



# Federal Judicial Center Annual Report 1988

"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."

28 U.S.C. § 620(a)

**Federal Judicial Center  
Annual Report  
1988**



## **The Board of the Federal Judicial Center**

Honorable William H. Rehnquist, *Chairman*  
Chief Justice of the United States

Honorable Alvin B. Rubin  
Judge, United States Court of Appeals  
for the Fifth Circuit

Honorable J. Clifford Wallace  
Judge, United States Court of Appeals  
for the Ninth Circuit

Honorable Jose A. Cabranes  
Judge, United States District Court  
for the District of Connecticut

Honorable William C. O'Kelley  
Chief Judge, United States District Court  
for the Northern District of Georgia

Honorable David D. Dowd, Jr.  
Judge, United States District Court  
for the Northern District of Ohio

Honorable Robert E. Ginsberg  
Judge, United States Bankruptcy Court  
for the Northern District of Illinois

Honorable L. Ralph Mecham  
Director, Administrative Office  
of the United States Courts

## The Federal Judicial Center

### *Director*

Judge John C. Godbold

### *Deputy Director*

Charles W. Nihan

### *Division Directors*

William B. Eldridge  
Research

Richard D. Fennell  
Innovations and Systems Development

Alice L. O'Donnell  
Inter-Judicial Affairs and Information Services

Daniel L. Skoler  
Continuing Education and Training

Russell R. Wheeler  
Special Educational Services

### *Past Directors of the Center*

Honorable Tom C. Clark  
Associate Justice (retired), United States Supreme Court  
March 27, 1968, to September 23, 1969

Honorable Alfred P. Murrah  
Senior Judge, United States Court of Appeals  
for the Tenth Circuit  
May 1, 1970, to October 27, 1974

Honorable Walter E. Hoffman, Director Emeritus  
Senior Judge, United States District Court  
for the Eastern District of Virginia  
October 27, 1974, to July 17, 1977

Honorable A. Leo Levin, Director Emeritus  
Meltzer Professor, University of Pennsylvania Law School  
July 18, 1977, to July 31, 1987

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# *about the Federal Judicial Center*

- *What it is*
- *What it is intended to do*
- *How it is organized*

# the place to begin

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is with the statutes enacted by Congress  
(title 28, United States Code, *Judiciary and Judicial Procedure*):

## § 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, clerks of court, probation officers, and United States magistrates;

(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; and

(5) insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice.

## § 621. Board; composition, tenure of members, compensation

(a) The activities of the Center shall be supervised by a Board to be composed of—

(1) the Chief Justice of the United States, who shall be the permanent Chairman of the Board;

(2) two active judges of the courts of appeals of the United States, three active

judges of the district courts of the United States, one active judge of the bankruptcy courts of the United States elected by vote of the members of the Judicial Conference of the United States: *Provided, however*, That the judges so elected shall not be members of the Judicial Conference of the United States; and

(3) the Director of the Administrative Office of the United States Courts, who shall be a permanent member of the Board.

(b) The term of office of each elected member of the Board shall be four years. A member elected to serve for an unexpired term arising by virtue of the death, disability, retirement, or resignation of a member shall be elected only for such unexpired term.

(c) No member elected for a four-year term shall be eligible for reelection to the Board.

(d) Members of the Board shall serve without additional compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

## § 623. Duties of the Board

(a) In its direction and supervision of the activities of the Federal Judicial Center, the Board shall—

(1) establish such policies and develop such programs for the Federal Judicial Center as will further achievement of its purpose and performance of its functions;

(2) formulate recommendations for improvements in the administration of the courts of the United States, in the training of the personnel of those courts, and in the management of their resources;

(3) submit to the Judicial Conference of the United States, at least one month in advance of its annual meeting, a report of the activities of the Center and such recommendations as the Board may propose for the consideration of the Conference;

(4) present to other government departments, agencies, and instrumentalities whose programs or activities relate to the administration of justice in the courts of the United States the recommendations of the Center for the improvement of such

programs or activities;

(5) 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, and include in the annual report required by paragraph (3) of this subsection details of the results of the studies and determinations made pursuant to this paragraph; and

(6) consider and recommend to both public and private agencies aspects of the operation of the courts of the United States deemed worthy of special study.

(b) The Board shall transmit to Congress and to the Attorney General of the United States copies of all reports and recommendations submitted to the Judicial Conference of the United States. The Board shall also keep the Committees on the Judiciary of the United States Senate and House of Representatives fully and currently informed with respect to the activities of the Center.

## § 624. Powers of the Board

The Board is authorized—

(1) to appoint and fix the duties of the Director of the Federal Judicial Center, who shall serve at the pleasure of the Board;

(2) to request from any department, agency, or independent instrumentality of the Government any information it deems necessary to the performance of the functions of the Federal Judicial Center set forth in this chapter, and each such department, agency, or instrumentality is directed to cooperate with the Board and, to the extent permitted by law, to furnish such information to the Center upon request of the Chairman or upon request of the Director when the Board has delegated this authority to him;

(3) to contract with and compensate government and private agencies or persons for research projects and other services, without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), and to delegate such contract authority to the Director of the Federal Judicial Center, who is hereby empowered to exercise such delegated authority.

## *its purpose and functions*

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### **Purpose**

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The statutory purpose of the Center is “to further the development and adoption of improved judicial administration” in the courts of the United States (28 U.S.C. § 620(a)).

### **Functions**

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To further this purpose the Center and its Board are assigned several functions by statute, viz., 28 U.S.C. § 620(b), describing the functions of the Center; § 623(a), setting out the duties of the Board; and § 637, providing for training of magistrates:

To conduct research and study and to create, develop, and conduct programs:

- to conduct research and study of the operations of U.S. courts (§ 620(b)(1))
- to develop recommendations for improvements of the administration and management of U.S. courts (§ 620(b)(2))
- to create and develop programs for education and training (§ 620(b)(3))
- to establish policies and develop programs that will further the achievement of the Center’s purpose and the performance of its functions (§ 623(a)(1))



- to study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts (§ 623(a)(5))
- to train U.S. magistrates (§ 637)

To develop, formulate, and submit recommendations to others:

- to formulate recommendations for improvements in the administration of the U.S. courts, in the training of the personnel in those courts, and in the management of their resources (§ 623(a)(2))
- to submit to the Judicial Conference such recommendations as the Board may propose (§ 623(a)(3))
- to present to other departments, agencies, and instrumentalities whose activities relate to the administration of justice recommendations for improvements of their activities (§ 623(a)(4))
- to recommend to public and private agencies aspects of operations of the courts deemed worthy of special study (§ 623(a)(6))

To stimulate research, study, and programs by others:

- to stimulate research and study of the operations of the U.S. courts conducted by other public and private persons and agencies (§ 620(b)(1))
- to stimulate programs of continuing education and training (§ 620(b)(3))

To cooperate and coordinate with others concerning research:

- to coordinate research and study in the operations of the U.S. courts conducted by other public and private persons and agencies (§ 620(b)(1))
- to cooperate with the State Justice Institute in establishing and coordinating research and programs (§ 620(b)(5))

To provide staff to others:

- to provide staff, research, and planning assistance for the Judicial Conference of the United States and its committees (§ 620(b)(4))

To transmit to Congress and the Attorney General copies of reports and recommendations submitted to the Judicial Conference

- to keep the Committees on the Judiciary of the U.S. Senate and House of Representatives fully and currently informed with respect to the activities of the Center (§ 623(b))

