the Federal Judicial Center, Congress directed the Center to "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). Pursuant to that mandate, during fiscal 1983 the Center continued its intensive program of developing computer applications for trial and appellate courts. Once an application has been declared operational, it is transferred to the Administrative Office, the operational arm of the federal judicial system, thus freeing Center resources for new developmental work. The umbrella term Courtran refers to the entire range of specific applications developed by the Center as part of the centralized support program based in Washington, D.C., including those that have already been transferred to the Administrative Office. Development of computer technology

has been centered primarily, though not exclusively, in the Center's Division of Innovations and Systems Development.

Seventy-four district courts are currently being served by Courtran applications. Forty-three of these courts have Courtran computer terminals, which serve their needs and also support thirty-one district courts that do not have their own terminals. The extent of Courtran coverage is best evidenced by the percentage of the federal caseload it serves. For example, INDEX, a Courtran application that allows the district courts to inventory their criminal and civil cases, currently supports 81 percent of the national caseload—civil and criminal—and that figure continues to grow. INDEX also allows courts to inventory cases assigned to magistrates and is used for bankruptcy caseloads as well.

During fiscal 1983, the Center completed the transfer of the following six Courtran applications to the Administrative Office: the Criminal Caseflow Management System, the Speedy Trial Act Accounting and Reporting System (STARS), District Court Index System (INDEX), Central Violations Bureau System (CVB), the Appellate Information Management System (AIMS), and the Word Processing and Electronic Mail application.

Decentralization. Further developments in technology for the federal courts will move from the centralized hardware and centralized software, which presently characterize Courtran, to a system of decentralized hardware, albeit with most software standardized on a national basis.

Automation for federal courts is today provided by time-sharing computers located in Washington, D.C. These large mainframe computers were the state of the art when they were purchased in the mid-1970s, but they are approaching the end of their life expectancies and will soon have to be replaced.

Several factors argue for moving to decentralized hardware. First, telecommunication costs have soared. Second, as maintenance costs for the centralized computers presently in use continue to escalate, the cost of new hardware suitable for placement in the field has decreased. To be more precise, advancements in the state of the art of stand-alone microcomputers have been so dramatic that the ratio of price to performance of the new generation of microcomputers is highly favorable. The capabilities of these computers are suf-

ficient to meet the needs of the courts. Furthermore, they will permit information to be stored and forwarded to Washington, D.C., at a lower cost than is currently the case. These smaller computers will be capable of performing all tasks associated with case management analysis and reporting; financial, jury, personnel, and property accounting; attorney roll and admissions requirements tracking; word processing within the clerk's office; national statistical reporting; and, in many courts, full electronic docketing.

Centralized computer support in Washington, D.C., will remain to process, for example, those statistics that must be kept on a national basis.

The Federal Judicial Center will continue to be responsible for major software development and the Administrative Office will be responsible, as it is now, for subsequent maintenance of operational standardized applications. Standard software applications will ensure both software stability and long-term maintenance support. Moreover, by avoiding duplication, centralized software development and maintenance is more cost-effective. However, central responsibility for software applications need not preclude user courts from tailoring report formats or developing applications to meet particular local needs.

In 1983, the Center and the Administrative Office decided upon UNIX as the operating system to control the new generation of microcomputers. (The operating system of a computer is the set of programs that links the hardware to the software applications and that manages the various internal resources of the computer.) UNIX is expected to permit courts to take full advantage of competition between numerous computer hardware suppliers whose machines are compatible with the UNIX operating system.

Automated Support for Civil Case Management. Of the first seven major Courtran applications, only the Civil Caseflow Management System (CIVIL) remains to be transferred to the Administrative Office. CIVIL now operates in seven district courts: Arizona, Central California, District of Columbia, Northern Georgia, Eastern Michigan, Oregon, and South Carolina. These courts represent approximately 14 percent of the national civil filings.

The Center plans to transfer CIVIL to the Administrative Office during fiscal 1984, after the final set of enhancements to the sys-

tem's capabilities have been encoded and tested. The capabilities of the centralized system as it will then exist will not subsequently be enhanced in any significant way. Further improvements in civil case management automation—electronic docketing in particular—will be accomplished instead on decentralized microcomputers that will be the hallmark of the next generation of federal court automated systems.

As an initial step toward that goal, the Center is installing a version of decentralized CIVIL on an experimental basis in the district court for the District of Columbia. The project has two phases. In the first phase, functions currently available on CIVIL will be converted to operation on a microcomputer located in the district court. This conversion is expected to enhance CIVIL's utility in terms of ease and speed of operation. The second phase of the project will be to develop an electronic docketing program for CIVIL.

It is expected that this effort in the District of Columbia will be of significant help in shaping the form that automated civil docketing and reporting will take during the next generation of management systems.

SAMCAP. One of the first district court projects to incorporate decentralized hardware and standardized software is the Small and Medium Court Automation Project (SAMCAP), which commenced in fiscal 1982. SAMCAP represents a joint undertaking by the Center and the Administrative Office and will provide additional automated support for approximately seventy trial courts, taking advantage of the new developments in computer hardware and software. The first phase of this project, which has been completed, involved testing the feasibility and acceptability of a decentralized automated case management system. The evaluation of this initial phase proved positive, and the Administrative Office decided to proceed with the procurement of additional equipment that had more capability than the equipment used in the first phase. The Center is primarily responsible for the development of the computer applications.

The second phase calls for the installation of more powerful microcomputers in five United States district courts during fiscal 1983. The five courts are the Southern District of Illinois, the District of Nebraska, the District of New Mexico, the Western District of

Washington, and the Eastern District of Wisconsin. These courts will work with one of three different software applications. Illinois Southern and Wisconsin Eastern will experiment with a case management system; New Mexico and Washington Western will test a jury management system; and Nebraska will implement a property inventory system. Each court will eventually add one or more other software applications to their systems. Such additional applications may include the three mentioned above and/or an attorney admissions system, a financial system, or a personnel system. The microcomputers provided to support these applications will also possess a word-processing capability.

A comparable project for large metropolitan courts (LAMCAP) will commence in fiscal 1984.

D. District Court Management

Court-Reporting Methods. The Center this year completed its test of electronic sound recording as a method of court reporting in United States district courts. A report of the test was published during the summer. This study was undertaken at the request of the Judicial Conference of the United States, pursuant to a 1982 statutory mandate that the Conference "experiment with the different methods of recording court proceedings." The Federal Courts Improvement Act of 1982, § 401, Pub. L. No. 97-164, 96 Stat. 25, 56-57 (1982).

Section 401 also provides for the amendment of 28 U.S.C. § 753(b) to allow district court judges the discretion to use electronic sound recording in their courtrooms as the official court-reporting method. Any use of electronic sound recording is to be governed by the discretion of the particular judge, subject to Judicial Conference regulations. The act does not require that the Conference promulgate regulations, but it does provide that if the Conference does adopt regulations, they may not become effective before October 1, 1983.

The Center, with the assistance of the Administrative Office, evaluated the operation of audio recording systems in twelve different courtrooms located in ten circuits. During the test, the stenographic reporters, as the official court reporters, took the official record and prepared transcript pursuant to statute and Judicial Conference policies; this allowed a side-by-side test of the two systems. Four-track cassette tape recorders were installed in eleven project

courtrooms; a reel-to-reel eight-track recorder was installed in one courtroom. Personnel employed in the office of the clerk of court were assigned to operate the recorders, to prepare logs of the proceedings, and to ship audio recordings and other materials to designated transcription companies whenever a transcript was ordered from the official court reporter.

The criteria by which the performance of the audio recording systems was evaluated follow from the legislative history of the statutory mandate: transcript accuracy, timeliness of transcript delivery, the systems' cost to the government, and the ease with which the systems were used to record proceedings in and out of the courtroom.

Transcript accuracy was evaluated using a stratified sample of 2,483 pages of audio-based transcript (and the matching pages from the official transcripts) drawn from 17,815 transcript pages from eighty-two civil and criminal cases of varying length and complexity, including several bilingual proceedings. Functionally relevant discrepancies between the paired transcript pages were compared with the audiotape to determine which transcript, if either, matched the tape.

The overall accuracy evaluation showed that the audio-based transcript matched the audiotape in 56 percent of the 5,717 discrepancies that did not represent discretionary deviations under project transcription guidelines. The steno-based transcript matched the tape in 36 percent of such discrepancies and neither transcript matched the tape in 3 percent of the discrepancies. The audiotape could not resolve the remaining discrepancies.

To give the benefit of the doubt to the official transcript, all discrepancies that could not be resolved because the speech was ambiguous or the tape was unintelligible were counted as "steno-based transcript correct." With this adjustment, the audio-based transcript matched the audiotape in 58 percent of the discrepancies, and the steno-based transcript matched it in 42 percent of the discrepancies, a difference that was statistically significant.

For the second accuracy analysis, legal assistants screened all the discrepancies on the 2,483 pages to eliminate those that could not possibly make a difference if one or the other transcript were used

for trial or appellate purposes. Panels of judges and lawyers reviewed the 6,781 remaining discrepancies.

