



Federal Judicial Center Annual Report 1989

"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)

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of
the
Federal
Judicial
Center**

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Chief Justice of the United States

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HONORABLE MONROE G. MCKAY
Judge, U.S. Court of Appeals for the Tenth Circuit

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HONORABLE WILLIAM C. O'KELLEY
Chief Judge, U.S. District Court for the Northern District of Georgia

HONORABLE DAVID D. DOWD, JR.
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HONORABLE ROBERT E. GINSBERG
Judge, U.S. Bankruptcy Court for the Northern District of Illinois

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Continuing Education and Training

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Special Educational Services

Past Directors of the Center

HONORABLE TOM C. CLARK

Associate Justice (retired), U.S. Supreme Court

March 27, 1968, to September 23, 1969

HONORABLE ALFRED P. MURRAH

Senior Judge, U.S. Court of Appeals for the Tenth Circuit

May 1, 1970, to October 27, 1974

HONORABLE WALTER E. HOFFMAN, DIRECTOR EMERITUS

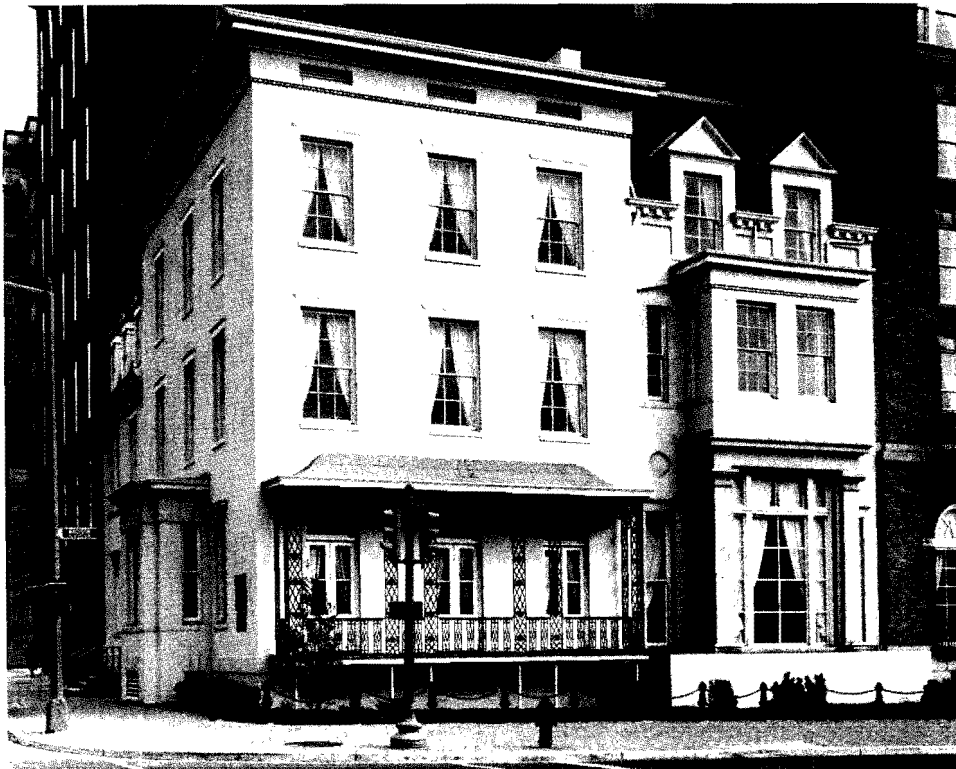
Senior Judge, U.S. District Court for the Eastern District of Virginia

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



The headquarters of the Federal Judicial Center are in the Dolley Madison House, located on H Street at Lafayette Park, near the White House. The house was built in 1820 and purchased by President Madison in 1828. Following his death in 1836, Mrs. Madison left their Virginia home, Montpelier, and returned here to the Washington life she loved so much. She lived in the house until her death in 1849. From 1851 to 1881, it was the home of Rear Admiral Charles Wilkes, U.S.N., and his family; later, it was occupied by the Cosmos Club. In 1940 it was purchased by the U.S. Government. Refurbishing was completed in the fall of 1968.

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What it is

The Federal Judicial Center is the federal courts' agency for research, systems development, and continuing education. It was established by statute in 1967 at the request of the Judicial Conference of the United States as a separate organization within the federal judicial system. (See 28 U.S.C. § 620 *et seq.*) Its basic policies are determined by an eight-member Board, chaired *ex officio* by the Chief Justice of the United States. For fiscal 1989, it was funded by a congressional appropriation of \$11,640,000. The Center maintains a permanent staff of 96.

What its responsibilities are

The Center's mandate is "to further the development and adoption of improved judicial administration" in the courts of the United States (28 U.S.C. § 620(a)). The many specific statutory duties of the Center and its Board fall into a few broad categories.

Conducting and promoting research on federal court organization, operations, and history

The Center has specific statutory charters to "conduct research and study of the operation of the courts of the United States," including "ways in which automatic data processing and systems procedures may be applied to the administration of the courts." But it must do more than conduct research about the federal courts. The statute directs it to "stimulate and coordinate such research and study on the part of other public and private persons and agencies," including a specific mandate to "cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice." In 1988, Congress added to these duties the responsibility to "conduct, coordinate, and encourage programs relating to the history of the judicial branch."

About the Federal Judicial Center

Conducting and promoting orientation and continuing education and training programs for federal judges, court employees, and others

The statute directs the Center to develop and conduct—and stimulate—educational programs for all judicial branch employees and for “other persons whose participation in such programs would improve the operation of the judicial branch.” The statute mentions “persons serving as mediators and arbitrators” as an example of such “other persons.”

Developing recommendations about the operation and study of the federal courts

The statute provides that the Center will present recommendations in various areas to other agencies:

- to the Judicial Conference or the courts, recommendations for improvements in the administration of the federal courts, in the training of their personnel, and in the management of their resources;
- to other public agencies whose programs relate to federal judicial administration, recommendations for improvements in those programs;
- to public and private agencies, recommendations for research on federal court operations.

Providing staff assistance to the judiciary

The statute directs the Center to “provide staff, research, and planning assistance for the Judicial Conference of the United States and its committees.”