## *its organization*

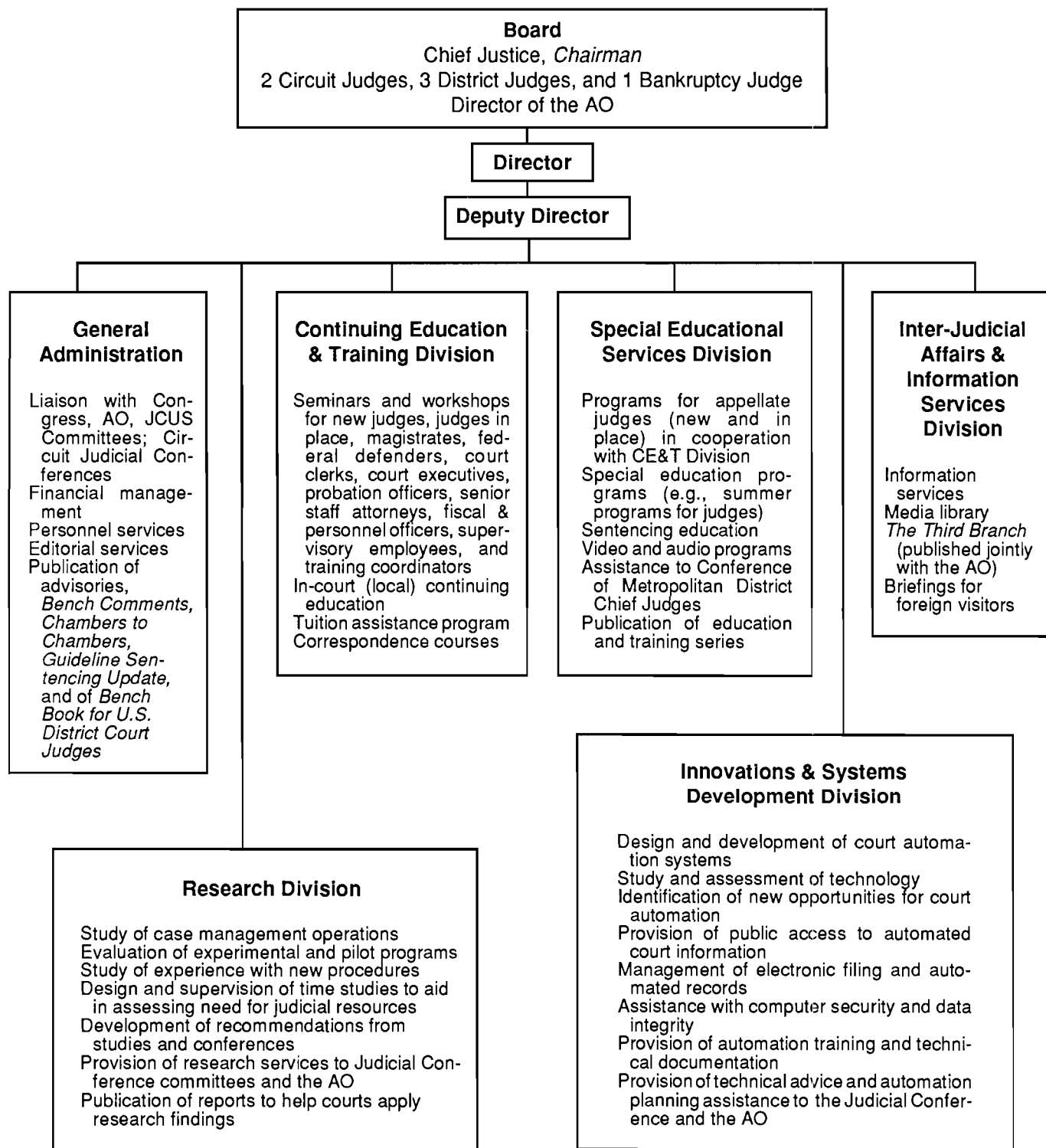
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Members of the Center Board are elected by the Judicial Conference of the United States for four-year, nonrenewable terms. By statute the Chief Justice serves as permanent chair and the Director of the Administrative Office of the U.S. Courts (AO) as a permanent member. During fiscal 1988 the membership of the Board changed as follows:

- Bankruptcy Judge Robert E. Ginsberg (N.D. Ill.) joined the Board October 1987. He succeeded Chief Judge Martin V. B. Bostetter, Jr. (E.D. Va.), whose term expired in September.
- Judge J. Clifford Wallace (9th Cir.) was elected to the Board in February 1988 to fill the vacancy created as a result of Justice Anthony M. Kennedy's appointment to the Supreme Court of the United States.
- Judge David D. Dowd, Jr. (N.D. Ohio) became a member of the Board in March 1988, succeeding Judge A. David Mazzone (D. Mass.), whose term expired.

The internal organization of the Center is shown in the chart on page 6.

# Organization of the Federal Judicial Center



**Budget:** Fiscal 1988 budget = \$10,548,000

**Staff:** 96 authorized personnel positions

## *FJC Advisory Committees*

The Center frequently seeks the guidance of experienced judges and court personnel when planning seminars or publishing reference books and periodicals. The assistance provided by the following committees is gratefully acknowledged:

### COMMITTEE ON APPELLATE EDUCATIONAL PROGRAMS

Judge Jon O. Newman (2d Cir.), *Chair*  
Judge Daniel M. Friedman (Fed. Cir.)  
Judge James K. Logan (10th Cir.)  
Judge Kenneth W. Starr (D.C. Cir.)

### COMMITTEE ON BANKRUPTCY EDUCATION

Chief Judge Martin V. B. Bostetter, Jr. (E.D. Va.), *Chair*  
Judge Alice M. Batchelder (N.D. Ohio)  
Judge Robert E. Ginsberg (N.D. Ill.)  
Judge Sidney C. Volinn (W.D. Wash.)

### COMMITTEE ON THE BENCH BOOK FOR UNITED STATES DISTRICT COURT JUDGES

Chief Judge Wm. Terrell Hodges (M.D. Fla.), *Chair*  
Judge William B. Enright (S.D. Cal.)  
Judge A. David Mazzone (D. Mass.)  
Chief Judge Aubrey E. Robinson, Jr. (D.D.C.)  
Chief Judge John F. Grady (N.D. Ill.)

### COMMITTEE ON CONFLICTS OF INTEREST

Chief Judge Martin V. B. Bostetter, Jr. (E.D. Va.)  
Director L. Ralph Mecham (AO)  
Judge Abner J. Mikva (D.C. Cir.)

### COMMITTEE ON ORIENTATION FOR NEWLY APPOINTED DISTRICT JUDGES

Judge Warren K. Urbom (D. Neb.), *Chair*  
Judge Zita Weinshienk (D. Col.)  
Judge Robert E. Keeton (D. Mass.)  
Chief Judge William C. O'Kelley (N.D. Ga.)  
Judge Joseph M. McLaughlin (E.D.N.Y.)

### COMMITTEE ON SENTENCING, PROBATION, AND PRE-TRIAL SERVICES

Judge A. David Mazzone (D. Mass.), *Chair*  
Judge Gerald B. Tjoflat (11th Cir.)  
Judge Edward R. Becker (3d Cir.)  
Chief Judge Barbara J. Rothstein (W.D. Wash.)  
Judge David D. Dowd, Jr. (N.D. Ohio)  
Magistrate Calvin Botley (S.D. Tex.)  
Chief Probation Officer Charles E. Varnon (E.D. Cal.)  
Chief Probation Officer W. Dan Broome (D.N.D.)