The panels determined that 744 of the discrepancies submitted to them "were likely to make a difference" if one or the other of them had been used for posttrial motions, on appeal, or for a similar purpose. Analysis of these discrepancies showed that the audio-based transcript matched the audiotape in 62 percent of the discrepancies and the steno-based transcript matched the audiotape in 38 percent of the discrepancies; these were the figures that resulted after all discrepancies that could not be resolved were counted as "steno-based transcript correct."

Some panel members stressed that many discrepancies that they could not conclude were "likely to make a difference" nevertheless represented intolerable errors in any federal court-reporting system.

The timeliness of audio-based transcript delivery was evaluated according to whether the transcription company delivered transcripts to the clerk of court within the Judicial Conference deadlines for ordinary transcript (thirty days after order), expedited transcript (seven days after order), daily transcript (prior to the normal opening hour of court the next day), and hourly transcript (within two hours of the conclusion of the morning or afternoon session).

Eighty-three percent of the audio-based transcripts produced on the ordinary production schedule were delivered to the clerk of court within the ordinary transcript deadlines, and 100 percent were delivered within thirty-five days; 64 percent of the steno-based transcripts were filed with the clerk of court within thirty days, and 77 percent were filed within thirty-five days. However, it is possible that more steno-based transcripts were delivered to the parties within the deadlines than were filed with the clerk.

Eighty-nine percent of the audio-based transcripts ordered for expedited production were delivered to the clerk of court within the deadline, after discounting for time lost mailing to and from the transcription company. Almost without exception, audio-based transcripts ordered for daily and hourly production were delivered to the clerk of court within the Judicial Conference deadlines; daily and hourly production was attempted in only a small number of project courts.

There was no effort to compare audio-based transcript delivery with steno-based transcript delivery on any schedule but ordinary production, because records did not allow certain determination of when the transcripts were delivered to the parties; there is no evidence in the project files to suggest they were not delivered to the parties on time.

The project calculated the comparative costs to the government of the audio recording and official reporting systems (costs for almost all transcript production are met by the parties). In calculating the costs of the audio recording system, it was necessary, among other things, to identify the portion of the time that the equipment operator devoted to court-reporting duties as distinguished from other duties in the clerk's office.

Based on the costs incurred during the project, and projecting other costs that could be expected in normal operations but were not encountered during the project, the average annual cost of one audio recording court-reporting system in federal district court is $18,604, compared to $40,514 for the corresponding official stenographic court-reporting system. Projecting those costs over six years, the average cost of one audio court-reporting system is about $125,000, compared to $275,000 for the official court-reporting system.

Information from judges using the project courtrooms, audio operators, and site monitors appointed by the Center to observe the conduct of the test in each location provided bases for evaluation of the ease or difficulty with which the audio recording system was used in the court. Of the judges, eleven of twelve said that the systems did not disrupt the conduct of proceedings, and five of seven said that the audio system was generally able to provide playback of testimony during the proceedings.

Audio equipment reliability was satisfactory in some 4,200 hours of proceedings recorded in this study, but some equipment breakdowns occurred. Had the audio recording system been the official system, remedying these failures would have caused delays in the proceedings until the backup system could be activated. Six operators reported varying instances of relatively brief equipment failure. Two other operators reported equipment malfunctions that led to more serious problems, one of half a day, the other on five separate days. No backup systems were provided the project courts in

this study; however, backup systems were included in the cost projections of permanently installed systems.

In July 1983, the report was prepared in a limited typescript edition in sufficient quantity for use by the Judicial Conference Committee on Court Administration, and for distribution to those involved in the experiment and to the members of a joint task force appointed by the National Shorthand Reporters Association and the United States Court Reporters Association. A typeset edition was distributed to all trial courts in August 1983.

Role of the Chief District Judge. For some time the Center has been concerned with providing assistance to the chief judges of district courts with respect to the discharge of their administrative duties. The Conference of Metropolitan District Chief Judges has played an important role in stimulating Center research with respect to the administration of district courts and also with respect to the development by the Center of a publication that would be useful to chief judges in connection with the discharge of their administrative duties. The Chief Justice has been concerned with the administration of district courts, particularly the larger ones. In 1979 he proposed that district court executives be provided to the larger metropolitan courts, a proposal that has since been implemented on an experimental basis. Spurred by that proposal, the conference requested that the Center review and document the various administrative practices and structures found in federal district courts with fifteen or more judgeships. The conference reviewed the resulting report at a later meeting, and the Center published it in fiscal 1982 as *Administrative Structures in Large District Courts.*

In the course of this activity, the conference gave its support to broader Center efforts to provide assistance to the chief judges of all district courts, metropolitan and otherwise. Thus, every chief district judge, upon elevation, is now invited to visit both the Administrative Office and the Center to become better acquainted with the aspects of the work of the two agencies that are relevant to a chief judge of the district court. The Center has also undertaken preparation of a Desk Book for chief judges of district courts. The Desk Book is conceived as a court management companion to the Center's *Bench Book*, which is available to all district judges. The Desk Book is being prepared in close consultation with sitting and former chief district judges, and its outline and contents were discussed in detail by the Conference of Metropolitan District Chief

Judges at a meeting this year. It will be designed not only to chronicle the numerous duties that attach to the office of chief district judge but also to memorialize the accumulated experience of chief district judges in dealing with the management tasks that confront them. Publication is expected in 1984.

Local Rules. Both the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure make explicit provision for local rules. These are designed to accommodate local preferences and practices within the national framework. Understandably, most, if not all, United States district courts have promulgated local rules. Although there has been intense debate on the desirability of some of the local provisions, their existence is a fact of federal judicial administration. The Center's Information Services now maintains a complete and current collection of local rules, while the Clerks Division of the Administrative Office has produced a detailed index of all local rules by subject matter.

Several courts have asked for the Center's assistance in analyzing their local rules, not only with concern for substance and internal consistency but also with concern for consistency with the national rules and with local rules in other districts in the same state. As this particular service grows, the Center is accumulating a significant body of material gathered in responding to requests for specific assistance and hopes to share the accumulated knowledge with national bodies responsible for federal court rules.

The District of Massachusetts was one of the first courts to turn to the Center for assistance in the revision of its local rules. In late 1981, Chief Judge Andrew A. Caffrey requested the Center's assistance in an ambitious project involving reexamination of all of the district's local rules. Such revision was to be based not only upon local needs and practices of the Massachusetts federal bench and bar but also upon the experience other federal courts have had with particular local rules. In cooperation with the clerk of the Massachusetts court, the Center's Research Division drafted revisions of sixty-seven local rules. Such draft revisions were then forwarded to Chief Judge Caffrey for review by him and a committee of three judges of that court.

A by-product of the work performed at the request of the District of Massachusetts has been a document entitled "A Review of Civil Case Management Literature, Rules and Practice," which has

served this fiscal year as the principal discussion piece for five case management seminars sponsored jointly by the Center and the Administrative Office.

E. Research on the Trial Litigative Process

Alternatives to Litigation. Litigation processes in federal district courts have been the subjects of many of the Center's research projects. Much of this work has been cited by the Advisory Committee on the Rules of Civil Procedure in the official notes to recent amendments of the rules; some has been referred to earlier in this report. Work in this area continues, but the focus has shifted to place increased emphasis on what are termed alternatives to litigation. In some respects, the term is misleading. The alternatives studied by the Center and described below are more accurately described as alternatives to trial, as they are applicable to cases in which litigation has already been instituted and discovery is proceeding. The desire to avoid an unnecessary trial is shared by lawyers, litigants, and judges. The search for satisfactory alternatives has been widespread, and many techniques have been tried. Describing such techniques, and sharing the information that exists, serve a useful function, as does rigorous empirical analysis of the extent to which a particular procedure actually saves trial time or speeds disposition. The Center has been involved in both types of effort.

The Center recently completed a descriptive paper, *Report on the Mediation Program in the Eastern District of Michigan*. The program, which is unique in federal courts, commenced in November 1981 and is patterned after a successful State of Michigan program that has been in place since 1978. Prompted by a sharp increase in diversity filings coupled with a record number of removals of diversity cases from state courts, the Eastern District of Michigan promulgated a local rule that permitted diversity cases seeking only damages to be referred for mediation to the same panels that were handling the state mediation cases. Referral to mediation may be made by stipulation of the parties, by motion of one party with notice to all other parties, or by motion of the court. Unless an award is rejected within forty days after it is issued, the court enters judgment on that award. The program also incorporates cost-shifting sanctions for the rejection of reasonable awards; attorneys' fees for trial days as well as all actual costs from the filing of the complaint are included in the sanctions imposed.

Since the federal mediation program has been in place less than two years, there exists a dearth of hard data concerning the effects of the program. However, most of the ten federal trial judges who shared some impression of the workings of the mediation program perceived positive results. They agreed that the mediation program diverted cases from trial, conserved judicial resources, and reduced the costs of litigation to the parties.