Reporting its activities

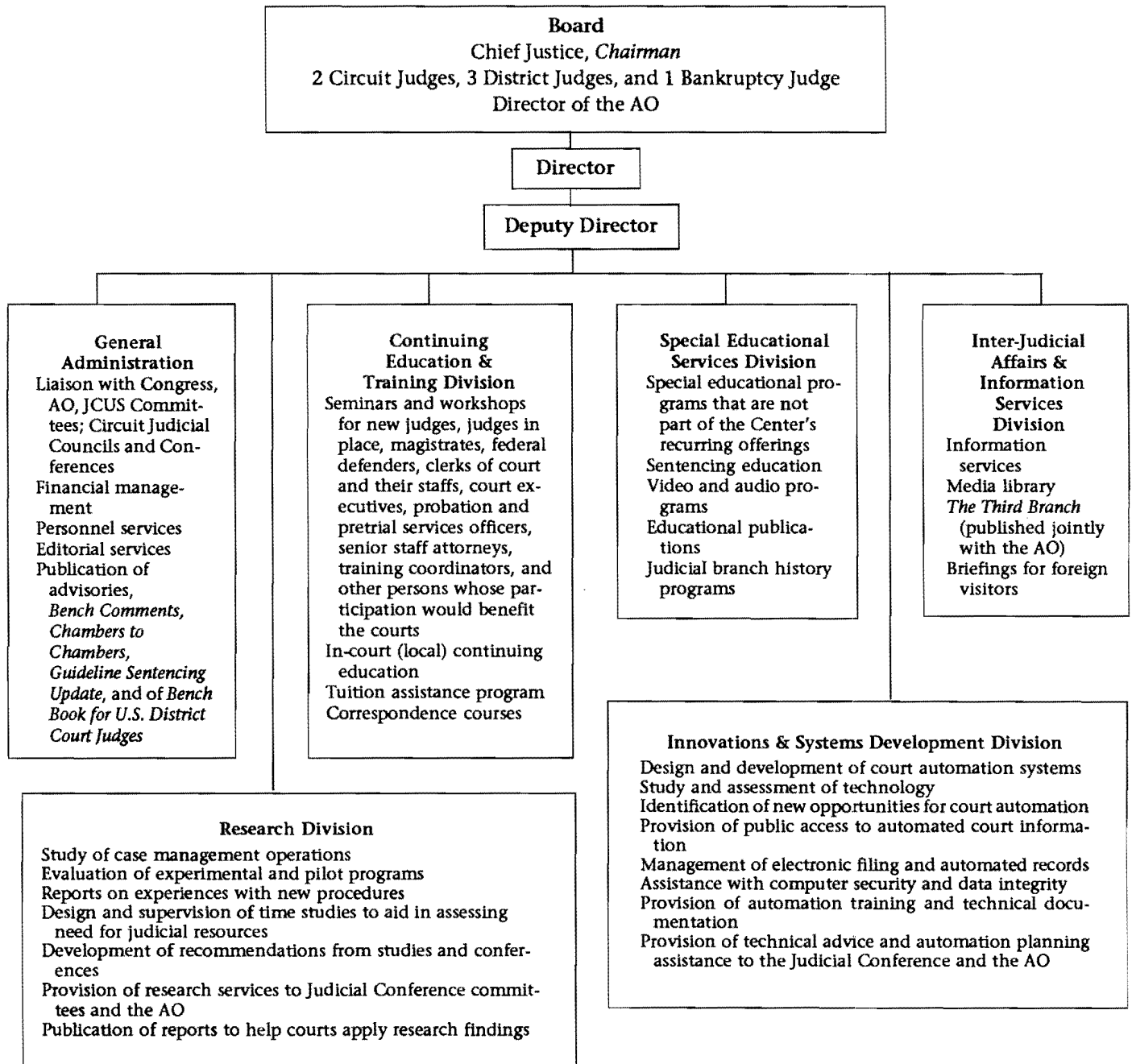
The Center is required to make an annual report to the Judicial Conference. Copies of all reports and recommendations submitted to the Conference must also be sent to Congress and the Attorney General. The Center is also required to keep the judiciary committees of the House and Senate fully informed of its work.

How it is organized

By statute, the Judicial Conference elects members of the Board of the Center for four-year, nonrenewable terms. The Chief Justice serves as permanent chair, and the director of the Administrative Office of the U.S. Courts (AO) as a permanent member. In March 1989, Judge Monroe McKay (10th Cir.) was elected to the Board, succeeding Judge Alvin B. Rubin (5th Cir.), whose term expired. By statute, the Board appoints the Center's director and deputy director, and the director appoints the Center staff.

The internal organization developed by the Center is shown in the chart on page 4.

Organization of the Federal Judicial Center



Budget: Fiscal 1989 budget = \$11,640,000
Staff: 96 authorized personnel positions

FJC Advisory Committees

*The Center frequently
seeks the guidance of
experienced judges and
court personnel when
planning seminars and
publishing reference
books and periodicals.*

*The assistance pro-
vided by the commit-
tees listed here is grate-
fully acknowledged.*

Committee on Appellate Educational Programs

Judge James K. Logan (10th Cir.), Chair
Judge Dorothy W. Nelson (9th Cir.)
Judge James C. Hill (11th Cir.)
Judge David A. Nelson (6th Cir.)

Committee on Bankruptcy Education

Bankruptcy Judge Robert E. Ginsberg (N.D. Ill.), Chair
Judge Alice M. Batchelder (N.D. Ohio)
Chief Bankruptcy Judge Lloyd King (N.D. Cal.)
Chief Bankruptcy Judge Thomas C. Britton (S.D. Fla.)
Chief Bankruptcy Judge Glen E. Clark (D. Utah)

Committee on the Bench Book for U.S. 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.)