*what the Center did in fiscal 1988*



# *highlights of fiscal 1988*

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## **Guideline Sentencing**

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Guideline sentencing, which became effective in the federal courts on November 1, called heavily on Center resources. Center research had explored the topic even before 1984, when the Sentencing Reform Act directed creation of the U.S. Sentencing Commission to formulate mandatory guidelines for federal offenses. The Commission, appointed in late 1985, promulgated its guidelines for congressional review in April 1987.

Initial orientation to the guidelines proceeded according to a Center plan, funded largely by the Sentencing Commission, by which probation officers and judges from each district court attended October 1987 "train-the-trainer" seminars to equip them to administer orientation programs in their districts. These were followed by intra-district programs using Center-prepared video lectures and annotated exercises illustrating the application of the guidelines. The 94 judicial districts held over 220 such programs. Probation officers and district judges—as well as U.S. attorneys and private practitioners invited by the local districts—were most heavily represented among the almost 5,000 participants.

Other guideline-related activities in 1988 included:

- presentations at all regular orientation and other educational programs for judges, magistrates, probation officers, and federal defenders, and a special seminar for appellate clerks
- major revisions in the orientation and continuing education programs for probation and pretrial services officers



- revisions to the *Bench Book for United States District Court Judges*, including development of a set of model forms for imposition of sentences under the Sentencing Reform Act, a new chapter on guideline sentencing, and extensive revision of the chapter on taking pleas of guilty or nolo contendere
- publication and distribution of *Guideline Sentencing Update*, a periodical reporting decisions interpreting the Sentencing Reform Act and the guidelines, on a fast-response basis as significant cases are decided
- a special Center orientation program for defense attorneys appointed under the Criminal Justice Act, which the Defender Services Division of the AO distributed for use in the districts
- video programs and accompanying written materials exploring the procedural changes demanded by guideline sentencing
- development of an automated system for calculating sentencing guidelines that was provided to the Sentencing Commission for blending with its own system. In June 1988 the blended system was sent to all federal probation offices for preliminary use and evaluation.
- preparation of a technical report using a sample of probation and parole cases from eight districts to learn how contact levels vary for different types of offenders during the first six months of supervision.

## **Bankruptcy Judge Orientation**

Orientation was a priority as the courts of appeals filled the 52 new bankruptcy judgeships that Congress authorized in late 1986 and selected successor appointees in existing judgeships. The new judgeships represented the only significant increase in the bankruptcy bench since the 1978 Bankruptcy Code and this during a period in which case filings doubled.

The initial orientation curriculum for bankruptcy judges, which is usually provided in small regional seminars using video lectures, was totally restructured this year. This initial training is followed by a one-week orientation seminar in Washington, D.C. Two such seminars were conducted in 1988.

## **Completion of Development and Pilot Testing of the New AIMS (Phase II), CIVIL, and BANCAP Automation Systems**

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The Center concluded the primary development efforts of the Integrated Case Management System (ICMS) family of electronic docketing and case management systems. Following the completion of court-benefit studies, responsibility for the systems was transferred to the AO for follow-on implementation and support. The ICMS family includes the New Appellate Information Management System (New AIMS) for circuit courts, the CIVIL Case Management System for district courts, and the Bankruptcy Court Automation Project (BANCAP). The AO is modifying the CIVIL system to allow it to support criminal case management in the district courts.

Phase II of the New AIMS automation system was transferred to the AO in September 1987, several months ahead of schedule. The CIVIL and BANCAP projects were both completed in late 1987 and they were formally transferred to the AO in February 1988. (Additional information on these systems is provided in *Automated Case and Court Management*, page 35.)

Following the transfer of the three components listed above, the primary focus of the Center's Innovations and Systems Development Division shifted from systems development to technology assessment and analytical studies.

## **Pattern Criminal Jury Instructions**

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Fifty-nine new pattern instructions, mostly covering specific federal offenses, were published in fiscal 1988 through the work of the Subcommittee on Pattern Jury Instructions of the Committee on the Operation of the Jury System of the Judicial Conference, with assistance from the Research Division. Publication of these instructions, which supplement instructions published in 1982, marks the completion of the Research Division's assistance requested by the Committee. If the Judicial Conference decides to undertake similar work in the civil area, the Division will be ready to provide similar assistance.



## *education and training*

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Congress has directed the Center “to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the government.” The Center responds through

- Orientation seminars for new judges, which are conducted regionally and then in Washington, D.C. Programs for more experienced judges may be held in Washington, in the circuits, or by region.
- Probation and pretrial services officers orientation programs in Boulder, Colorado, and Baltimore, Maryland.
- Seminars and workshops for other personnel of the judicial branch in Washington and across the country.
- Local (intra-court) training programs that may use Center video programs, treatises, guides, and other materials for orientation and continuing education.
- Tuition assistance for non-Center courses.
- A substantial audiovisual library, which is described in the *Catalog of Audiovisual Media Programs*.
- Publication and distribution of handbooks, monographs, and treatises, which are described in the *Catalog of Publications*.

Committees of judges and staff advise the Center as to program goals and content. For programs within circuits, committees drawn from the circuits participate in program design. When necessary, special programs are designed to meet special needs (see *Highlights*).

Center continuing education and training seminars and workshops are done principally through the Continuing Education and Training Division. The Special Educational Services Division mainly conducts non-continuing programs (such as summer programs for judges) and programs responding to special needs, and produces Center video and audio programs and educational publications.

The table on page 16 shows seminars and workshops in fiscal 1988.

## Breakdown of Fiscal 1988 Training Sessions

### Seminars and Workshops

Participant Category	Number of Seminars or Workshops	Number of Participants	Number of Faculty	Total Participants and Faculty
Circuit/district judges	13	647	182	829
Bankruptcy judges	6	333	93	426
Magistrates	5	244	88	312
Clerks of court and clerk's office personnel (circuit, district, and bankruptcy)	17	781	185	966
Probation and pretrial officers	21	651	185	836
Federal public defenders, community defenders, and investigators	6	310	48	358
Senior staff attorneys	1	12	3	15
Training coordinators	4	138	29	167
Programs for personnel in several categories	8	300	60	360
<b>TOTAL</b>	<b>81</b>	<b>3,416</b>	<b>853</b>	<b>4,269</b>

### In-Court Training Programs

Participant Category	Number of In-Court Training Programs	Number of Participants	Number of Faculty	Total Participants and Faculty
Circuit/district judges	5	214	5	219
Clerks of court and clerk's officer personnel (circuit, district, and bankruptcy)	49	927	55	982
Probation/pretrial officers and clerks*	105	1,860	153	2,013
Programs for personnel in several categories**	31	834	42	876
Guideline sentencing	218	4,563	436	4,999
<b>TOTAL</b>	<b>408</b>	<b>8,398</b>	<b>691</b>	<b>9,089</b>

\* Includes Center-prepared Staff Safety and Financial Investigation programs.  
 \*\* Includes participants in Center-structured pilot programs for mid-level managers.

Total Seminars/Workshops and In-Court Training Programs: 489  
 Total Number of Participants in All Categories: 11,814  
 Total Number of Faculty: 1,544

## Programs for the District Courts

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### District Judges

Each newly appointed district judge attends a small, regional four-day orientation seminar at about the time he or she goes on the bench. The format consists of Center-prepared video lectures and group discussions under the direction of a faculty member/discussion leader. These programs emphasize the basics of case and court management, sentencing, and the Federal Rules of Evidence. Four of these seminars were held in fiscal 1988.