A follow-up evaluation of another dispute resolution alternative, court-annexed arbitration, was published in fiscal 1983. That evaluation, an update of the 1981 Center report entitled *Evaluation of Court-Annexed Arbitration in Three Federal District Courts* and described in earlier annual reports, confirmed the initial report's findings of the utility of this procedure. The incidence of trial among cases mandatorily referred to arbitration was reduced by approximately 50 percent in two pilot courts. In one of these courts—the Eastern District of Pennsylvania—less than 2 percent of the cases referred to arbitration in 1979 ever came to trial. That court has also recently extended the scope of the program's subject matter jurisdiction to include actions arising under the Federal Employers' Liability Act. More federal courts are now seeking funds to implement mandatory arbitration programs.

A third alternative to traditional civil litigation procedures, the summary jury trial, has also received attention from the Center. A summary jury trial is intended to give attorneys a better insight into the advantages of settlement by permitting counsel for each party to present their respective positions to a jury selected for that presentation alone. The procedure is outlined in the Center's 1982 annual report and is more fully described in a Center report entitled *Summary Jury Trials in the Northern District of Ohio.* This dispute resolution alternative has been successfully applied to contract actions, product liability cases, and a multiparty antitrust action. It has been reported to have resulted in settlements being reached in difficult cases after other techniques had failed.

Federal Rule of Civil Procedure 68. Federal Rule of Civil Procedure 68 provides that a defendant may, at least ten days before trial, make an offer of a judgment that, if it is not accepted by the plaintiff, will have the effect of shifting to his adversary "the costs incurred after making the offer," unless the judgment finally obtained by the adversary is more favorable to him than the offer was. On its face the rule is both simple and equitable: If defendant was reasonable in offering plaintiff everything to which he was en-

titled and plaintiff was obdurate in insisting on a trial that availed him nothing, let the plaintiff bear the costs. Moreover, from the point of view of the system as well as litigants, needless trials are a waste of valuable resources; fair settlements, which work to everyone's advantage, are to be encouraged. Similar rules are found in a large number of state systems, and yet the evidence is that neither the federal rule nor its state counterparts are used very much in practice.

The Center's Research Division is currently engaged in two projects involving Rule 68. The first of these involves a study of the actual experience of federal and state courts with Rule 68-type provisions. The study will pay particular attention to any variations in the substantive details that may make such a rule more or less effective. The second project focuses on the possible effect of fee-shifting under a hypothetical Rule 68 that permits the recovery of attorneys' fees as well as the taxation of "costs." The Research Division will also attempt to analyze the effects of recovery of attorneys' fees in other situations in which either procedural rules or statutes contain such provisions.

Telephone Conferences in Civil Litigation. A new Center report, *Business by Phone in the Federal Courts,* describes the ways in which federal courts currently use teleconferencing as a cost- and time-saving management technique. The report, the findings of which substantially provided the foundation for the first issue of *Chambers to Chambers*, also lists the advantages and disadvantages that federal trial judges in thirteen courts have experienced with this innovation. Although the use of telephones to hear motions in civil proceedings is simple from a technological standpoint, relatively few federal judges use them for multiparty conferences. The Center's modest inquiry was designed to share an account of their experiences with other judges.

Teleconferencing has been used, for example, to resolve objections to questions propounded at a deposition without adjourning the deposition. In another case, an unscheduled pretrial conference became necessary, but counsel for one of the parties was physically unable to get to the courthouse; a multiparty teleconference call made it possible to hold the pretrial conference. Finally, status calls, which can be time-consuming and therefore expensive when held in person, are far more efficient and just as effective when held by teleconference.

Manual for Complex Litigation 2d. The Center has provided continued support to the Board of Editors of the *Manual for Complex Litigation 2d.* This publication is the successor to the *Manual for Complex Litigation.* The *Manual,* which since its inception has been produced under the auspices of the Center, continues to be cited frequently and transferee judges, appointed pursuant to the statute governing multidistrict litigation, continue to attest to its utility.

Role of United States Magistrates. In Public Law 90-578, enacted in 1968, Congress provided for the establishment of the United States magistrates system to replace the former system of commissioners. During the intervening years, the role of magistrates has evolved with wide variations from district to district. In light of that diversity, the Center's Research Division has undertaken a two-part study of the varying roles of full-time magistrates. The first report, to be published in 1983 under the title of *The Roles of Magistrates in Federal District Courts,* provides a detailed description of the scope of responsibilities of full-time magistrates in eighty-two district courts, the processes by which those responsibilities are assigned to them, and the frequency with which they are called upon to perform their varied tasks.

A second report will involve interviewing and surveying judges, magistrates, and members of the bar of eight different prototype courts, to ascertain among other things the rationale underlying the evolution of the duties of each magistrate as perceived by the participants in the system. This work is expected to be completed in fiscal 1984.

F. Jury Projects

Pattern Jury Instructions. The Center's Research Division this year continued its work in the area of pattern jury instructions through the Subcommittee on Pattern Jury Instructions of the Judicial Conference Committee on the Operation of the Jury System. This subcommittee, chaired by Judge Thomas Flannery of the United States District Court for the District of Columbia, places heavy emphasis on making jury instructions intelligible to the lay juror.

The subcommittee is continuing work done by the Research Division and the members of a Center Committee on Pattern Jury

Instructions, which was chaired by Judge Prentice H. Marshall of the United States District Court for the Northern District of Illinois. The earlier project resulted in the publication in 1982 of a collection of fifty-one criminal jury instructions along with an introduction and two appendixes.

The present project takes notice of developments of various circuit committees that are drafting their own pattern instructions.

Juror Utilization. In response to its own analyses as well as to a report of the General Accounting Office, the Judicial Conference at its fall 1981 meeting asked each circuit council to undertake to improve its juror utilization record. The goal is to ensure that sufficient jurors are available when needed, while keeping to a minimum the calling of citizens whose services will not be required. The Conference, while encouraging circuit councils to experiment with different methods designed to achieve this end, specifically suggested education in juror utilization as one means of achieving improved performance. To assist in this effort the Center has offered a series of juror utilization workshops for clerical personnel and has included the subject in orientation seminars for judges, as well as in regional workshops and seminars. The Center is presently preparing a juror utilization manual, based in part on information shared in the course of some of these workshops. Publication is expected in 1984.

G. Improvement of Advocacy in Federal District Courts

Since its inception in fall 1979, the Judicial Conference Implementation Committee on Admission of Attorneys to Federal Practice, chaired by Judge Lawrence King of the United States District Court for the Southern District of Florida, has been charged with overseeing the implementation, on an experimental basis, of the major recommendations of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, otherwise known as the Devitt Committee. These recommendations include a system of peer review of lawyers, with assistance for those in need of help; entrance examinations to test knowledge needed for practice in the federal courts; a trial experience requirement; and rules providing for law students to practice in the federal courts. The implementation committee works with

thirteen district courts, each of which is experimenting with one or more of the proposals. The committee met in 1983 with representatives from the pilot courts to share observations about their experiences to date and to identify the status of the various programs selected by the courts, including the reaction of the bar to the rules developed by the pilot courts.

During fiscal 1983, the Center has continued its support for the implementation committee. The Center has maintained contact with the pilot courts on a continuing basis, functioned as a clearinghouse for information and a depository for local rules and other relevant documents, and undertaken to provide a record of the committee's progress. A Center staff member has been designated to represent the implementation committee on the Coordinating Council on Lawyer Competence of the Conference of [State] Chief Justices. Center staff have made various presentations concerning the work of the committee, including the keynote address on the judiciary's concern with lawyer competence at the Federal Practice Institute of the Federal Bar Association in July 1983.

The committee, with Center support, also continues to obtain and to disseminate information about court-sponsored continuing education programs for the bar on federal practice and trial advocacy. The Devitt Committee had recommended such judicial involvement and several of the pilot courts are sponsoring such programs, as are many other trial and appellate courts.

II. FEDERAL SENTENCING AND PROBATION

The Center this year continued to devote substantial resources to the related areas of sentencing and probation. In doing so, the Center is continuing a tradition that is virtually as old as the Center itself. One of the Center's earliest research efforts studied disparity in sentencing; and the report that followed, *The Second Circuit Sentencing Study: A Report to the Judges of the Second Circuit* (1974), remains a widely cited reference. In addition, the Center has, since its earliest days, provided education and training for judges and magistrates who exercise the sentencing function and for probation officers who supervise defendants sentenced to terms of probation.

As detailed in the sections of this chapter that follow, this year's activities fall into three general areas: programs of continuing education and training, research projects, and continued progress in the development of a Probation Information Management System (PIMS). In all of this work the Center has been greatly influenced by the agenda and objectives of the Judicial Conference Committee on the Administration of the Probation System, chaired by Judge Gerald B. Tjoflat of the United States Court of Appeals for the Eleventh Circuit.

A. Continuing Education and Training

Sentencing Institutes. The Congress, in 1958, authorized the Judicial Conference of the United States to convene sentencing institutes at the request of either the attorney general or, as has been the practice, of a circuit chief judge (28 U.S.C. § 334). Since 1974, at the request of the Judicial Conference Committee on the Administration of the Probation System, the Center has been involved in the planning, administration, and evaluation of these institutes. Center support is a coordinated effort of its Research Division and Education and Training Division.