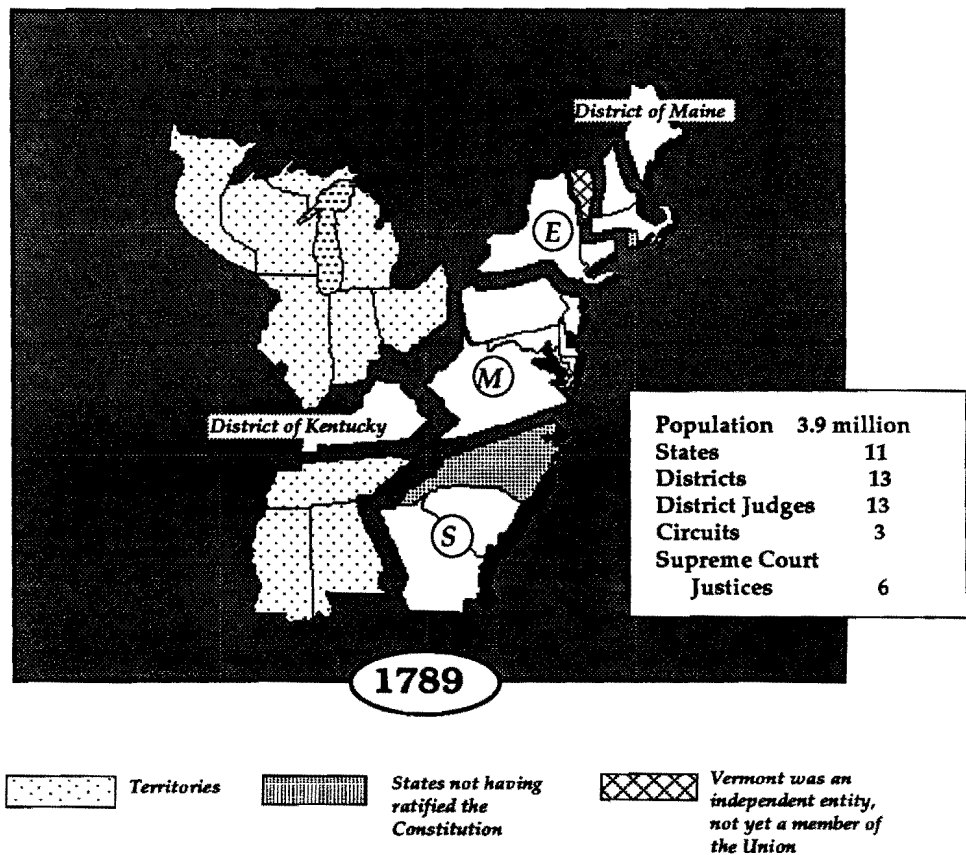
Committee on District Judge Education

Judge Roger G. Strand (D. Ariz.), Chair
Judge Frank J. Polozola (N.D. La.)
Judge Maryanne Trump Barry (D.N.J.)
Chief Judge Alexander Harvey II (D. Md.)
Judge J. Owen Forrester (N.D. Ga.)

Committee on Sentencing, Probation, and Pretrial Services

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

One of a series of maps illustrating the evolution of the federal court system that was part of the written program the Center prepared for its national bicentennial conference of federal appellate judges.



September 24, 1789: The First Judiciary Act created 13 districts and placed eleven of them in 3 circuits: the Eastern, Middle, and Southern. Each district had a district court, a trial court with a single district judge and primarily admiralty jurisdiction. Each circuit had a circuit court, which met in each district of the circuit and was composed of the district judge and two Supreme Court justices. The circuit courts exercised primarily diversity and criminal jurisdiction and heard appeals from the district courts in some cases. The districts of Maine and Kentucky (parts of the states of Massachusetts and Virginia, respectively) were part of no circuit; their district courts exercised both district and circuit court jurisdiction.

New Statutory Responsibilities

Title IV of the Court Reform and Access to Justice Act, signed by the President on November 19, 1988, made four changes in the Center's organic statute. It

- directed the Board to develop and encourage historical programs about the judicial branch, in essence making the Center the historical office for the federal judiciary;
- authorized the Center to provide educational services to non-judicial branch employees, where such programs would improve the operation of the courts (for example, programs for arbitrators and mediators, and perhaps some private defense counsel who serve under the Criminal Justice Act, and for court interpreters);
- established the Federal Judicial Center Foundation to receive gifts to enhance and facilitate the Center's work;
- formally recognized the office of deputy director. The deputy director, like the director, is to be appointed by the Board and serve at its pleasure.

Highlights of the Year

National Conferences for Appellate Judges and for Chief District Judges

The Center initiated two new conference programs in fiscal 1989. An October conference in Washington, D.C., for all U.S. appellate judges considered the conditions and continued vitality of the appellate judiciary as the federal courts completed their second century and prepared to enter their third. An April conference for all U.S. chief district judges presented an eclectic array of topics appropriate to the variety of federal court needs; it used hypothetical case problems to explore how chief judges can deal with sensitive management issues. These conferences were the first opportunity for all judges in each group to meet in a single national meeting.

Improvements in Education and Training

The Center continued a concentrated effort to refine its educational programs and broaden the content of its offerings, both in national seminars and in the local programs that are essential components of orientation and in-service training for the 20,000 employees of the judicial system located throughout the United States. Increasingly, the Center uses small-group discussions,



A Center video program shown as part of an in-court seminar for probation and pretrial services officers on conducting financial investigations

video segments, and hypothetical case problems as alternatives to the traditional lecture format. The staffs of both Center educational divisions have been expanded, mainly through reallocation of resources within the Center. A revised evaluation method has been developed that allows those attending the seminars to offer more pointed analyses of the strengths and weaknesses of various educational approaches and of individual faculty members. Center staff, in turn, correlate the evaluation data and use it in planning future training.

In cooperation with the University of Chicago Law School, the Center conducted a program aimed at bringing together, on the one hand, the needs of federal judges for training and stimulation, with, on the other hand, the faculties, physical facilities, and energy of accredited law schools. Forty judges assembled on the Chicago campus for a week of instruction by Chicago faculty members. Participants, the Center, and the law school judged the experiment a significant success.

For teaching, the Center continues to draw faculty mostly from the ranks of the federal judiciary and from academia. Faculty are now encouraged to supply written presentations, or outlines, in advance of their classroom presentations. They are specifically asked to consider using training aids, graphics, question-and-answer, and other means, to heighten the communication-learning process. Faculty have been generous in their response to the Center's efforts to sharpen its teaching programs. The Center is presently conducting a test program by which it makes available to judges not present at workshops and

seminars the written presentations supplied by faculty to accompany their presentations.

Training for judiciary employees at the local level is often conducted internally by court employees who also serve as training coordinators. The Center trains the coordinators and has developed resource material such as an orientation notebook, outlines, and case studies for their use.

Analyses of Resource Needs

A 1988 report entitled *The Budgetary Impact of Possible Changes in Diversity Jurisdiction* was prepared by Center staff at the request of the Judicial Conference Committee on the Budget. This report provided the first comprehensive analysis of cost savings that would result from changes in diversity-of-citizenship jurisdiction—savings in otherwise needed judgeships, court staff, and auxiliary support. The Center is now devoting significant staff time to district court and bankruptcy court time studies requested by Judicial Conference committees. The findings from these studies will provide key information for use by the Judicial Conference and Congress in estimating judgeship needs during the next decade.

Probation and Pretrial Services Officer Training

The Center has established a centralized training academy for probation and pretrial services officers. The academy's program includes intensive orientation programs as well as a variety of advanced seminars on management techniques and such specialized topics as preparing presentence reports, developing skills in testifying, and contracting with suppliers of services for drug treatment.