New district judges are then invited to a week-long Washington, D.C., orientation seminar with larger classes, a faculty of judicial and academic lecturers, and appropriate social and ceremonial events. This seminar allows additional review of basic subjects and exploration of high-volume federal litigation areas such as civil rights, search and seizure, and habeas corpus. One such seminar was held in fiscal 1988.

"Refresher" training for district judges is provided primarily through annual workshops offered on a single- or joint-circuit basis and designed in consultation with judges in the respective circuits. These workshops were originally designed for district judges, but many appellate judges have found them equally valuable, and the workshops are today viewed as serving both groups. Seven workshops in 1988 covered nine judicial circuits. Guideline sentencing was a priority in all of them. At least half the workshops reviewed evidentiary problems and allowance of attorneys fees.



*Participants at a Center seminar for newly appointed district judges, held in November 1987 at Dolley Madison House, the Center's headquarters in Washington, D.C.*

## Magistrates

Orientation for magistrates follows the same pattern as the programs offered for district judges, except that annual workshops for magistrates have been organized in multicircuit (regional) groupings and are presented four times annually. Video orientation seminars for newly appointed magistrates were suspended in 1988 pending revision of the video lecture curriculum. A national orientation seminar for newly appointed magistrates and four regional continuing education seminars for full- and part-time magistrates with substantial workloads covered such topics as guideline sentencing, pretrial services, and trial of civil cases.

## District Court Clerks and Supporting Personnel

Programs for district court clerks and supporting personnel included a national seminar for clerks of district courts as well as specialized workshops for district court docket supervisors and financial deputies and for personnel managers of all courts. A juror utilization and management workshop brought together teams of judges, clerks, and jury administrators. (See also *In-Court Programs and Management Training*, page 21, and *Supplementary Training and Tuition Support*, page 22.) The Center also developed and conducted the first national seminar for deputies in charge of divisional offices of district courts.

## Probation and Pretrial Services Officers

Probation officers were more affected by guideline sentencing in 1988 than were any other professionals within the judicial branch. They were the major recipients of Center-Sentencing Commission orientation (see *Highlights*) and were instrumental in ensuring the success of that educational program.

Combined orientation seminars for probation and pretrial service officers are held at two primary training sites, in Colorado and Maryland. They provide plenary and specialized sessions to accommodate the varying needs of officers serving in districts with independent pretrial services offices, as well as so-called combined districts. The curriculum was substantially modified in

1988, in large part to ensure coverage of the ramifications of guideline sentencing, pretrial services functions, and supervision of drug offenders. Eight orientation seminars were offered by the Center this year.

National in-service training programs dealt heavily with management topics in the probation and pretrial service and provided continued emphasis on pretrial investigation and report writing.

The probation and pretrial services offices, with large numbers of professionals spread across the country, make especially heavy use of Center support for local programs and tuition assistance (see *In-Court Programs and Management Training*, page 21, and *Supplementary Training and Tuition Support*, page 22). In two areas—officer safety and financial investigation—the Center has developed training modules with lesson plans, video demonstrations, and student workbooks and has instructed selected officers in how to provide the training in local districts. By the end of the fiscal year these in-district workshops had been offered to virtually all officers in the federal system.

### **Federal Public Defenders and Staff**

By statute federal public defenders are a part of the judicial branch. In planning defenders' educational programs, however, the Center respects the fact that defenders are independent officers of the court and that their roles and objectives are different from those of judges, who are the primary consumers of Center education and training.

The Center conducts a national orientation seminar and sponsors attendance at the National Criminal Defense College's summer training institute in an effort to provide assistant defenders with a foundation in the practice as well as the theory of criminal defense work. This year the Center also held two regional seminars for federal defenders that dealt almost exclusively with guideline sentencing. These seminars attracted a record number of participants. The Center developed its separate guideline sentencing training program for CJA panel attorneys in cooperation with federal public defenders (see *Highlights*).



## Programs for the Bankruptcy Courts

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### Bankruptcy Judges

Orientation for new bankruptcy judges was a major activity of 1988 (see *Highlights*).

Departing somewhat from the traditional lecture presentation at educational programs, this year the Center increased its use of discussion groups, panel sessions, optional seminar presentations, and the transmittal of advance readings and hypothetical case problems.

The Center's four 1988 regional seminars for bankruptcy judges covered such topics as case law updates, discussion of the



*Newly appointed bankruptcy judges at the Center orientation program held in February 1988.*

expanded U.S. Trustee program, and techniques for managing bankruptcy cases and proceedings. They were attended by a record number of participants.

### Bankruptcy Court Clerks and Supporting Personnel

National seminars in 1988 for clerks of bankruptcy courts and for chief deputy clerks complemented regional programs for court personnel managers and for bankruptcy administrators. A bankruptcy case management seminar brought together chief bankruptcy judges and bankruptcy clerks. (See also *In-Court Programs and Management Training*, page 21, and *Supplementary Training and Tuition Support*, page 22.)

## Programs for the Courts of Appeals

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### Appellate Judges

The Center conducts orientation seminars for appellate judges when a class of at least 10 to 15 new judges is available. The last seminar was in September 1987. Two video programs, prepared in 1988, are also available to provide new circuit judges with suggestions from experienced colleagues about setting up chambers and about how a judge functions as a member of a multijudge appellate court.

For all appellate judges, circuit workshops are offered. Almost half the appellate judges attended 1988 circuit workshops (see *Programs for the District Courts*, page 17). Approximately every three years the Center conducts regional seminars for sitting circuit judges.

### Appellate Court Staff

The Center's annual seminars for appellate senior staff attorneys and for clerks of the appellate courts mix substantive law and management topics. Additional workshops for clerks and supporting personnel focus on case management implications of guideline sentencing and on effective case management procedures. Appellate court staff also participated in the Center's two workshops for personnel managers.

## In-Court Programs and Management Training

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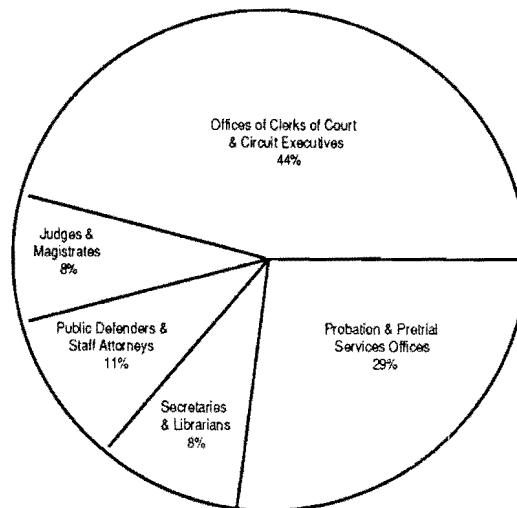
Continuing education cannot be administered solely from Washington, D.C. Over 300 court employees serve as local "training coordinators" to develop in-court training activities and serve as liaison with the Center. Two workshops for new coordinators and three for experienced coordinators were conducted in fiscal 1988. The Center also publishes a quarterly newsletter for training coordinators, *What's Happening*, with articles on local training

efforts, excerpts from leading training journals, and descriptions of new programs available through the Center's Media Library. This year, the Center helped fund more than 100 in-court workshops on such topics as AIDS in the workplace, guideline sentencing, and management skills. Management and supervisory training needs for clerks' offices and probation and pretrial services officers were met through a self-study correspondence course, a video-based training program, and several administrative and operations manager workshops.