One sentencing institute was held in 1983 for the judges of the Fourth and Eleventh Circuits, at Raleigh, North Carolina, and at the federal correctional facility at Butner. The institute included presentations on the Victim and Witness Protection Act of 1982 and on the insanity defense. Institute participants also heard a presentation and panel discussion on the treatment of inmates with psychiatric disorders, a topic of particular interest because of the psychiatric treatment center at the Butner facility.

In the past, sentencing institutes were planned in part to accommodate the special interests of newly appointed district judges. Consistent with Judicial Conference policy, there was a determined effort made to assure that as many new judges as possible attended a sentencing institute and visited a federal correctional facility early in their judicial careers. As described more fully in the section on the orientation of newly appointed district judges, the Center has now decided to extend its three-day regional video orientation seminar for an extra day, specifically to include both a visit to a nearby federal correctional facility and a specially designed one-day program focused exclusively on sentencing.

Law and Policy Changes Affecting Judges' Sentencing Options. A primary objective of both the sentencing institutes and the Center's orientation seminars for newly appointed district judges is to keep judges abreast of important case law affecting the sentencing process and to advise them of the current policies of the Parole Commission and the Bureau of Prisons. The policies of these executive agencies—especially those of the Parole Commission—can have a major effect on the actual time served under a sentence of imprisonment, often without regard to the sentence imposed.

An important vehicle for the dissemination of this information is a Center report, *The Sentencing Options of Federal District Judges*, most recently revised in June 1983. This report, which is reviewed on a continuing basis and revised as needed, is provided to federal judges, to the Criminal Justice Act Division and the Probation Division of the Administrative Office, and to the Department of Justice. The organizations distribute the report, in turn, to federal defenders, probation officers, and United States attorneys, respectively.

Victim and Witness Protection Act of 1982. Last October, President Reagan signed the Victim and Witness Protection Act of 1982.

The act requires judges, when imposing sentence, to take account of harms suffered by the victims of the offenses. It also directs probation officers, in preparing presentence reports, to include a "victim impact" statement. To orient judges, magistrates, federal defenders, and probation officers to the requirements of this new legislation, and to analyze some of its more complex provisions, the Center developed a three and one-half hour program, which was telecast live by satellite on March 15, 1983, to audiences in twenty-six metropolitan areas. Faculty included federal judges, a federal defender, and senior staff in the Department of Justice and in the Administrative Office. By arrangement with the Department of Justice, invitations were also extended to United States attorneys in each participating city. The total audience exceeded one thousand. In addition, the program was videotaped and audiotaped, and more than sixty copies of these tapes have been borrowed from the Center for use by individuals and in some cases for the training of groups.

Seminars and Workshops for United States Probation Officers. During fiscal 1983 the Division of Continuing Education and Training sponsored three management skills workshops, designed for chief and deputy chief probation officers. It also scheduled eight regional seminars for probation officers. The regional seminars were planned and conducted in large part by the officers in the participating districts, under general guidelines established by the Center.

Much of the continuing education and training provided to probation officers comes in the form of local training of a technical nature. Many programs are organized by local court training coordinators, using the Center's media resources but requiring no special faculty. Others are more structured and require more Center involvement. Supervisory skills seminars, for example, are designed by the Center staff for officers designated as supervising United States probation officers. The faculty for this seminar, which provides a curriculum of on-site training supplemented by presession and postsession components, is composed of Center personnel and others with expertise in the field. A supervisor who enrolls in a supervisory skills seminar first develops a set of individual vocational goals with his or her chief probation officer. These are modified at the on-site training program, reevaluated with the chief probation officer, and then implemented by the attendee. Completion of the goals must be certified by the chief probation officer before the Center awards a certificate of course completion.

For the past six years, Fordham University has offered qualifying probation officers the opportunity to enroll in a three-year program leading to a master's degree in sociology with a specialization in probation and parole practice. The Center has defrayed a portion of the cost of this program for federal probation officers. Correspondence courses are the primary means of instruction, but the program does include a one-week residential seminar each semester. Fifty-six of the program's graduates have been United States probation officers. The first probation officers were graduated in fiscal 1979, and fifteen degrees were scheduled to be awarded in 1983. During fiscal 1983, forty federal probation officers participated in the degree program.

With the enactment of the Pretrial Services Act of 1982, training in pretrial services became a high priority in fiscal 1983. Pilot pretrial services agencies had been operating in eleven districts when Congress authorized such agencies in all districts. The effect was to create a training need in the eighty-three nonpilot districts. The Center arranged to have teams of instructors from the pilot districts and from the Administrative Office's Probation Division travel to each of the eighty-three districts to work with probation personnel on the best means of establishing a pretrial services unit, giving adequate attention to local conditions. By the end of the fiscal year, approximately 1,500 officers will have been trained in pretrial services, at an estimated cost of $27 per eight-hour day of training for each trainee—about one-fifth the cost of bringing the officers to a regional seminar or workshop.

Other Programs. The Center made increasing use of its media service capabilities in the training of probation support personnel. One video program focused on the impact of recent revisions of the Parole Commission's guidelines on the preparation of presentence reports. The specially produced videotape featured a senior staff member of the Parole Commission and two assistant United States probation officers in a panel discussion of key elements in the recent revisions and the difference these changes make in the work of probation personnel. A second program provided instruction in completing revised forms developed for the new Federal Probation Sentencing and Supervision Information System (FPSSIS). Both programs were planned in cooperation with the Probation Division of the Administrative Office.

B. Probation and Sentencing Research

Drug Aftercare Program Evaluation. When Congress transferred responsibility for providing aftercare services to drug-dependent probationers and parolees from the Bureau of Prisons to the federal courts, it also provided for an evaluation of the program to be submitted by the Administrative Office. To assist it in the discharge of this statutory obligation, the Administrative Office requested the Center to undertake a long-range, multiphased evaluation of the effectiveness of the program and of the methods of service delivery. The first phase of this evaluation has been completed, and the report is to be published late in fiscal 1983.

The program itself is quite complex. There are twenty-three types of drug aftercare services available, including individual, group, or family counseling, urinalysis, ambulatory detoxification, and methadone maintenance. Moreover, not every probationer is eligible for the program; minimum standards have been established and the extent to which these are applied consistently is in itself a question. Finally, the evaluation of the effectiveness of the various components of the program, and of the program as a whole, is a central concern.

The initial phase of the research was aimed at determining the extent to which the Probation Division's minimum requirements for participating in aftercare services have been met. How consistently were the officers responsible screening persons and identifying those who should participate in the program? An outside contractor conducted interviews with trial judges and probation officers in ten district courts: Central District of California, Southern District of Texas, Southern District of New York, Northern District of Illinois, Northern District of Indiana, District of Maryland, Eastern District of Michigan, Western District of Missouri, District of Nebraska, and District of New Jersey. Regional commissioners from the United States Parole Commission as well as administrative parole examiners were also interviewed. In addition, sample case files of approximately 1,500 offenders were examined and profiles of program participants were developed.

The second phase of the project, development of the evaluation, is also near completion. In this effort, the Center has had the benefit of the services of a distinguished advisory committee composed of academicians, probation officers, and representatives of the Admin-

istrative Office. The final phase of the project is scheduled to begin in early fiscal 1984.

Sentencing Reform Bill. Since the introduction of sentencing reform legislation in 1973, the staff of the Center has remained alert to congressional interest in revising the federal criminal code and, particularly, in proposals designed to affect the sentencing discretion of judges. In April 1983, a judicial alternative to the sentencing reform legislation that has been debated in Congress for the last decade was introduced in the Senate. This bill, S. 1182, which deals with mandatory sentencing and sentencing disparity, has the approval of the Judicial Conference. It draws upon knowledge and research gathered by the Center since the early 1970s; the staffs of the Center and the Administrative Office assisted in the drafting.

C. Probation Information Management System

The Center's Divisions of Research and of Innovations and Systems Development in fiscal 1983 continued their joint efforts with the Administrative Office and the Judicial Conference Committee on the Administration of the Probation System to develop and design a Probation Information Management System (PIMS). PIMS refers to the automated information management system recommended by the Judicial Conference probation committee, which when completed will not only contain detailed nationwide information on sentences imposed for various offenses and offenders, but will also provide essential planning information for probation officers to use in tracking and analyzing their caseloads; statistics for probation office administrators' budget and personnel needs; information for management planning; and data for research.

The Center has assisted in the completion of the PIMS functional description that defines the services that its potential users want PIMS to perform and has defined the data on offense and offender characteristics that should be included in the automated reports. The Innovations and Systems Development Division has been primarily responsible for the selection of the computer equipment and the development of the necessary software applications for PIMS.

A number of factors have influenced the Center and the Administrative Office to implement PIMS and to do so as expeditiously as possible. First, the cost-benefit analyses performed by the Adminis-

trative Office showed positive findings. Second, there was evidence of increased interest in Congress as well as among the judiciary for better national sentencing information. In order to move more expeditiously the original PIMS project was divided into two projects and there was some reallocation of responsibility between the Center and the Administrative Office, all of which is detailed below.