Sentencing

The 1984 Sentencing Reform Act, the constitutionality of which the Supreme Court upheld in January 1989, created a new sentencing system for federal offenders. Through research and

educational programming, the Center continues to devote considerable effort to helping the courts adapt to the requirements of guideline sentencing. Publication of *Guideline Sentencing Update*, a fast-response reporting service of significant cases, has continued, and its distribution has been expanded.

Public Access to Court Data

The Center began testing a variety of public access facilities it has developed to allow law firms, agencies, and the public at large to have easy access to electronic court databases of case docket information. One such system accepts direct telephone inquiries for case-status information and automatically answers a query with a computer-synthesized voice. Another system links computers outside the court (such as personal computers in law offices) to court computers for purposes of searching the court's database and retrieving copies of docket sheets in electronic form. A similar program is being tested that enables lawyers to file pleadings and other documents electronically by transmitting them directly to the court's computer. In a pilot appellate court, the Center has installed an electronic bulletin board that provides public access to information such as texts of opinions and local rules.

Internal Administration

The Center has dozens of ongoing projects at any one time. Working together, staff have developed a computerized information system that tells all concerned in the Center the critical details of each Center undertaking: its aim, its scope, who is doing it, who requested it and who approved it, the projected time commitment, when it is to be concluded, and other similar data. Through this system, staff commit Center resources with greater care and plan in more detail. They structure appropriate limits for what they propose to do, better inform themselves as their work progresses, and check on themselves. The system also creates meaningful reports that inform senior staff and the Center Board about division activities.

Service as a Meeting and Conference Facility

The Center continues to serve as a facility for matters external to itself but related to the federal judiciary by making space available for meetings and conferences other than those specifically scheduled by the Center itself. Committees of the Judicial Conference, groups of foreign judges, university students in Washington to study our judicial system, and the Anglo-American Legal Exchange are among those who have assembled or will assemble in Dolley Madison House during fiscal 1989. Center-sponsored groups, plus others, will convene close to 100 meetings at the Center in 1989.

Education and Training

Congress has directed the Center "to stimulate, create, develop, and conduct programs of continuing education and training" for judges, court employees, and, through a 1988 amendment, others whose participation would enhance the courts' operation.

The table on page 14 shows Center seminars and workshops in fiscal 1989. These classroom programs are supplemented by video and audio media productions, educational publications, and tuition assistance for individual training.

Judges and Magistrates

Close to the time they enter on duty, new federal trial judges and magistrates attend small regional orientation seminars emphasizing procedural and management essentials. They later attend a week-long orientation seminar in Washington, D.C., dealing more with high-volume federal litigation areas and allowing appropriate social and ceremonial events.

Orientation needs for appellate judges are less intense than for trial judges. A Washington, D.C., orientation seminar for new circuit judges is held approximately once every 18 months. This is supplemented by special video programs and publications on such topics as appellate jurisdiction.

Programs for more experienced judges are held in Washington and throughout the country. Workshops, held by circuit for district and appellate judges and by region for bankruptcy judges and magistrates, provide continuing judicial



Judge Alvin B. Rubin (Fifth Circuit) is one of four circuit judges who discuss problems facing new circuit judges in a Center-produced orientation video program.

1989 Activities

Fiscal 1989 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 | 12 | 869 | 179 | 1,048 |
| Claims Court judges and special masters | 1 | 38 | 8 | 46 |
| Bankruptcy judges | 6 | 357 | 51 | 408 |
| Magistrates | 5 | 260 | 76 | 336 |
| Clerks of court and clerk's office personnel (circuit, district, and bankruptcy) | 24 | 1,018 | 325 | 1,343 |
| Probation and pretrial officers | 20 | 761 | 223 | 984 |
| Federal public defenders, community defenders | 5 | 287 | 65 | 352 |
| Training coordinators | 5 | 106 | 22 | 128 |
| Programs for personnel in several categories | 2 | 42 | 11 | 53 |
| TOTAL | 80 | 3,738 | 960 | 4,698 |

In-Court Training Programs

| Participant Category | Number of Seminars or Workshops | Number of Participants | Number of Faculty | Total Participants and Faculty |
|--|---------------------------------------|---------------------------|----------------------|--------------------------------------|
| Circuit/district judges | 5 | 161 | 8 | 169 |
| Bankruptcy judges | 1 | 26 | 2 | 28 |
| Clerks of court and clerk's officer personnel (circuit, district, and bankruptcy) | 60 | 1,248 | 63 | 1,311 |
| Probation and pretrial officers and clerks* | 139 | 2,127 | 178 | 2,305 |
| Programs for personnel in several categories** | 47 | 1,579 | 65 | 1,644 |
| TOTAL | 252 | 5,141 | 316 | 5,457 |

* 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: 332 Total Number of Participants in All Categories: 10,155 Total Number of Faculty: 1,276 |
|--|

NOTE: Figures are estimated through the end of the fiscal year.

education on new problems and developments in the federal courts. Committees of judges and staff advise the Center on program goals and content.

Probation and pretrial services officers

Combined orientation seminars for probation and pretrial service officers are now held at a centralized training academy near Baltimore. Officers serving in districts with independent pretrial services offices have different needs from those serving in districts where pretrial and probation services are combined, so the seminars provide both plenary and specialized sessions. National training programs for officers already in service focus on management topics, with special emphasis on pretrial investigation and report writing.

The Center has developed probation and pretrial services office training modules that include lesson plans, video demonstrations, and student workbooks. These are delivered in local sessions by selected officers who have been specially trained by the Center as instructors. They cover such topics as staff safety and financial investigation.

Federal public defenders and staff

The Center provides a national orientation seminar for assistant defenders and sponsors their attendance at the National Criminal Defense College's summer training institute. This two-part training gives a foundation in the practice and the theory of criminal defense work. Regional seminars offer training in standard defense topics and special areas such as sentencing. In accordance with the terms of the Criminal Justice Act revision of 1986, the AO will assume responsibility for funding and conducting defender training in fiscal 1990.

Clerks of court and their staffs

National and regional seminars and workshops for senior and mid-level managers in the clerks' offices present training in management and supervision and in particular skills (e.g., financial controls or procurement procedures).

Other local training

In a system as large as the federal courts, training on the local level is an essential complement to national and regional programs. This year the Center helped to fund more than 100

in-court workshops on such topics as AIDS in the workplace, 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 workshops for administrative and operations managers.

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., the Office of Personnel Management and the General Services Administration). Clerks' offices employees and probation officers received more than two-thirds of this assistance.