## Supplementary Training and Tuition Support

The Center extended financial assistance to over 1,200 persons to attend educational courses offered by universities, professional associations, private training firms, and other federal agencies (e.g., Office of Personnel Management and the General Services Administration). Clerks' offices employees and probation officers received more than two-thirds of this assistance. A cap on standard grants (raised this year by the Center Board from \$250 to \$350) means that many recipients attend these courses on a cost-sharing basis.

**Tuition Assistance Program—Fiscal 1988**  
Course Participation by Personnel Category



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## Automation Training

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The Center continued its efforts to provide automation training services to the circuit and district courts. To support the successful decentralization of automation, the Center was responsible for developing the documentation and instructional materials necessary for the AO and court-based training centers to train court personnel in the use of Center-developed software applications.

The Center also developed and refined a training program for court-designated computer system administrators responsible for managing and conducting computer operations activities in the courts. Responsibility for conducting this introductory course has now been transferred to the AO, but the Center will continue its involvement in developing additional courses addressing topics of interest to court computer system administrators and court managers responsible for ensuring the integrity of automation functions.

Support continued this fiscal year for courts that have personal computing equipment used by judges, clerks, and others. For the most part, this assistance has taken the form of multimedia instructional packages consisting of books and videos, which include instructional software, on popular applications such as Lotus 1-2-3 and dBASE III. The Center intends to expand its support of personal computer training by identifying means by which courts can attain self-sufficiency in their use and support of PC-based automation efforts. This additional training support may include the development of training programs, as well as the increased use of multimedia instructional packages and tuition assistance, for both technical and managerial court personnel involved in supporting a court's computer needs.



# research

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## Research on the Trial Litigative Process

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### The Pretrial Phase

The August 1983 amendments to the Federal Rules of Civil Procedure expanded the powers of federal district courts to manage the pretrial phase of civil litigation. During fiscal 1988 the Center continued research activity designed to examine the pretrial phase, so as to assist district judges in identifying options for managing the volume and complexity of modern federal litigation.

*Court-annexed arbitration.* The Center's Research Division continues to work with the 10 federal district courts currently engaged in court-annexed arbitration pilot programs. Variations in the programs provide an opportunity to observe and report on alternative goals, procedures, and methods of selecting cases for referral. The Center is also studying the level of satisfaction among participants in each program.

Final reports for five of the 10 districts were completed this year. The other district reports, and the final project report that will compare data across districts, are expected next year.

*Sanctions.* Developing clear standards and fair procedures for implementing Amended Fed. R. Civ. P. 11 and controlling satellite litigation are the primary tasks facing the courts during the "shakeout" period for rule 11. These topics commanded the attention of judges and lawyers interviewed for a field study involving eight federal districts. The report on the study, *The Rule 11 Sanctioning Process*, concentrates on providing a systematic empirical description of the operation of the rule. The report illuminates differing effects of two alternative models of sanctioning: one is a compensatory fee-shifting model and the other is a behavioral disciplinary model. In addition, by documenting the experiences of judges and lawyers in districts with high, moderate, and low

levels of sanctioning activity, the report presents alternative methods of controlling frivolous litigation.

*Summary judgment.* Fed. R. Civ. P. 56, providing for full or partial summary judgment, is a long-standing option available for pretrial management of civil litigation. The Research Division is currently engaged in a two-part study of changes in summary judgment practice in six federal district courts. The first study, *Summary Judgment Practice in Three District Courts*, demonstrated a sharp decline in the percentage of cases disposed of by summary judgment between 1975 and 1986. Following this study, several opinions by the Supreme Court clarified the standards for summary judgment, and a number of courts of appeals indicated a greater willingness to use it. The Center is presently undertaking an examination of current practice in six federal district courts to determine if there has been a movement toward greater use of summary judgment to avoid unnecessary trials.

### **The Trial-Focused Phases**

*Court-appointed experts.* In a survey of federal district judges the Center found that approximately one in five judges has appointed an expert under the authority of Fed. R. Evid. 706. Approximately half of those judges have used the process more than once. Because the process of defining the need for such an expert appears to involve a complicated prediction of the likelihood of disputed expert testimony from the parties, a follow-up study has been undertaken. Cases examined in the second study will have been identified by the judges as deserving this relatively rare form of management. Since most judges do not routinely use the rule 706 procedure, it is anticipated that they can identify unique case features that warrant use of experts. Viable alternatives for other cases may also be identified.

### **Factors Affecting Termination of Litigation**

The Center is conducting a study of the movement of cases through the district and appellate courts. At each stage of the pretrial and trial process, substantial numbers of cases terminate for a variety of reasons. Only about 20 percent of cases filed remain for a disposition on the merits. This study attempts to identify the case characteristics that are related to this movement from one step to another. By identifying the factors associated

with the transition from one stage to the next, the Center hopes to improve the judicial branch's ability to estimate demands on the federal courts.

## Jurisdiction of the District Courts

*Impact of Proposed Changes in Diversity Jurisdiction.* A number of proposals have been made to reduce the burden of diversity jurisdiction on the federal courts. Among changes suggested have been abolishing diversity jurisdiction entirely, to increasing the jurisdictional amount, to changing the definition of corporate citizenship, and to barring plaintiffs from invoking diversity jurisdiction in federal courts in their home states. In a study scheduled for completion in the summer of 1988 the Center seeks to assess the impact on judicial branch resources of a number of these proposals. In addition to using data routinely collected by the AO, the study will rely on data specially collected from a national sample of approximately 400 diversity cases.

## Local Rules

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In response to increasing interest in local rule making the Research Division has published a report that describes in detail the local rule revision process followed by the Northern District of Georgia. Northern Georgia's rule revision project, which lasted two years, was led by the court's rules committee and managed by a former law clerk hired by the court to serve as research assistant to the committee. The Center report, *A Practical Guide to Revision of Local Court Rules*, was written by the committee's research assistant and is intended to serve as a "how-to-do-it" presentation for use by other courts. The report does not address the considerations that influence the content of local rules.

The Center has also provided assistance from time to time in the development of model local rules. In fiscal 1987 the Center published *Illustrative Rules Governing Complaints of Judicial Misconduct and Disability*, designed to assist circuit judicial councils in the implementation of 28 U.S.C. § 372(c). The rules were developed by a committee of appellate chief judges with the assistance of Research Division staff. As an ongoing service the Center maintains a collection of local rules.



## Jury Projects

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### Use of Alternate Jurors in Civil Cases

The Judicial Conference Advisory Committee on Civil Rules currently is studying proposals to amend Fed. R. Civ. P. 47(b), which guides the selection and substitution of alternate jurors in civil trials. At the Committee's request the Center is collecting information about the range of relevant alternate juror practices in district courts—methods of selecting, designating, and discharging alternate jurors or, in some cases, of permitting alternate jurors to be included in deliberations with the consent of the parties. Analysis of the collected data will be delivered to the Committee to aid assessment of the likely effects of proposed amendments.

## Sentencing and Probation

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Center research on sentencing and corrections has over the years been extensive and diverse. Current research is still fairly varied, but studies have been increasingly driven by issues associated with reform of the criminal law and sentencing procedures. The need for information, analysis, and critical review of experience with implementation of new policies will present a continuing call for research support.

### Sentencing

The Center continued to work with the Judicial Conference Committee on Criminal Law and Probation Administration and with the U.S. Sentencing Commission on various aspects of implementing new sentencing procedures. A significant portion of the Research Division's work with the Commission focused on bringing together the experience of both agencies in developing and testing alternative approaches to an automated system for calculating sentences under the guidelines (see *Highlights*).