In fiscal 1983, the Innovations and Systems Development Division was responsible for the installation of the PIMS computer and related hardware equipment in the probation offices of the various divisions of the pilot court, the United States District Court for the Northern District of Ohio. By October 1983 the computer equipment will be in place and some of the software applications will be in use. This pilot court, which includes Cleveland, Akron, Toledo, and Youngstown, will experiment with the automated management control function of PIMS. Evaluation of this pilot project by the Research Division will commence early in fiscal 1985.

The second goal of the project is the improvement of the national sentencing data collection and reporting system. The Research Division, in conjunction with the Administrative Office, has identified those characteristics of both offender and offense not currently being reported to the Statistical Analysis and Reports Division of the Administrative Office that will be of assistance to judges and probation officers in the decisions involved in the sentencing and probation processes. These new offender and offense characteristics will be included in the Administrative Office's Federal Probation Sentencing and Supervision Information System.

III. APPELLATE COURTS

A. Continuing Education and Training

A seminar for newly appointed appellate judges was offered during the past fiscal year, the second such seminar in the Center's history. The seminar was planned by a committee appointed by the Chief Justice and chaired by Judge John D. Butzner of the United States Court of Appeals for the Fourth Circuit, then a member of the Center's Board. The seminar included presentations on standards of appellate review, administrative agency appeals, federal appellate jurisdiction, opinion writing, statutory construction, cases brought under 42 U.S.C. § 1983, the role of judicial councils, and a consideration of relationships between judges of multijudge courts.

The Center continues to offer regional seminars for judges of the United States courts of appeals, typically on a three- or four-year cycle. Judge Butzner's committee has planned two such seminars for circuit judges; these are scheduled to be held in October 1983.

Of course, federal appellate judges participate in a variety of other Center educational activities. They avail themselves of Center publications. They are well represented at the Center's special summer programs. In addition, many attend the circuit workshops on a regular basis; although these are designed primarily for district court judges, the programs include much that appellate judges find useful.

The burgeoning caseload in the United States courts of appeals, far from precluding attention to continuing education for lack of time, underscores the desirability of providing federal appellate judges with every possible mechanism of support. In the twelve-month period ending June 30, 1982, the number of filings in the courts of appeals rose to record levels. For the first time, the number of appeals filed for each authorized three-judge panel exceeded 600—indeed, the 1982 figure was 635 appeals for each three-judge panel. During that same period, however, the federal appellate courts re-

duced their pending caseload—albeit by only two-tenths of 1 percent.

In November 1982 the Center again sponsored a seminar for the clerks of the courts of appeals. The seminar provided a forum for reports on Center research and development, including the Courtran systems for automated appellate case management and the proposed changes in the Federal Rules of Appellate Procedure. The seminar supplied an opportunity for each of the clerks in attendance to present status reports and, in a new development, an opportunity for the clerks, meeting as a committee of the whole, to present to senior personnel of the Center and the Administrative Office their perceptions of likely developments in appellate case management and the needs of the clerks of court.

B. Research and Development on Appellate Court and Case Management

The ever-burgeoning appellate court dockets, referred to above, have increased the already heightened interest in the variety of research and technological assistance that the Center might provide to the courts of appeals. Demands for new services stem in a sense from early Center efforts: its 1977 analysis of the Second Circuit's Civil Appeals Management Plan, the CALEN9 computer program devised in 1978 to prepare calendars pursuant to Ninth Circuit policies, and the word-processing and electronic-mail application that the Center tested in cooperation with the Court of Appeals for the Third Circuit in 1977 and 1978.

Appeals Expediting System. In 1982, the Tenth Circuit judicial council, aware of the Center's work on appeals expediting procedures, as documented in *Appeals Expediting Systems: An Evaluation of Second and Eighth Circuit Procedures* (1982), requested support in designing its own appeals expediting system. A case management system for the Tenth Circuit was designed, and a computer simulation was developed to allow the Tenth Circuit to determine the impact of changes in caseflow management plans. In 1983, the simulation was modified to permit eventual use in other circuits, particularly those participating in the New Appellate Information Management System (New AIMS).

Similar assistance is being provided to the Ninth Circuit. The Center, in 1981, in response to a request for assistance by the Ninth Circuit judicial council, proposed a number of innovative procedures that the court might consider in order to improve its processing speed and to decrease its backlog. In the summer of 1982, the Center conducted a modest evaluation of the status of these procedures that had been adopted by the court, primarily through interviews with judges and senior staff. The court of appeals has expressed interest in having the Center undertake an in-depth evaluation of these procedures and of their impact on the business of the court.

Procedures for Preargument Case Disposition and Oral Argument. The Second Circuit has been a pioneer in the use of preargument conferences designed to reduce the burdens of time and effort on the parties, the attorneys, and the court. In the mid-1970s, the Center was asked to evaluate the Second Circuit's Civil Appeals Management Plan (CAMP), one objective of which was to identify cases that, with a conference, might settle prior to oral argument. The results of the first evaluation, reported in *An Evaluation of the Civil Appeals Management Plan: An Experiment in Judicial Administration* (1977) and described in prior annual reports, were less than conclusive. The Second Circuit, however, remained committed to the program. Procedures were modified and expanded, as was the staff. In 1981, the Center was again requested to analyze data drawn from the second controlled experiment that the court began in 1978. In marked contrast to the inconclusive results of the first CAMP evaluation, the second evaluation revealed positive benefits flowing from the Second Circuit's modified and expanded appeals management program. *A Reevaluation of the Civil Appeals Management Plan* (1983) (also referred to as CAMP II) describes, among other things, the following affirmative findings: CAMP reduced the argument rate for cases in the program by 10 percent, from 60 percent to 50 percent. In terms of the full calendar of the court, this represented a reduction of approximately 8 percent in the number of arguments. CAMP also reduced the elapsed time from the docketing of an appeal to disposition, with an average savings of approximately six weeks. Phrased differently, 45.1 percent of all cases in the CAMP program were terminated within three months of the docketing of an appeal, as contrasted with only 20.5 percent—less than half—of the appeals in the control group. After four months, 58 percent of the CAMP appeals had been terminated; the comparable figure for the control group was only 30.5 percent.

The Ninth Circuit, acting upon the Center's recommendation, has also instituted a preappeal conference program. This program has been in place for two years, and the Ninth Circuit, with the assistance of the Center, is preparing to evaluate the effects of the program.

Automated Appellate Court Calendaring and Paneling Systems. The assignment of cases to three-judge panels is a pervasive management problem faced by courts of appeals. Typically, cases for hearing are grouped together into "calendars," often according to criteria designed to reflect that court's policies with respect to case mix, in terms of both subject matter and difficulty. By another process, judges are grouped into "panels" and a schedule of panels is developed for sittings for an entire year. Again, courts usually have policies that govern how often judges sit with other judges and that ensure geographic or other diversity. The calendars are then distributed to the prearranged panels, usually on some random basis, to avoid any concern over purposeful assignment of specific cases to specific panels of judges.

In all of this, computer support can be most helpful. Previous annual reports have described the CALEN9 computer application, developed by the Center's Research Division. CALEN9 groups cases into calendars using appropriate criteria and is capable of assigning judges to the various panels. The Center has been called upon to develop programs to meet the calendaring and paneling needs of a number of courts of appeals. Some employ variations of CALEN9 to assign judges to three-judge panels; some courts use the program only for calendaring.

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 named 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 Records Management System (ARMS), which the Center developed for use in the Ninth Circuit clerk's office. During fiscal 1983 the Ninth Circuit consolidated the operation of SADB and ARMS within the clerk's office, resulting in greater efficiency.

Monograph on Appellate Court Research. The Center has over the years published a substantial number of research reports and staff

papers relating to appellate courts and the appellate process. Collecting this material within a single volume would make it more accessible and more useful to judges as well as to others within and outside the federal judicial system. The sheer volume of the Center's published reports, however, precludes a mere reprinting or an unedited anthology. Accordingly, the Research Division is presently preparing a one-volume work that will combine specially prepared text with edited reprints. Publication is expected in fiscal 1984.

Judicial Councils. Work commenced this year on a study of the implementation of several provisions of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 and of the Federal Courts Improvement Act of 1982. All of the provisions in question involve administrative functions of the circuit councils and of the courts.

The study will examine how the various circuits have implemented the congressional mandate that district court judges be included as members of the circuit councils. Congress allowed substantial discretion to each circuit with respect to the size of the councils and the number of district judges to be included. The circuits have varied in the actions taken and this phase of the project is designed to analyze those variations. Another aspect focuses on the procedures for processing complaints about judicial misconduct. At the request of the Judicial Conference Committee on Court Administration, Center staff has reviewed and revised a questionnaire to be addressed to each of the thirteen circuits about the processing of such complaints.

The Center's Information Service Office now maintains a complete set of the rules for processing complaints of alleged judicial misconduct, as promulgated by the judicial council of each circuit.