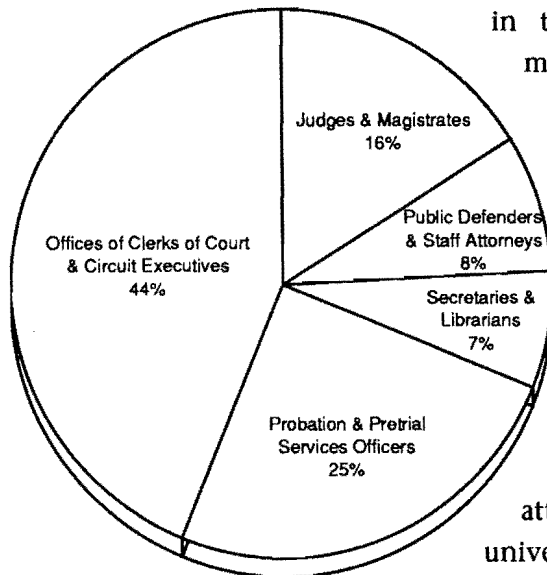
To promote local training, the Center supports a network of training coordinators who develop in-court training activities and serve as liaison with the Center. A Center newsletter, *What's Happening?*, and workshops help the coordinators meet their responsibilities.

Automation training

To support the successful decentralization of automation, the Center prepared documentation and instructional materials that the AO and court-based training centers used to train court personnel in software applications that the Center has developed.

The Center also has developed and refined a training program for court-designated computer system administrators, who are responsible for managing and conducting computer

**Tuition Assistance
Program—
Fiscal 1989
Course
Participation by
Personnel Category**
(Figures are estimated
through the end of the
fiscal year)



operations in the courts. Responsibility for conducting this introductory course has been transferred to the AO, but the Center continues its involvement by developing additional courses to address topics of interest to system administrators and court managers responsible for ensuring the integrity of automation functions. For example, in the past fiscal year the Center held six workshops for court managers responsible for overseeing automation activities as well as numerous small-group workshops in conjunction with national seminars for clerks and chief deputies.

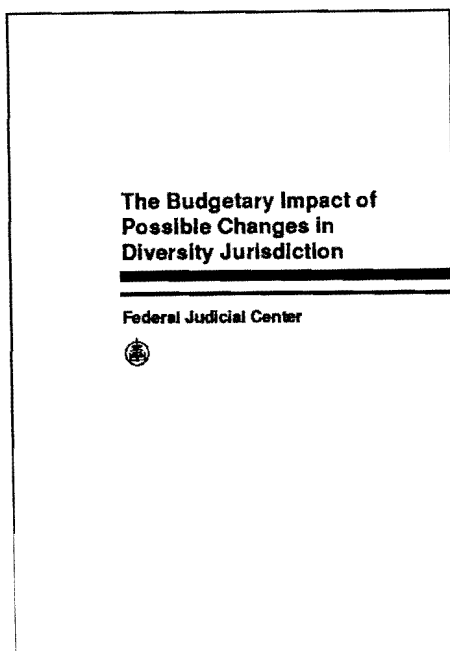
Judges, clerks, and others in the courts use personal computing equipment, and the Center continues to provide training assistance in this area. For the most part, this assistance has taken the form of multimedia instructional packages consisting of books and videos (including instructional software) on popular applications such as Lotus 1-2-3™ and dBASE III™. The Center will be expanding its support of personal computer training, in coordination with the AO and its office automation vendor, by identifying ways the courts can attain self-sufficiency in their use and support of PC-based automation efforts. This additional training support may include training programs, increased use of multimedia instructional packages, and tuition assistance for both technical and managerial court personnel involved in supporting a court's computer needs.

Educational publications and media programs

The Center produces and disseminates a wide range of deskbooks, monographs, and periodicals for the information and education of federal court personnel and others (see pages 26 to 28). It produces video and audio educational media programs for initial orientation and continuing education throughout the judicial system (see pages 28 to 29).

Research

Center research in fiscal 1989 examined many aspects of the federal trial and appellate process.



From page 27: "In estimating the resources devoted to diversity jurisdiction, I have estimated that 64,476 district court filings and 3,900 appellate filings would have been eliminated if diversity jurisdiction did not exist."

Estimating necessary resources for system operations

Budgetary impact of changes in diversity of citizenship jurisdiction

A report, requested by the Judicial Conference Budget Committee and published this year, presented estimates of savings to the judiciary of various restrictions in diversity-of-citizenship jurisdiction. It concluded, *inter alia*, that raising the jurisdictional amount to \$50,000 from \$10,000, as October 1988 legislation did, will result in savings of at least \$21 million annually.

District court time study

Substantial staff time and energy is being devoted to this project, undertaken for the Committee on Judicial Resources of the Judicial Conference in order to develop "case weights," a fundamental element in determining judgeship needs.

Time study of bankruptcy cases and proceedings

A bankruptcy time study, which is similar to the district court project, has been undertaken at the request of the Judicial Conference Committee on the Administration of the Bankruptcy System. It will be the basis for developing weighted caseloads for the bankruptcy courts.

The pretrial stage

Court-annexed arbitration

For several years, the Center has been assessing pilot programs of mandatory court-annexed arbitration in 10 districts. It seeks to gauge, among other elements, the level of participant satisfaction with the programs and whether satisfaction varies from one program to another. Legislation in 1988 authorized 10 additional programs of arbitration with the consent of the parties and mandated their evaluation.

Sanctioning practices

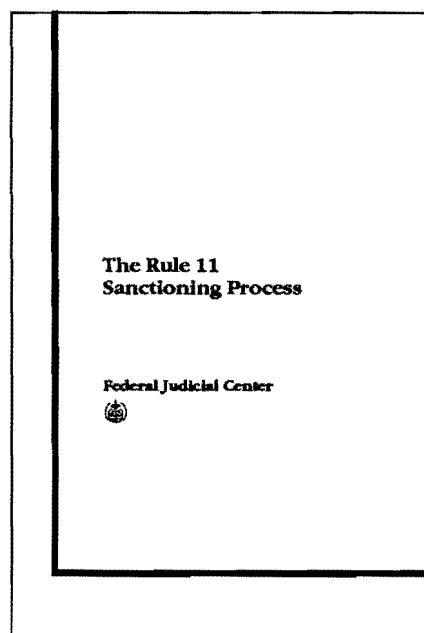
A major Center report, published this year, suggested that Federal Rule of Civil Procedure 11, with its provisions for sanctions for irresponsible filings, has begun to achieve its goal of deterring frivolous filings without inhibiting creative advocacy for unpopular causes. However, the report found that widespread support for Rule 11 among bench and bar (including lawyers who have been sanctioned) is qualified by substantial concerns.

Rule 12 motions

A preliminary examination is under way to determine the extent of use of motions to dismiss for failure to state a claim on which relief can be granted.