Changes in criminal law and sentencing processes have required review and modification of a wide range of established procedures. Center staff members have assisted Judicial Confer-

ence Committees and the AO with many tasks associated with the changes. These include revision of the presentence investigation report format, development of a model local rule for sentencing procedures, and revision of the Judgment and Commitment Form. The Center is being asked to provide assistance in other sentencing-oriented projects, such as a study and report on actual operation of new sentencing procedures in the district courts and an assessment of community residential resources available for implementing guideline options of community and intermittent confinement.



*Staff from the Center's Research Division join Probation Office and Sentencing Commission staff in a demonstration of guideline sentencing computer software.*

### **Electronic Monitoring**

Several states are sentencing offenders to some form of home confinement enforced by electronic devices that signal absence from the confinement area. The practice is of increasing interest to federal corrections agencies because of existing and projected overcrowding. At the request of the AO Probation Division the Center provided technical assistance in the design of research to evaluate the results of an electronic monitoring pilot project in two probation districts, the Southern District of Florida and the Central District of California.

## **Assessing the System's Needs for New District Court Judgeships**

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In 1987, at the request of the Judicial Conference and with the assistance of five district courts, the Center tested a new time study method designed to produce data richer than that obtained from previous studies while imposing a reduced burden on participating judicial officers. District judges and magistrates will report all time expended on cases designated for time study, from filing to final disposition. The study design calls for the districts to com-

mence participation at different times during a two-year period. Ultimately, about 12,000 cases will be tracked. Information on the full lives of these cases will be useful for a wide range of analyses and will permit exploration of a number of questions concerning the influence of various practices and procedures on judicial and magistrate resources. Analysis of recent filing statistics indicates that, on average, each judge will have 20 to 30 filings designated as study cases, and that 10 to 15 will involve judicial activity requiring time records.

Twenty-five districts will participate in the new time study during fiscal 1988. Present plans call for all districts to be participating by November 1989. The study will begin to generate useful information during fiscal 1989, but since data will continue to flow in until nearly all cases are terminated, it is anticipated that analyses will undergo refinement through late 1992.

## Appellate Court and Case Management

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### Compilation of Center-Sponsored Research

Eighteen published and unpublished reports concerning the federal appellate courts have been collected in *Managing Appeals in Federal Courts*. The individual reports, all supported by the Center in the past 15 years, demonstrate the widely varying tasks that are undertaken by the Center in examining federal appellate practices and procedures. The publication addresses five broad areas of appellate research: (1) case management in individual circuits; (2) case weighting systems used to characterize the workload of the courts; (3) procedures for expediting appeals once they reach a judge's chambers; (4) administration of the circuits; and (5) the application of new technologies to judicial administration.

### Other Studies of Appellate Procedures

Many appellate procedures are adopted as a means of accommodating rising numbers of appeals. However, increases in appeals vary greatly across circuits and across time periods. As part of the study of the procedural progress of cases in the trial courts,

described earlier, filings of appeals will be examined to determine variations in the rate of appeals and the circumstances that are likely to result in an increase in appeals. The study examines the progression of appeals through the courts and identifies factors related to termination of an appeal prior to a decision on the merits.

### **Assistance to the Judicial Conference**

As part of its ongoing responsibility, the staff of the Research Division will continue to work with the Advisory Committee on Appellate Rules and other committees of the Judicial Conference to monitor the manner in which the individual courts of appeals exercise their discretion to structure their appellate procedures.

## **Operation of the Bankruptcy System**

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The Center has begun a research program aimed at helping the bankruptcy courts understand and cope with some of the problems that are created or exacerbated by the great increase in filings in those courts.

Filings have increased from a rate of approximately 30,500 per month in 1985 to more than 50,000 per month in 1988. Adversary proceedings filed in respect to these bankruptcy cases have also increased. Furthermore, in November 1986 Chapter 12 was introduced to handle the cases of family farmers as defined by bankruptcy legislation passed earlier that year. During the first seven months of the chapter's operation almost 5,000 petitions were filed.

### **The Management of Cases in Chapter 12**

The Center conducted a survey of the operation of Chapter 12 (Family Farmer) bankruptcy practice in the District of Nebraska, which has received 12.7 percent of the filings under the new chapter. The study collected information through interviews with officials of the bankruptcy court, key lawyers, and agricultural and financial experts.

### **Alternative Dispute Resolution: Mediation of Adversary Proceedings in the Southern District of California**

At the request of the Ninth Circuit the Center conducted a descriptive and analytic study of an innovative program for mediation of adversary proceedings, and to a lesser extent of contested motions, established by the bankruptcy bar of the Southern District of California in cooperation with the bankruptcy court. During the first 15 months of operation, 80 adversary proceedings were sent to mediation, a majority of which were dischargeability proceedings for relatively small amounts of money.

### **The Operation of Bankruptcy Appellate Panels in the Ninth Circuit**

The Bankruptcy Reform Act of 1978 permitted each circuit to establish one or more panels of bankruptcy judges to hear appeals taken from decisions of the bankruptcy courts; absent such a panel, all bankruptcy appeals are first filed in the district court. Only the First and Ninth Circuits established such panels, and at this time only the Ninth Circuit's panels remain active.

The Ninth Circuit's bankruptcy caseload is the largest in the country; indeed, the Central District of California alone had almost nine percent of the nation's bankruptcy filings in statistical year 1987, and the circuit overall accepted more than one-fourth of the nation's total. The Center is conducting a study of the bankruptcy appellate panels of the Ninth Circuit that will provide information for policy makers to use to assess the effectiveness of the panels.

### **Bankruptcy Administration in Alabama and North Carolina**

The Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986 expands the pilot U.S. Trustee Program established by the Bankruptcy Reform Act of 1978 to include all judicial districts in the United States except the six districts of Alabama and North Carolina. These six districts may operate without a U.S. Trustee until October 1, 1992, or until a district elects to be included in the U.S. Trustee program, whichever occurs first.

The Center is conducting a descriptive and comparative study of the operation of estate administration in the Alabama and North Carolina districts, tracking the work of the six administrators' offices in respect to four major goals that the offices have established: enhanced efficiency of estate administration, oversight of the standing and panel trustees, effective case management, and provision of these services at a lower cost than could be achieved under any other organizational scheme. The Center's report on the performance of the offices in respect to these goals should provide useful information for future decisions about the administration of estates in bankruptcy.

### **Bankruptcy Judgeships and Caseweights**

The Judicial Conference Committee on the Operation of the Bankruptcy System, responding to a request from Congress, has asked the Center to conduct a study of bankruptcy judge activity for the purpose of improving the formula used to establish the appropriate number of bankruptcy judgeships. This study will combine features of several of the Center's prior investigations of judicial time allocation. All bankruptcy judges will be asked to complete diaries of their work, including case-related and non-case-related activity, for a period of a few months. Time will be accounted for in categories relevant to the various judicial responsibilities of bankruptcy judges.



# *automated case and court management*

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The *Long Range Plan for Automation in the United States Courts* was developed by the Center and the AO to assist the Judicial Conference Committee on Judicial Improvements in overseeing the courts' various automation activities. The *Plan* has a five-year time horizon and is updated annually. The current version of the *Plan* describes the Center's responsibilities for completion of major systems under development and transfer of those systems to the AO for operational implementation, support, and enhancement. The *Plan* also summarizes the status of the various automation projects that come under the purview of the AO.

The following paragraphs describe Center automation activities in fiscal 1988.

## **District Courts**

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The Civil Case Management System (CIVIL) is an electronic docketing system developed for use in the district courts. CIVIL is part of the Center-designed family of electronic docketing and case management systems based on the Integrated Case Management System (ICMS) software.