Finally, the Center is reviewing the various ways in which the circuits have implemented two provisions of the Federal Courts Improvement Act of 1982. The first is a statutory directive that members of the bar be included on advisory committees for local rules of practice and procedure. The second provides that a senior judge who sits on a three-judge panel for a particular case be permitted to participate in an en banc hearing of that case, if a full panel is convened. This work is expected to continue into fiscal 1984.

Research on Appeals and Appellate Practice

During 1983, at the request of a number of judges and Judicial Conference committees, the Research Division began work on a number of diverse but interrelated projects concerning federal appellate practice. These inquiries are designed to shed light on some of the lesser-known aspects of how courts of appeals conduct their business.

Stays of Mandate. One short project looked at the practices of federal appellate courts concerning the issuance of stays of mandates in the courts of appeals pending the filing of petitions for certiorari in the Supreme Court. The primary finding was that there appeared to be substantial variation in how the courts of appeals treated requests for stays. Some circuits appeared to grant stays of the mandate as a matter of course; other circuits denied such prayers except in rare circumstances. A clerk might make the determination to grant or deny an application for a stay in one court, while another court required that denial of a request for a stay be made only by the court sitting en banc. A rather striking finding of the project was the difference between the standard used in the United States Supreme Court to determine whether a stay should be granted and those standards used by some of the courts of appeals. Specifically, many of the courts of appeals at the time of the survey did not take into consideration the likelihood that certiorari would be granted; such a likelihood is a requisite for the issuance of a stay by a Justice of the Supreme Court.

Review of Interlocutory Orders. Another project, which commenced in 1983 and which will receive substantial attention in 1984, concerns appellate review of interlocutory decisions. The subject has attracted some attention recently as a result of interest in a reexamination of federal appellate jurisdiction. The Center has begun to focus on the exercise of judicial discretion with respect to appeals from nonfinal orders under 28 U.S.C. § 1292(b). That statute provides for a discretionary appeal in matters in which the district court is of the opinion that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the case.

Certifying Questions of State Law. In fiscal 1983, the Research Division completed a study on the certification of questions of state law to high state courts. This inquiry was undertaken at the re-

quest of judges of the Ninth Circuit. The study included a survey of appellate and trial judges. The findings, which are generally favorable to the procedure, are reported in *Certifying Questions of State Law: Experience of Federal Judges.* The advantages of this procedure for resolving disputed issues of state law include obtaining an authoritative answer from the appropriate tribunal, sometimes resulting in the immediate resolution of the underlying claim, and having a potential for improving relations between state and federal courts. Overall, these were thought to outweigh the inherent disadvantage, namely the possibility of delay.

Reversals in Criminal Cases. Acting upon the suggestion of a member of the Center's Board, research was undertaken to study the bases for reversals by courts of appeals in criminal cases. The study attempts to determine whether any types of error below—for example, evidentiary rulings—occur with particular frequency. Findings of the study will be published in a Center staff paper. If the findings warrant, the results will be analyzed to determine whether the Center's education program might benefit from focusing on any causes of reversal pinpointed by the study.

C. Automated Appellate Information Management Systems

Consistent with the move toward decentralized computer support systems, described earlier, the Center's Innovations and Systems Development Division has turned its attention to development of an appellate information management system supported by standalone microcomputers located in the individual circuit courts (New AIMS). Development of this new system will respond to the demand for substantially enhanced automated data-processing capability at the appellate level. A "Users Group," composed of one representative from each of the thirteen federal circuits, is charged with serving as the critical link between the appellate courts and the Center during the design, development, and implementation of the decentralized system to ensure that the needs of these courts are most efficiently met. A smaller steering committee will meet with Center staff on a regular basis during the development of the system.

By the close of this fiscal year, the first set of modules for New AIMS will have been installed in the Ninth and Tenth Circuits

and, as described above, computer equipment will have been delivered to the Eleventh Circuit to assist that court with its unique capital punishment caseload. The Fourth Circuit will begin to use the New AIMS system in fiscal 1984.

New AIMS will be an evolving system. A fundamental characteristic of the computer hardware will be its capacity for expansion to allow accommodation of future needs, as may be required by increases in a court's workload. New AIMS is intended to substitute for AIMS, the older, centralized Courtran application.

IV. CENTER ACTIVITIES WITH SYSTEMWIDE IMPACT

Some Center activities are best understood as directed toward the federal judicial system as a whole, rather than at a specific function or level of court. Those activities are described in this chapter.

A. Continuing Education and Training

Center seminars and workshops cannot satisfy all of the education and training needs that arise within a broad institutional structure as heterogeneous as the federal judicial system. In some instances, the need for particular training exists for only a few individuals so that developing a seminar would clearly be uneconomical. Other factors also militate in favor of developing alternatives to travel-based training. The Center's annual appropriation for travel has not risen commensurately with the increase in the size of the federal judicial system nor with the spiraling cost of travel. Thus, even with judicious site selection for regional seminars and careful attention to the availability of reduced fares, the search for alternative forms of training has been accorded high priority.

In-Court Training and Education Programs. In fiscal 1983, the Center conducted more than 180 in-court workshops on such topics as office management, supervisor-employee relationships, group dynamics, psychological testing, staff development, and word processing. 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 is made available. Occasionally, a Center staff member provides the instruction.

A series of in-court training programs established for eight metropolitan district courts deserves special mention. Personnel in these courts, working with Center staff, surveyed first-line supervisors to define areas of needed training and then scheduled a series of monthly seminars devoted to specific supervisory topics. Sessions

were normally repeated two or three times to accommodate individual work schedules. Among the topics covered were communications skills, basic writing skills, decision making, goal setting, performance appraisal, handling complaints and grievances, and counseling employees. To date, 1,470 persons have participated at an average cost of $4.50 per person, per session. To provide this training to first-line supervisors in other courts, the Center has begun a pilot project to videotape some of the major presentations. The videotapes and accompanying materials will then be made available to court personnel through the Center's Media Services unit.

To coordinate local training services and maintain close contact with the courts, the Center has encouraged each court to designate one of its staff as a training coordinator. In addition to their regularly assigned duties, training coordinators help structure and promote training programs for the personnel within their courts. Five workshops for training coordinators were held in 1983 to describe relevant techniques and to provide information concerning resources available both from the Center and from their respective local communities. The Center also uses a newsletter, *What's Happening?*, to alert training coordinators to the availability of new materials and programs.

Media Services. The Center's media holdings have been growing consistently and now include more than 1,200 audio cassettes, 230 video cassettes, and 100 films. These materials cover a wide range of specialized topics and are widely used. Federal judicial system personnel can hear, and often view, presentations of specific interest to them in their own courts, and sometimes in their own homes, and do so at their convenience. Most of the library's holdings are recordings made at Center seminars and workshops, although the Center has the capability of producing programs developed in the first instance for the media library and has been doing so with increased frequency. While many judges and others within the system use the tapes to substitute for attendance at a seminar or workshop, the media library also permits seminar and workshop attendees to review, in a more leisurely setting, programs they have already attended in person. The complexity of many of the subjects treated has made for increased use of tapes for this purpose.

In view of the size of the Center's collection and the variety of its holdings, an appropriate catalog is a necessity. This year, a new loose-leaf revision of the *Educational Media Catalog* was published.

It is designed for continual updating through the use of replacement sections. More recent acquisitions are also listed from time to time in supplemental bulletins attached to issues of *What's Happening?*, the division's newsletter.

Supplementary Training. Tuition support to attend courses in job-related subjects at local educational institutions is also available to qualifying personnel. Where circumstances require, the Center occasionally permits attendance at a national institution as well. The program is limited to courses whose subject matter is not available through the regular Center seminars. These may include offerings of one or more days' duration in specific office management skills, specialized topics in corrections and law enforcement, substantive legal issues, and advocacy skills. They also include evening courses that run for a full semester. From October 1982 through July 1983, the Center provided tuition support to 1,897 individuals, who attended 1,945 courses. The average expenditure per course was slightly over $177. The total amount obligated for these courses was almost $360,000, which represents approximately 13 percent of the Center's total education and training budget. The funds were used by various categories of personnel as shown below.

Tuition Support Program

	Percentage of Funds
Offices of clerks of court	29
Bankruptcy judges and staff	27
U.S. probation officers and staff	24
Federal public defenders and staff	8
Secretaries	4
Circuit and district judges	2
U.S. magistrates	2
Staff attorneys	2
Librarians and others	3

(Figures do not total 100 percent due to rounding. Not included in this list are the funds used to support judges' attendance at the special summer programs, and the funds for assistant federal defenders' attendance at the National College of Criminal Defense, described in chapter 1 of this report.)

B. Assessing the System's Future Needs for Judgeships

The creation of judgeships is solely within the province of Congress. The Congress, however, regularly seeks the recommendation of the Judicial Conference concerning the need for additional judgeships. The Subcommittee on Judicial Statistics of the Judicial Conference Committee on Court Administration undertakes a bi-

ennial survey of the workload of the district and appellate courts to identify those courts where increased workload justifies increases in judgeships. The Center has long supported the work of the subcommittee, particularly with its district court time studies, the most recent of which was published in 1980, based on time records kept by ninety-nine federal judges in 1979.