Organizing and processing the litigation demands presented by asbestos and other toxic tort litigation

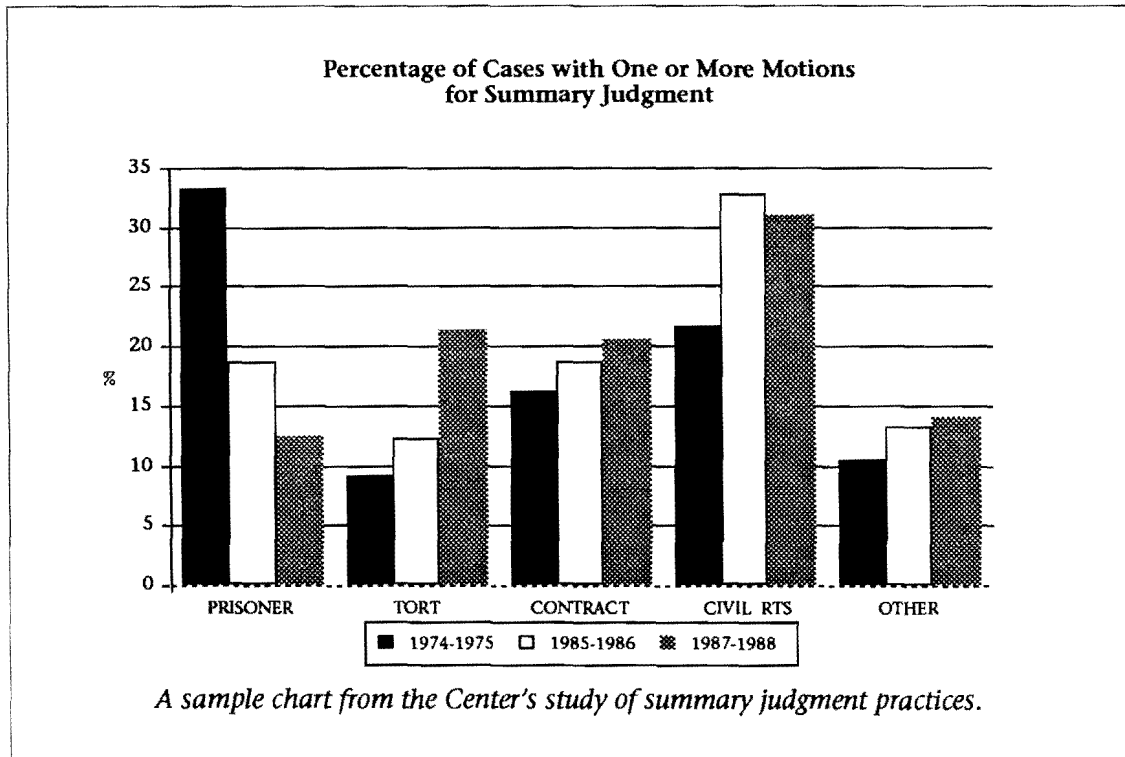
The Center convened a conference in fiscal 1989 in which participants analyzed recent trends in asbestos litigation. The participants also examined information systems and computer technology used for mass tort case management and case-worth evaluation.



From page 1: "Rule 11 has widespread support among the bench and bar, even among lawyers who have been sanctioned, but that support is qualified by substantial concerns."

Summary judgment

A project is under way in six federal districts to determine if there have been changes in summary judgment practice under Federal Rule of Civil Procedure 56 following Supreme Court decisions that clarified the standards for its use.



Litigation flow: district court dispositions and factors influencing appeals

A Center study is seeking to determine what factors explain why cases terminate at various stages of the litigative process and how the courts can estimate the demands that various cases will place on them.

Trial and post-trial stages

Court-appointed experts

This examination of expert appointments (which are rarely made) will try to identify special case features that may warrant such appointments.

Also see *Litigation flow* above.

Sentencing

Procedures under the 1984 Sentencing Reform Act

This study, based on field research in six districts, will analyze the operation of different procedures adopted by courts to accommodate the demands of guideline sentencing. It will address procedures that seem to work well and, of the procedures that have been tried, those that seem not to.

Sentencing Options for “Old Law” Sentencing

The Center is revising *The Sentencing Options of Federal District Judges*, last updated in 1985, to provide guidance to judges in sentencing offenders who were convicted for pre-November 1987 offenses and thus are not subject to the Sentencing Guidelines.

The appellate stage

Pre-hearing procedures

The Center has responded to a Sixth Circuit request to evaluate its preargument conference program, which is designed to narrow issues and settle appeals. The Center is also evaluating screening programs in the Seventh and Tenth Circuits.

Bankruptcy Appellate Panels

The Ninth Circuit’s Bankruptcy Appellate Panel is the only panel now operating pursuant to the Bankruptcy Act of 1984. A study by Center staff has reviewed its history and performance.

Bankruptcy courts and procedures

Bankruptcy Estate Administration

The Center has begun assessments of bankruptcy administration in the six districts of Alabama and North Carolina, which are not participating in the U.S. Trustee program.

Automated Case and Court Management

The *Long-Range Plan for Automation in the United States Courts* assists the Judicial Conference Committee on Judicial Improvements in overseeing the courts' various automation activities. The plan, which is updated annually, carries out the automation policies established by the Committee, and it provides projected schedules for the development, testing, and implementation of automated systems by the Center and the AO. The Center is actively involved in the exploration of new technologies that might benefit the courts. It is also involved in the development of enhancements to existing court automation products, such as the Center-developed family of electronic docketing and case management systems based on the Integrated Case Management System (ICMS) software. The ICMS applications include NewAIMS for circuit courts, CIVIL/CRIMINAL for district courts, and BANCAP for bankruptcy courts.

Center automation activities in fiscal 1989 included the following:

Pilot projects to enhance access to case information

- *Public Access to Court Electronic Records (PACER)*—Using standard dial-in telephone lines, PACER provides electronic access and transmission of official case dockets and party indexes from a court-based PC to the bar, media, and other interested parties who have equipment with appropriate telecommunications capabilities. PACER is currently available for district courts using the ICMS CIVIL/CRIMINAL automated system, and will be extended next to the bankruptcy courts using the BANCAP system.