The CIVIL system is used by docket clerks, courtroom deputies, court managers, and chambers personnel. Some judges use the system, and a few have terminals for on-line access within their courtrooms. Terminals are available in some clerk's offices to allow members of the bar and the public to enter their own queries for information. It is expected that the use of chambers access and public access will expand substantially as the information capabilities of the system become more widely known.



Four districts participated as pilot courts in the CIVIL development process: Arizona, the District of Columbia, Northern Georgia, and Western Texas. By January 1987 all four pilot courts had begun "live" operations under CIVIL.

A phased transfer of CIVIL to the AO began in July 1987. CIVIL software development was completed in late 1987 and, as reported in *Highlights*, the transfer process was formally concluded in February 1988.

The AO is currently developing a new version of the Courtran CRIMINAL system, using the CIVIL software as the base and adding CRIMINAL-specific functions. The resultant product will be an integrated CIVIL/CRIMINAL district court case management system.

As part of the process of transferring CIVIL to the AO, the Center undertook studies to assess benefits and costs of operating the system. These studies, based upon measurements and information provided by the pilot courts, showed the CIVIL system to be highly beneficial and to offer the courts the potential for substantial cost savings over manual operations. The Center also assisted the AO in the installation of CIVIL into the first non-pilot court, the Eastern District of Michigan. The AO is now working with the recently established CIVIL Training Center in the District of Arizona to facilitate the rapid implementation of CIVIL on a nationwide basis. It is expected that the integrated CIVIL/CRIMINAL system will be implemented in an additional 10 districts within the next year; this will allow the AO to retire the aging Courtran DECSYSTEM-10 centralized mainframe computers. Subsequent implementation into additional courts is then expected to proceed at a rate of 20 districts per year.

## Bankruptcy Courts

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The central component of the Center's Bankruptcy Court Automation Project (BANCAP) is an electronic, full-docketing case management system. A member of the ICMS family, and thus offering functional capabilities similar to the CIVIL system, BANCAP provides the bankruptcy courts with the automated assistance necessary to carry out their prescribed tasks, from case opening to docketing to noticing to statistical reporting.

Several unique features were developed for BANCAP to address the particular, high-volume case processing needs of bankruptcy courts. To facilitate the entry of creditor name and

address information associated with each case, BANCAP has the ability to automatically scan and read appropriately formatted creditor lists using relatively inexpensive optical character readers, thereby avoiding substantial manual data entry costs. BANCAP also has facilities for accepting high-volume entry data in electronic form, such as on diskettes.

Using commercially available computer voice synthesis technology, BANCAP has the capability of receiving and responding to telephone inquiries. By using a standard telephone keypad as the data entry device, inquiries are received without the intervention of court personnel. The system is able to probe the BANCAP database to answer a query and respond to the telephone caller using a computer-generated synthetic voice.

Mechanisms have been provided to expedite the preparation and mailing of high-volume notices, either on a local district or regional basis.

Three pilot courts have worked with the Center in the development of the BANCAP system: the Districts of Western New York, Western Texas, and Western Washington. BANCAP software development was completed in late 1987, and the transfer process to the AO was formally concluded in February 1988.

The Committee on Judicial Improvements has designated the nationwide implementation of BANCAP as a high priority under the *Long Range Plan*. In early 1988 a BANCAP Training Center was established in the Western District of Texas to facilitate the rapid implementation of BANCAP. It is expected that BANCAP will be implemented in an additional 10 districts during fiscal 1988 and at a rate of approximately 20 districts per year thereafter.

## Courts of Appeals

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Phase II of the New Appellate Information Management System (New AIMS) was designed to offer a variety of ancillary services to the circuit courts, including:

- automated assistance in providing judges' chambers with on-line access to New AIMS information
- issues indexing
- staff attorney case inventory functions
- formation of hearing panels
- automatic assignment of cases to a calendar for oral argument.

In addition, expanded database reporting facilities were developed that allow courts greatly enhanced capabilities to extract and

format docketing and case management information from the New AIMS database.

The Fourth, Ninth, and Tenth Circuits served as pilot courts for Phase II, as they did with Phase I. As the various Phase II capabilities were completed and tested in the pilot courts, they were transferred to the AO. This incremental transfer process was completed in September 1987, several months ahead of schedule.

# *information resources*

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## **Briefings for Foreign Visitors**

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The Inter-Judicial Affairs and Information Services (IJA) Division has primary responsibility for liaison with other organizations working in the area of judicial administration.

In response to requests, the Division conducts briefings on the federal court system and the work of the Center for foreign judges, court administrators, deans, law professors, and legislators. These visitors come to the United States at the invitation of the State Department, U.S. Information Agency, and other agencies.

Briefings are patterned according to individual interests, sometimes in the English language and sometimes through translators. During the past year briefings were held for visitors from over 50 countries.

## **State–Federal Programs**

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The Center has supported the work of state–federal judicial councils by providing modest travel support and discrete educational components for meetings since the councils became active in 1971. During fiscal 1988 the Center continued to provide support for meetings of state and federal judges held under council auspices.

In the state–federal councils timely subjects of common interest and concern are discussed. Habeas corpus and post-conviction remedies continue to be of primary concern to both judicial systems. Subjects of special interest this past year were sentencing

guidelines, capital cases, and cooperation on court calendaring to avoid conflicting engagements of counsel. The IJA Division provides guidance to states interested in organizing state–federal judicial councils as well as suggestions for agenda subjects.

## Information Services Office

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The Information Services Office (ISO), a component of the IJA Division, offers a full range of library and related information services to the Center's divisions. On-line information systems answer questions and perform comprehensive literature searches. Increased levels of access to both in-house and commercial databases in fiscal 1988 resulted in more efficient operations, faster response time, and a greater ability to keep Center staff informed of current developments.

The ISO serves as a national resource center for information on federal judicial administration.

As part of its clearinghouse function, the ISO maintains a complete computer-indexed collection of local rules from the district and circuit courts. It also serves as a central repository for procedural rules and published orders under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980.

The ISO distributed more than 29,000 copies of Center research reports, staff papers, and manuals during fiscal 1988.

The Center's media library is also managed by ISO, which last year filled over 3,200 audiovisual loan requests.

## Publications

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Center publications fall into four basic categories:

- research reports and staff papers (described earlier in this report)
- educational manuals and monographs
- automation technical documents and training manuals
- periodicals

Revisions to the following manuals were published in fiscal 1988:

The *Bench Book for United States District Court Judges* is a compilation of information for judges' use on the bench or in

what's happening  
at a glance for training coordinators of the U.S. court system

The Center publishes the five periodicals shown here to keep members of the judicial branch informed about new developments in the law and about ongoing Center activities in research, in new systems development, and in continuing education and training.

Federal Judicial Center

BULLETIN OF THE FEDERAL COURTS

# THE THIRD BRANCH

VOLUME 20  
NUMBER 6  
JUNE 1988

Congress Weighs Impeachment Study Bill, Judge Richard J. Banker

The following Congress introduced a bill on June 13, 1988, which would amend Article III of the Constitution to provide for the removal of federal judges. The bill, H.R. 2500, is currently pending in the House of Representatives.

## Center Guide

The following information is provided for your information. It is intended to provide you with a general overview of the Center's activities and programs. For more information, please contact the Center at (202) 462-1000.

## ChamberstoChambers



Federal Judicial Center

ChamberstoChambers is provided to advise judges of techniques and procedures found helpful by other judges. Each issue is initially prepared by and reviewed by volunteer judges. Publication signifies that the Center regards it as a responsible and valuable work. It should not be considered an official position of the Center.