For some time there has been concern among judges and courts that the process of judgeship creation does not give sufficient consideration to the question of how many cases a judge should be able to handle, and these concerns have been communicated to the Center. More specifically, some are apprehensive that too much emphasis is being placed on the current caseload of judges rather than on what judges' caseloads ought to be. This issue is, of course, a normative one that is not susceptible to empirical analysis. However, the Subcommittee on Judicial Statistics, when advised of these representations to the Center, requested the Center's assistance in several related projects that might eventually be helpful in addressing the larger question.

The impact of judicial vacancies is one factor that could be relevant in determining the need for new judgeships, particularly where vacancy patterns are recurring and, within limits, predictable. Recurring vacancies due to death and retirement and the delay in replacement have long been asserted to account for significant loss of judge power. The Center studied the effect of vacancy patterns on total available judge power in the courts of the United States, analyzing available data for an ad hoc Judicial Conference Committee on Judgeship Vacancies, now discharged. The analysis showed that the average time from the creation in 1978 of 117 new district judgeships until the positions were filled was 15.8 months. The time lag from when the Judicial Conference *recommended* the creation of the new positions until they were filled averaged 60.6 months. This means that delay in filling positions authorized by Congress accounted for more than 1,848 judge-months, or 154 judge-years. Delay in filling recommended positions accounted for more than 7,090 judge-months, a record that is all the more remarkable since the policy of the Conference has not been to anticipate future needs, but to recommend action only with respect to needs that already exist.

The Center's work in the development of case weights for United States district courts has already been referred to. 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. This study, *The 1981 Bankruptcy Court Time Study*, was published early in fiscal 1983. In some respects it is similar to the 1979 district court time study; it also involves a sample of one hundred judges keeping records of their time expenditures for a twelve-week period. There were, however, important differences in methodology. For this reason, the methods used in the bankruptcy court time study have been applied to data used in the 1979 district court time study weights and have confirmed those weights. The new methodology is expected to help in the refining of time-study methodology in general. The goal is to obtain as much data as possible with minimal imposition on the judges. The new methodology does produce valuable additional data and has some promise of imposing less on the judges in the future. The Center's findings have been presented to the Subcommittee on Judicial Statistics in response to its request for additional analyses of caseloads in both the federal district and appeals courts.

To respond to the requests of the statistics subcommittee, and to facilitate other research projects, the availability of data sets, suitable for a variety of analyses, is necessary.

The Administrative Office's report-oriented annual data sets are clearly of substantial value, but were not sufficiently complete for some research-oriented data analysis. As a result, the Center has entered into a series of contracts designed to create an integrated data base of data collected by the Administrative Office. This data base will permit timely, reliable research to be performed on a greater variety of problems. The project is expected to be completed in fiscal 1984.

C. Developments in Automation

Since the mid-1970s, computer technology has become increasingly important to the federal courts. It has provided them with management and operational support all the more necessary in the face of ever-increasing and increasingly complex caseloads. Automation has also helped the courts to expedite routine tasks and has assisted significantly in necessary research and planning. An important step in the planning for automation in the future was taken during this fiscal year with preparation, by the Administrative Office and the Center, of a "Five-Year Plan for Automation in the United States Courts." The plan has received preliminary approval by the

Board of the Center and has been distributed to the chief judges of all of the circuits for review and comment.

The plan is envisioned as an evolving document. It is expected that revisions to the five-year plan will be made annually in light of changed circumstances. At the time of the annual revision, an additional planning year will be added to the plan so that there will always be a single document that summarizes automation goals for the next five years.

This effort at long-range planning comes at a propitious time. As noted elsewhere in this report, the useful life of the computers that now support case management and administrative systems on a daily, nationwide basis in federal courts cannot be expected to extend beyond fiscal 1987. Planning for their replacement is intended to take advantage of technological advances in the field.

Between fiscal 1984 and 1988, the plan proposes to install—subject, of course, to the availability of funds—complete case management, including electronic docketing, and administrative support systems in all the courts of appeals and the larger metropolitan district courts that desire them. The plan calls for case management functions to be integrated with word-processing and electronic-mail functions located in judges' chambers. Additionally, it has been proposed that complete case management systems be made available to those smaller district courts that elect to participate, and some of these courts may receive electronic docketing systems as well. Computer support is to be made available to bankruptcy courts, and it is expected that a number of probation offices will receive automated systems.

The five-year plan proposes to decentralize data processing by placing small but powerful stand-alone computers in the courts themselves. While computer hardware will be decentralized, development of software applications will remain the responsibility of the Center; the Administrative Office will be responsible for the maintenance of fully operational, standardized applications. Central responsibility for the design, development, and implementation of generalized software applications will ensure software stability and avoid wasteful duplication of effort. However, individual courts will be able to tailor certain applications and develop others to meet local needs. Achievement of a uniform software environment is predicated upon establishing a standard that will apply to all court

automated applications. The core of the standard software will be the UNIX operating system. As UNIX is portable across several brands of computers, the courts will be able to take full advantage of the competing products of different computer vendors.

Once the microcomputers have been placed in the courts, court staff will perform some of the tasks that are now performed in Washington, D.C. The Center will provide training, as it has in the past, in order to develop the knowledge and skills that court personnel will need.

D. Information and Liaison Activities

The Center continues to serve, pursuant to its statutory mandate, as a clearinghouse and disseminator of information within the third branch. It does so through a variety of bulletins and advisories described elsewhere in this report, and through less formal means. As a clearinghouse, the Center does not take an advocacy position on such suggestions it may receive, but can channel them to the appropriate Judicial Conference committees, or to other appropriate bodies.

The Center also maintains contact with other organizations that have similar interests or objectives. For example, the Center's director is a statutory member of the Advisory Board of the United States Department of Justice's National Institute of Corrections and also serves on the American Bar Association's Action Commission to Reduce Court Costs and Delay and the American Law Institute-American Bar Association Committee on Continuing Professional Education. 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 and the National Association of State Judicial Educators.

Much of the Center's interorganizational and liaison work is the responsibility of its Division of Inter-Judicial Affairs and Information Services. The director of that division, for example, has served as the secretary-treasurer of the National Center for State Courts; she is also active in the Institute of Judicial Administration and the American Bar Association's Judicial Administration Division; and she is a liaison member to the Administrative Conference of the United States.

The Third Branch. *The Third Branch*, the monthly bulletin of the federal courts, is published jointly by the Center and the Administrative Office, with the Center assuming major responsibility for the editorial function. Thirteen thousand copies are printed each month and distributed to all federal judges, supporting personnel, members of the Senate and House of Representatives, all state chief justices, deans of law schools, leading American Bar Association officials, and others active in the field of judicial administration. This monthly publication serves primarily as a medium for the dissemination of information to the federal judicial community, including announcement of the publication of new reports, legislative developments affecting the courts, and a calendar of Judicial Conference committee meetings and circuit judicial conferences. In-depth interviews have continued this year. Judge Gerald B. Tjoflat, chairman of the Judicial Conference Committee on the Administration of the Probation System, discussed the judicial alternative to then-pending legislative proposals concerning sentencing reform and also discussed the sentencing education of trial judges. Chief Judge John C. Godbold of the United States Court of Appeals for the Eleventh Circuit covered aspects of the organization and management of the newly created Eleventh Circuit, and former Illinois Congressman Tom Railsback reflected upon the needs of the federal judiciary and his experience on the House Judiciary Committee. In a continuing effort to improve upon both the content and the appearance of the bulletin, a new format has been adopted, which permits almost one-third more copy per page with enhanced readability.

Information Services. During fiscal 1983, the Center's Information Services Office (ISO) staff responded to nearly 3,000 requests for information, ranging from factual reference queries to more complex questions requiring more extended research. As the unit responsible for distribution of the Center's published reports, the ISO sent more than 7,000 publications to judges, attorneys, students, and others interested in federal judicial administration.

To respond to information requests, the Center's information specialists have available four automated data bases, one of which, DIALOG, provides access to hundreds of discrete data bases on a variety of subjects. This gives the staff the ability to conduct comprehensive literature searches and prepare topical bibliographies. The recently acquired data base, NEXIS, includes the full text of national and international newspapers, wire services, and magazines. Both DIALOG and NEXIS facilitate access to nonlegal re-

search material that may be necessary to the Center's work. Circuit and district librarians are encouraged to submit questions to the Information Services staff for computerized search assistance. To facilitate its use of on-line systems, the library recently joined the Federal Library and Information Network (FEDLINK), a group of more than 375 federal libraries that has negotiated several cost-saving agreements with data base suppliers.

The Center maintains an extensive collection of "fugitive materials" relevant to federal judicial administration, including unpublished addresses and incidental papers. These are indexed on ISIS, a computerized index developed by the Center.

As resources of the library permit, this collection is available to members of Congress and their staffs, other judicial administration organizations, the academic community, and the legal profession generally.