- *Voice Case Information System*—This system uses commercial voice-response technology to provide dial-in public access information in court clerks' offices. A court computer's voice-synthesis device reads back case information directly from the court's database, without human intervention from the clerk's office. The system is currently available for BANCAP application and will be extended next to NewAIMS.
- *Touch Screen Terminal*—Special-purpose PC terminals with touch-sensitive screens located in the public counter area of clerks' offices provide basic case information to public users without any need for assistance from court staff.
- *Electronic Bulletin Board System*—This system, currently being tested in the Ninth Circuit, allows electronic dissemination of court information (e.g., recently published opinions, court calendars, local rules and procedures, press releases, and general notices) to the media, bar, legal publishers, and other interested parties through dial-up access to a computer located in the court, using an electronic bulletin board software package.
- *Electronic Submission of Case Pleadings*—The Center is in the early stages of testing means to allow parties to submit pleadings to the court electronically in a machine-readable format.

Refinements in Center case management systems

The various ICMS electronic docketing and case management systems (viz., NewAIMS, CIVIL, CRIMINAL, and BANCAP) developed originally by the Center were transferred to the AO in early 1988 for nationwide implementation and support. Current plans call for this implementation to be completed in 1992.

The ICMS applications provide on-line access to all court personnel, including docket clerks, courtroom deputies, court managers, and chambers staff. Some judges use the systems, and a few have on-line access in their courtrooms. As noted above, increased public access to the ICMS databases is also being made available.

To expedite the planned nationwide implementation of ICMS and to increase the affordability of these systems in smaller courts, the Center undertook pilot projects to convert the full-function ICMS CIVIL/CRIMINAL and BANCAP applications to run on PC-based microcomputers. (PC) CIVIL/CRIMINAL and (PC) BANCAP have been successfully pilot tested in several districts and are now available as a cost-effective alternative for use in smaller district and bankruptcy courts.

Other activities

The Center:

- Participated in the Ad Hoc Committee on Automation Staffing, established by the Judicial Conference Committee on Judicial Improvements to recommend organizational structures and staffing guidelines necessary to support decentralized automation as called for in the *Long-Range Plan for Automation in the United States Courts*.
- Undertook two automated records management projects: evaluating optical disk storage for documents filed with the court; and a pilot test of using microfilm jacketing equipment to film both active and closed cases, thus providing space and personnel savings.
- Provided advice to the courts and within the Center to ensure compliance with the Computer Security Act of 1987.
- Completed major efforts in automation training (described on page 16) and documentation.

Information Resources and Service Activities

The general dissemination of information is part of the Center's research and education mission. In fiscal 1989, Center personnel conducted briefings on the federal courts for approximately 123 visitors from 35 countries. In addition, state and federal courts are provided with advice on the creation and operation of state-federal judicial councils.

The Center's Information Services Office

- offers a full range of library and sophisticated information-retrieval services to the Center's divisions;
- is the distribution point for Center publications (over 31,000 copies in fiscal 1989) and audiovisual materials (over 5,300 items in fiscal 1989);
- serves as a national resource center for information on federal judicial administration. It has a comprehensive 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.

Center staff provide research and information assistance to Judicial Conference committees. Major assistance in 1989 was provided to

- the Criminal Law and Probation Administration Committee, in the continued implementation of the Sentencing Reform Act of 1984 and the guidelines issued pursuant to it;
- the Judicial Improvements Committee, especially in the area of automation;
- the Advisory Committees on Criminal, Civil, and Bankruptcy Rules;
- the Committee on the Bicentennial of the Constitution, especially with respect to the observance of the 200th anniversary of the Judiciary Act of 1789.

Publications

Center publications fall into four basic categories: research reports and staff papers, educational manuals and monographs, automation technical documents and training manuals, and periodicals.

Publications scheduled for release in fiscal 1989 or early fiscal 1990 are listed below.

Reports

Study of Bankruptcy Appellate Panels: The Ninth Circuit's Experience, Gordon Bermant and Judy B. Sloan (reprinted from the Arizona State Law Journal (1989))

The Budgetary Impact of Possible Changes in Diversity Jurisdiction, Anthony Partridge

Change of Summary Judgment Use Following Supreme Court Clarification of Standards, Joe S. Cecil

Court-Annexed Arbitration in Ten Federal District Courts, Barbara Meierhoefer

The Rule 11 Sanctioning Process, Thomas E. Willging

Sentencing Federal Offenders for Crimes Committed Prior to November 1, 1987, James B. Eaglin

Seventh and Tenth Circuits Screening Project, Donna Stienstra and Joe S. Cecil

Sixth Circuit Preargument Conference Program, James B. Eaglin

Study of Sentencing Procedures, Barbara Meierhoefer, Paul J. Hofer, and William B. Eldridge

Supervision of Federal Offenders, Barbara Meierhoefer

Use of Rule 12(b)(6) Motions in Two Federal District Courts, Thomas E. Willging

Manuals and Monographs

Desk Book for Chief Judges of U.S. District Courts, 2d edition, Russell Wheeler

Handbook on Jury Use in the Federal District Courts, Jody E. George, Deirdre K. Golash, and Russell R. Wheeler

Law Clerk Handbook, Alvin B. Rubin and Laura B. Bartell

A Primer on the Jurisdiction of the U.S. Courts of Appeals, Thomas E. Baker

what's happening

a newsletter for training coordinators of the U.S. court system



Pictured left to right are: David T. Stenberg, Jr., Ronald R. Kirk, and Erwin N. Griswold.

Federal Judicial Center

All seven members of the Federal Judicial Center have now been appointed. In January, the Honorable Judge of the Seventh Circuit, appointed Robert E. Griffith as Board member.

In July E. and Richard A. were appointed. Tempore of the and three-year term. In August, I joined L. Zelenk Michel, Esq., w

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Federal Judicial Center



THE THIRD BRANCH

Newly Appointed Bankruptcy Judges Meet for Orientation

Seven newly appointed bankruptcy judges met for orientation at the Federal Judicial Center in Washington, D.C., on July 14-17 for orientation. Judges Robert E. Griffith, Chairman of the Education Committee, and Thomas O. McGinnis, first time a self-taught for su

Center's Special Educational Services Funds in Supplemental Appropriation

ChamberstoChambers

Federal Judicial Center

Chambers to Chambers is provided to advise judges of techniques and procedures found helpful by other judges.

BENCH COMMENT

1989, No. 2

Bench Comment is provided to call judges' attention to decisions that may have established their policy. It has been reviewed by the staff of the Federal Judicial Center and, at the Center's request, by a selected group of federal judges. Publication signifies that the Center

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Guideline Sentencing Update

Constitutionality

Supreme Court upholds constitutionality of Sentencing Reform Act against delegation and separation of powers challenges. In *Harrell v. United States*, the Supreme Court held, by an 8-1 vote, that although the United States Sentencing Commission is "an unusual hybrid in structure and authority," its Guidelines were not subject to constitutional challenge "on the grounds that Congress delegated excessive legislative power to the Commission or that the placement and structure of the Commission violated separation of powers."