# BENCH COMMENT

Federal Judicial Center

1988, No. 3

June 16, 1988

Bench Comment is provided to draw judges' attention to decisions that may have escaped their notice. It has been reviewed by the staff of the Federal Judicial Center and is the Center's responsibility. Publication signifies that the Center regards it as a responsible and valuable work. However, Bench Comment does not represent any official policy or recommendation of the Federal Judicial Center.

SUBJECT: De

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Not For Citation opinions or otherwise

## Guideline Sentencing Update



Guideline Sentencing Update will be determined periodically by the Center's advisory judge and other judicial personnel of selected federal court districts on the basis of the information received from the courts. Although the publication may refer to the Sentencing Commission and policy statements of the U.S. Sentencing Commission, responsibility for the content of the update rests with the Center. Updates should refer to the Commission, policy statements, and other materials issued by the Sentencing Commission for the update information. Publication of Guideline Sentencing Update signifies that the Center regards it as a responsible and valuable work. It should not be considered an official position of the Center. On matters of policy the Center speaks only through its Board.

Volume 1 • Number 13 • August 3, 1988

### Guidelines Applications

District court holds exceptional military service record warrants departure. A court in D. Md. held "that a person's military record is a relevant sentencing factor that was not considered by the Sentencing Commission and should be considered as an aggravating or mitigating factor as sentencing" under 18 U.S.C. § 3553(b). The defendant pled guilty to a mail theft offense, with a resulting Guideline sentence of 1-7 months. The court determined that Guideline § 5B1.1(a)(2) the defendant would be required to serve some period of intermittent or community confinement. The court found, however, "that the defendant's exceptional military record is a mitigating factor that warrants departure from Guideline Section 5B1.1(a)(2). Therefore, the defendant will be sentenced to a period of probation, without a condition or combination of conditions requiring intermittent confinement or community confinement." (Emphasis in original.)  
*U.S. v. Pipich*, No. S 88-097 (D. Md. July 20, 1988) (Sutakin, J.) (memorandum opinion).

### Constitutionality

Probation officers' role, specific Guidelines provisions upheld against constitutional attack. A court in D. Or. rejected challenges to the role of probation officers under the Sentencing Reform Act, and to the acceptance of responsibility and career offender sections of the Guidelines. The defendants argued that the "fundamental change in the role of the probation officer" under the Act violates separation of powers and due process. The court considered the role of the probation officer before and after the effective date of the Guidelines and concluded that "while the duties and role are significantly changed, in their essentials they are still the same," and there is no constitutional violation.  
The court rejected the claim that Guideline

§ 3E1.1, which provides a reduction in offense level for acceptance of responsibility, "chills the exercise" of the sixth amendment right to jury trial and the fifth amendment privilege against self-incrimination. This provision "is not constitutionally objectionable on its face" because it "is not designed for the purpose of inducing involuntary incriminating statements or involuntary guilty pleas" and "a guilty plea, as such, is neither a prerequisite to receiving the benefit of the reduction nor sufficient in itself to entitle a defendant to reduction." Nor is it unconstitutional, the court found, to encourage a guilty plea with a promise of leniency, or to impose a stiffer sentence on defendants who do not accept responsibility for their actions. The court also held that § 3E1.1 was not unconstitutional as applied in this case.

One defendant challenged the constitutionality of the career offender provision, Guideline § 4B1.1. The court held that the provision is not an "impermissible delegation of legislative authority," is not "a new crime" legislated by the [Sentencing Commission] in violation of the separation of powers doctrine, "does not exceed the authority granted the Commission by the Sentencing Reform Act, and is not a "status offense" but rather "a permissible sentence enhancement provision."

The court also rejected a challenge to Guideline §§ 4A1.2 and 4A1.3(a), which allow consideration of "tribal convictions" for departure purposes, and challenges to the Guidelines as a whole based on unlawful delegation, separation of powers, and due process grounds.

*U.S. v. Belgard*, No. 88-5-PA (D. Or. June 30, 1988, as amended July 25, 1988) (Burtis, J.) (opinion and order).

### Decisions upholding the Guidelines:

*U.S. v. Micknall*, No. 88 Cr. 87 (S.D.N.Y. July 27, 1988) (Brianni, C.J.) (memorandum and order upholding Guidelines against constitutional and

Not For Citation: Guideline Sentencing Update is provided for information only. It should not be cited, relied on, or otherwise used.

chambers. Although the *Bench Book* was originally designed for use by district judges, magistrates and bankruptcy judges have also found it useful, and the third edition was designed for their use as well. The *Bench Book* is prepared by a committee of experienced federal judges. Several updates to the *Bench Book* were published in 1988 (see *Highlights*).

The latest revision of the *Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts*, by Judge Charles R. Richey, was published in July 1988. The new release included extensive revisions to the materials on the Rehabilitation Act of 1973, substance abuse in the workplace, and the developing law on AIDS. The procedural charts summarizing the administrative stages of a Title VII case were also revised. A subject-matter index to the *Manual* was also included.

The materials presented in the 1981 edition of *Manual on Recurring Problems in Criminal Trials*, by Judge Donald S. Voorhees, were originally prepared for distribution at the Center's seminars for newly appointed district judges. They included a collection of relatively recent appellate decisions on many of the procedural problems that plague trial judges. The *Manual* was expanded and revised in 1985 and 1988.

The Center also offers a series of educational monographs to provide judges with overviews of particular topics, along with extensive bibliographies that serve as a guide to the literature. *Patent Law and Practice*, by Professor Herbert F. Schwartz of the University of Pennsylvania Law School, was a 1988 addition to the Center's series. The Center also published the second edition of Professor George R. Rutherglen's monograph *Major Issues in the Federal Law of Employment Discrimination*.

In addition to its *Annual Report* the Center publishes a catalog of publications, which is updated annually, as well as a catalog of audiovisual media programs.

New publications released in fiscal 1988 are listed below.

### **Research Reports and Staff Papers**

*Alternative Dispute Resolution in a Bankruptcy Court: The Mediation Program in the Southern District of California*, Steven Hartwell and Gordon Bermant

*Deciding Cases Without Argument*, Joe S. Cecil and Donna Stienstra  
*Jury Service in Lengthy Civil Trials*, Joe S. Cecil, E. Allan Lind, and Gordon Bermant

*Managing Appeals in Federal Courts*, Robert A. Katzmann and Michael Tonry (editors)

*Pattern Criminal Jury Instructions*, Report of the Subcommittee on Pattern Jury Instructions, Committee on the Operation of the Jury System, Judicial Conference of the United States

*A Practical Guide to Revision of Local Court Rules*, Jeanne Johnson  
Bowden

*The Rule 11 Sanctioning Process*, Thomas Willging

### **Education and Training Series**

*Major Issues in the Federal Law of Employment Discrimination* (2d ed.), George R. Rutherglen

*Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts* (updated ed.), Charles R. Richey

*Manual on Recurring Problems in Criminal Trials* (rev. ed.), Donald S. Voorhees

*Patent Law and Practice*, Herbert F. Schwartz

### **Center Periodicals**

The Center publishes a selection of periodicals designed for specific audiences:

*Bench Comments*—advisories on recent appellate decisions

*Chambers to Chambers*—descriptions of case or chambers management techniques

*Guideline Sentencing Update*—recent decisions interpreting the Sentencing Reform Acts and Sentencing Guidelines

*The Third Branch*—monthly bulletin of the federal courts, published jointly with the AO

*What's Happening*—local training newsletter