Library of Congress Liaison. This year the Center continued a cooperative arrangement it had developed with the American-British Law Division of the Law Library of the Library of Congress. Under this arrangement federal judges can submit research questions or obtain materials not available at their local libraries or the Center. The Library of Congress continues to welcome judges' requests for specialized research, which may be made directly to the Library of Congress or through the Center.

Foreign Visitor Service. Judges, law professors, and other representatives of the legal communities of foreign countries are received and briefed on subjects of interest to them by the Division of Inter-Judicial Affairs and Information Services, with staff from other divisions and the director participating for special presentations. Referrals come mainly from the State Department, the United Nations, the Agency for International Development, and embassies. During the past year countries represented through these visits included Australia, Cyprus, China (Taiwan), Cameroon, Chile, Dominican Republic, Egypt, El Salvador, West Germany, Greece, India, Korea, Malawi, Peru, the Philippines, Rwanda, South Africa, Sierra Leone, Sri Lanka, Thailand, Turkey, and Uruguay. The Center continues to welcome such opportunities to exchange information with representatives of other legal systems.

Oral History Project. At its most recent meeting the Center's Board approved a project designed to record the experience of seasoned federal judges with respect to judicial administration and case management. The Center had already undertaken, on a modest and experimental basis, in-depth interviews of district judges, each of whom had several decades of experience on the federal bench. The Board approved continuation and expansion of this effort, known as the Oral History Project.

V. THE ORGANIZATION OF THE CENTER AND ITS FOUR DIVISIONS

A. The Board of the Center

The Federal Judicial Center was established in 1967 by an Act of Congress, "to further the development and adoption of improved judicial administration in the courts of the United States." 28 U.S.C. § 620. The same statute provides that the Center shall be "within the judicial branch of the government" and its activities supervised by a Board, chaired by the Chief Justice. The Board also includes the director of the Administrative Office, who serves ex officio, and six judicial members 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.

Two new Board members were elected in March 1983. Judge Daniel M. Friedman of the United States Court of Appeals for the Federal Circuit assumed the seat formerly held by Judge John D. Butzner, Jr., of the United States Court of Appeals for the Fourth Circuit. Chief Judge Howard C. Bratton of the United States District Court for the District of New Mexico was elected to succeed Judge Donald S. Voorhees of the United States District Court for the Western District of Washington.

The budget for the Federal Judicial Center in fiscal 1983 was $7,789,000, and the Center had ninety-two authorized personnel positions. For most of its history, the Center has carried out its work through four divisions; summary information on each is provided in the sections that follow.

B. Division of Continuing Education and Training

The Division of Continuing Education and Training is the largest of the Center's four divisions. The division is responsible for a wide

variety of educational services, which are made available to the fifteen thousand individuals who constitute the federal judicial system. The Center's most well known educational programs are its formal seminars and workshops, usually organized on a national or circuitwide basis. Senior Judge William J. Campbell serves as senior chairman of the Center's seminar programs. Less publicized are the Center's regional, local, and in-court programs. These are developed to address training needs that are regional or local rather than national in scope. A typical program might be limited to a single court, bringing together persons with similar job responsibilities from the court's various offices. Some regional programs include individuals from several districts; others are 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 table that follows classifies the training programs offered by the Center in fiscal 1983. The table does not include a video teleconference or specialized training of various types that is offered by other educational institutions and that federal judicial system personnel attend with Center funding.

The planning process is part of a four-phase cycle the division uses to develop, implement, and assess its programs. Needs are identified through the work of planning groups—composed of representatives of the personnel categories to be served and of the Administrative Office—through suggestions from the field, and through staff review of data that the courts provide regularly to the Center and the Administrative Office. The division then, in consultation with the planning groups and others, prepares programs to meet those needs. The division uses a variety of evaluation devices to measure the success of its various programs. Questionnaires administered during or immediately after a program are standard. In addition, however, for certain personnel categories, follow-up questionnaires are distributed some months after the program in an effort to measure change in performance over time. Supervisors are also contacted to learn whether there have been any observable changes in the employees' performance.

The division continues to place greater emphasis on alternatives to travel-based training. These alternatives include the audio and video programs described above. Video teleconferences, such as that on the Victim and Witness Protection Act of 1982, are particularly useful when it is important to provide a program of instruc-

Seminars and Workshops

No.	*Category*	*Participants*	*Faculty*	*Total*
14	Circuit/district judges	538	109	647
7	Bankruptcy judges	290	52	342
4	Magistrates	152	49	201
9	Clerks of court & clerk's office personnel (circuit, district, and bankruptcy)	442	102	544
7	Combined programs	215	12	227
11	Probation officers	523	37	560
5	Training coordinators	162	23	185
1	Federal public defenders, community defenders	24	8	32
3	Court interpreters	150	18	168
1	Senior staff attorneys, appellate preargument attorneys	20	5	25
11	Automation seminars & workshops	193	75	268
73		2,709	490	3,199

In-Court Training Programs

185	Personnel of clerk's and probation offices	3,551	270	3,821
258	GRAND TOTALS	6,260	760	7,020

tion, several hours in length, to persons throughout the system, and to do so without undue delay.

C. Division of Innovations and Systems Development

The Division of Innovations and Systems Development is primarily but not exclusively responsible for the research and development of automated systems designed to assist in the management of the federal courts and their caseloads. The Congress in creating the Center placed heavy emphasis on automation, specifically mandating that the Center "study and determine ways in which automatic data processing and systems be applied to the administration of the courts of the United States." 28 U.S.C. § 623(a)(5). The Center's early efforts in this area, consistent with the state of the art at that time, took the form of developing centralized hardware facilities and software applications, all subsumed under the umbrella term Courtran. The wide range of support provided by these appli-

cations and the extent of their use by the courts have been detailed earlier in this report.

More recently, the Innovations and Systems Development Division has focused on harnessing technological advances in the processing power of stand-alone microcomputers for the benefit of the federal judicial system. These microcomputers will permit the decentralization of automated court support systems as described earlier in this report and in the "Five-Year Plan for Automation in the United States Courts."

The plan envisions a system with some central computer power in Washington, D.C., and decentralized hardware in the field. Development of software applications will remain the responsibility of the Center; the Administrative Office will be responsible for the maintenance of fully operational, standardized applications. In cooperation with the Continuing Education and Training Division, the Systems Division will continue to train court personnel in the use of computer applications available to them.

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 framed 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 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. In those instances, the division provides comment to the Judicial Conference committees, to the Administrative Office, and, upon specific request, to members of Congress and legislative staff.

E. Division of Inter-Judicial Affairs and Information Services

The Inter-Judicial Affairs Division is primarily responsible for liaison and coordination with other court-related organizations and persons interested in the federal courts, particularly officials of foreign countries. The Center's Office of Information Services is located within the division and serves the federal courts. The division is also responsible for a number of major, continuing projects, including the Center's oral history program, *Bench Comments*, the *Bench Book for United States District Court Judges, Chambers to Chambers*, and *The Third Branch.*

VI. CENTER PUBLICATIONS

A cumulative *Catalog of Publications* is revised annually for distribution with the printed version of the annual report. Most of the publications listed below, and other publications listed in the *Catalog of Publications*, can 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, as a matter of 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 wider interest in the subject matter. Publications in the Education and Training Series make available the presentations of selected lecturers or 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 fiscal 1983 are listed below. Other publications mentioned in this report will not be available for distribution in fiscal 1983, but are expected to be available early in fiscal 1984.

Research and Staff Papers

The 1981 Bankruptcy Court Time Study, by John E. Shapard

Business by Phone in the Federal Courts, by Barbara Meierhoefer

A Comparative Evaluation of Stenographic and Audiotape Methods for United States District Court Reporting, by J. Michael Greenwood, Julie Horney, M.-Daniel Jacoubovitch, Frances B. Lowenstein, and Russell R. Wheeler

Certifying Questions of State Law: Experience of Federal Judges, by Carroll Seron

Court-Annexed Arbitration, by A. Leo Levin (in 16 University of Michigan Journal of Law Reform 537 (1983))

Evaluation of Court-Annexed Arbitration in Three Federal District Courts, by E. Allan Lind and John E. Shapard (September 1983 revision)

In-Court Orientation Programs in the Federal District Courts, by Barbara S. Meierhoefer

Pattern Criminal Jury Instructions: Report of the Federal Judicial Center Committee to Study Criminal Jury Instructions

A Reevaluation of the Civil Appeals Management Plan, by Anthony Partridge and E. Allan Lind

Report on the Mediation Program in the Eastern District of Michigan, by Joe S. Cecil and Barbara S. Meierhoefer

The Roles of Magistrates in Federal District Courts, by Carroll Seron

Education and Training Series

Educational Media Catalog 1982

"Fraud" and Civil Liability under the Federal Securities Laws, by Louis Loss

Major Issues in the Federal Law of Employment Discrimination, by George Rutherglen

The Sentencing Options of Federal District Judges, by Anthony Partridge, Alan J. Chaset, and William B. Eldridge (June 1983 revision)

Manuals

Manual on Employment Discrimination and Civil Rights Actions in the Federal Courts, by Charles R. Richey (January 1983 revision)

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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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