The Court first held that "Congress' delegation of authority to the Sentencing Commission is sufficiently specific and detailed to meet constitutional requirements." Congress set forth the goals and purposes the Commission was to pursue in carrying out its mandate and "prescribed the specific tool—the guidelines system—for the Commission to use in regulating sentencing." The Court also found that Congress gave specific instructions as to how to set up the guidelines, including the determination of sentencing ranges, factors to use in formulating offense categories and in setting offense levels, and aggravating and mitigating circumstances that may or may not be considered.

The Court noted that "the Commission enjoys significant discretion in formulating guidelines. . . . But our cases do not so all suggest that delegations of this type may not carry with them the need to exercise judgment on matters of policy." In this instance the discretion granted to the Commission was proper: "Developing proportionate penalties for hundreds of different crimes by a virtually limitless array of offenders is precisely the sort of intricate, labor-intensive task for which delegation to an expert body is especially appropriate. Although Congress has delegated significant discretion to the Commission to draw judgments from its analysis of existing sentencing practice and alternative sentencing models, 'Congress is not confined to that method of executing its policy which involves the least possible delegation of discretion to administrative officers.'"

We have no doubt that in the hands of the Commission 'the criteria which Congress has supplied are wholly adequate for carrying out the general policy and purpose of the Act.'

On the separation of powers issue, the Court first held that the location of the Commission was proper. "Congress' promulgation of sentencing guidelines and to locate that body within the Judicial Branch is not unconstitutional unless Congress has vested in the Commission powers that are more appropriately performed by the other Branches or that undermine the integrity of the Judiciary." In the past the Court has held "that Congress, in some circumstances, may confer rulemaking authority on the Judicial Branch, and also that 'Congress may delegate to the Judicial Branch non-adjudicatory functions that do not trench upon the prerogatives of another Branch and that are appropriate to the central mission of the Judiciary.'" In light of this precedent and practice, the Court "discern[ed] no separation-of-powers impediment to the placement of the Sentencing Commission within the Judicial Branch. As we described at the outset, the sentencing function has long been a peculiarly shared responsibility among the Branches of government and has never been thought of as the exclusive constitutional province of any one Branch. . . . Given the consistent responsibility of federal judges to pronounce sentence within the statutory range established by Congress, we find that the role of the Commission in promulgating guidelines for the exercise of that judicial function bears considerable similarity to the role of this court in establishing rules of procedure for the cases before them. . . . Just as the rules of procedure bind judges and courts in the proper management of the cases before them, so the Guidelines bind judges and courts in the exercise of their uncommitted responsibility to pass sentence in criminal cases. In other words, the Commission's functions, like this Court's function in promulgating procedural rules, are clearly ancillary to a central element of the historically acknowledged mission of the Judicial Branch."

While conceding that "the degree of political judgment and the scope of the substantive exercise by the Commission some extent set its rulemaking powers apart from prior judicial rulemaking," the Court concluded "that the significant political nature of the Commission's work" did not preclude its placement in the Judicial Branch. "Our

Not for Citation. Guideline Sentencing Update is provided for information only. It should not be cited, either in support or otherwise.

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.

Other

1988 Audiovisual Media Catalog

Catalog of Personal Computer Software Developed Within the Federal Courts, compiled by the Innovations and Systems Development Division

1989 Catalog of Publications

Creating the Federal Judicial System, Russell R. Wheeler

The Federal Appellate Judiciary in the Third Century: Essays and Commentary Drawn from the Federal Judicial Center Bicentennial Conference of Judges of the U.S. Courts

Periodicals

The Center publishes a variety of periodicals designed for specific audiences within the federal judicial system:

Bench Comment—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

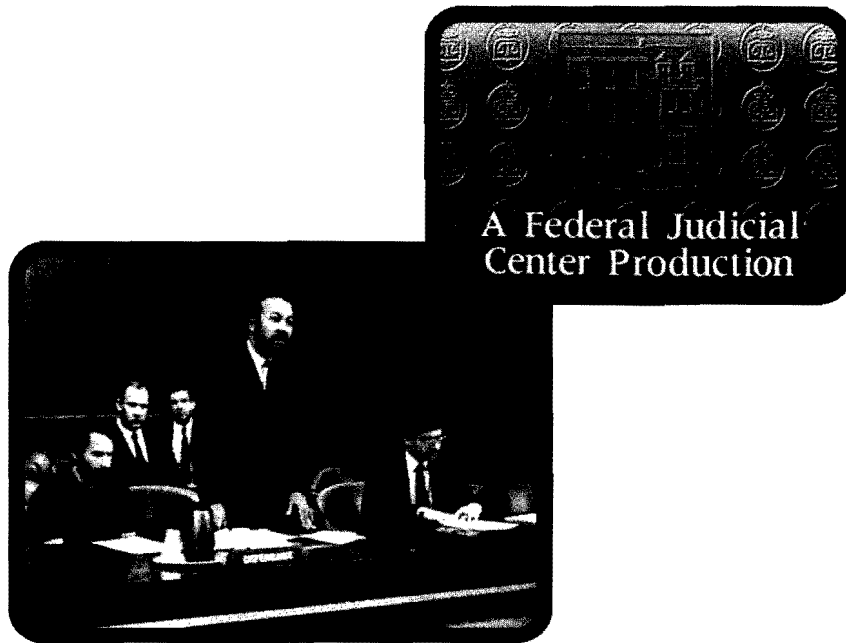
Media programs

The Center produced the following educational video programs for use in the federal courts in fiscal 1989.

- *Bankruptcy Judge Orientation*—a 14-program series of video lectures and demonstrations for use in the Center's initial, regional orientation seminars for bankruptcy judges
- *The Presentence Process*—a video lecture (by Judge Edward R. Becker, Chairman of the Judicial Conference Committee on Criminal Law and Probation Administration) and demonstration concerning the new demands placed on probation officers under guideline sentencing
- *Testifying Skills for Probation and Pretrial Services Officers*—mock courtroom scenes illustrating the do's and don't's of effective testifying (two versions: one for in-court seminars, one for self instruction)

- *Computer Security*—an instructional video program prepared in cooperation with the AO, to help it meet its statutory obligation to advise the courts of necessary court security measures
- Program for training coordinators
- Introduction to BANCAP

The Center also produced brief programs for limited use on topics ranging from the Constitutional Bicentennial Celebration (for the Judicial Conference Bicentennial Committee) to the administration of federal government employees life insurance (for the Personnel Division of the AO).



A hypothetical sentencing hearing is depicted as part of the Center's video program on the pre-sentence process.



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