

# 1992 Annual Report Federal Judicial Center



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U.S. Department of Justice  
National Institute of Justice

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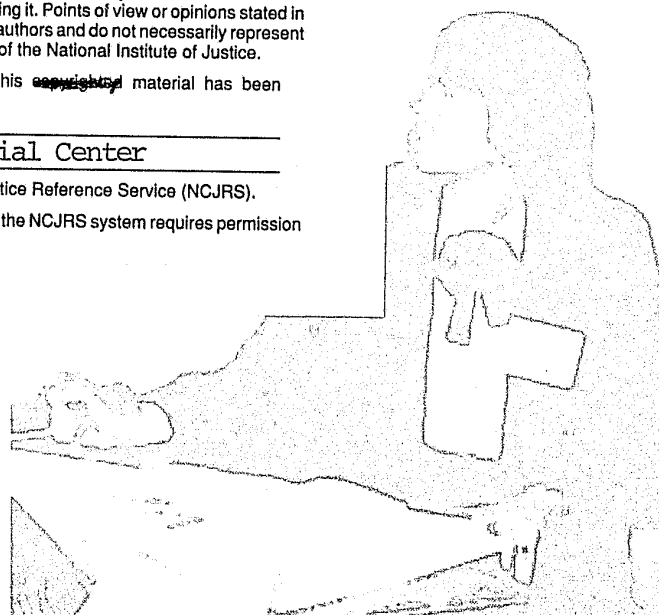
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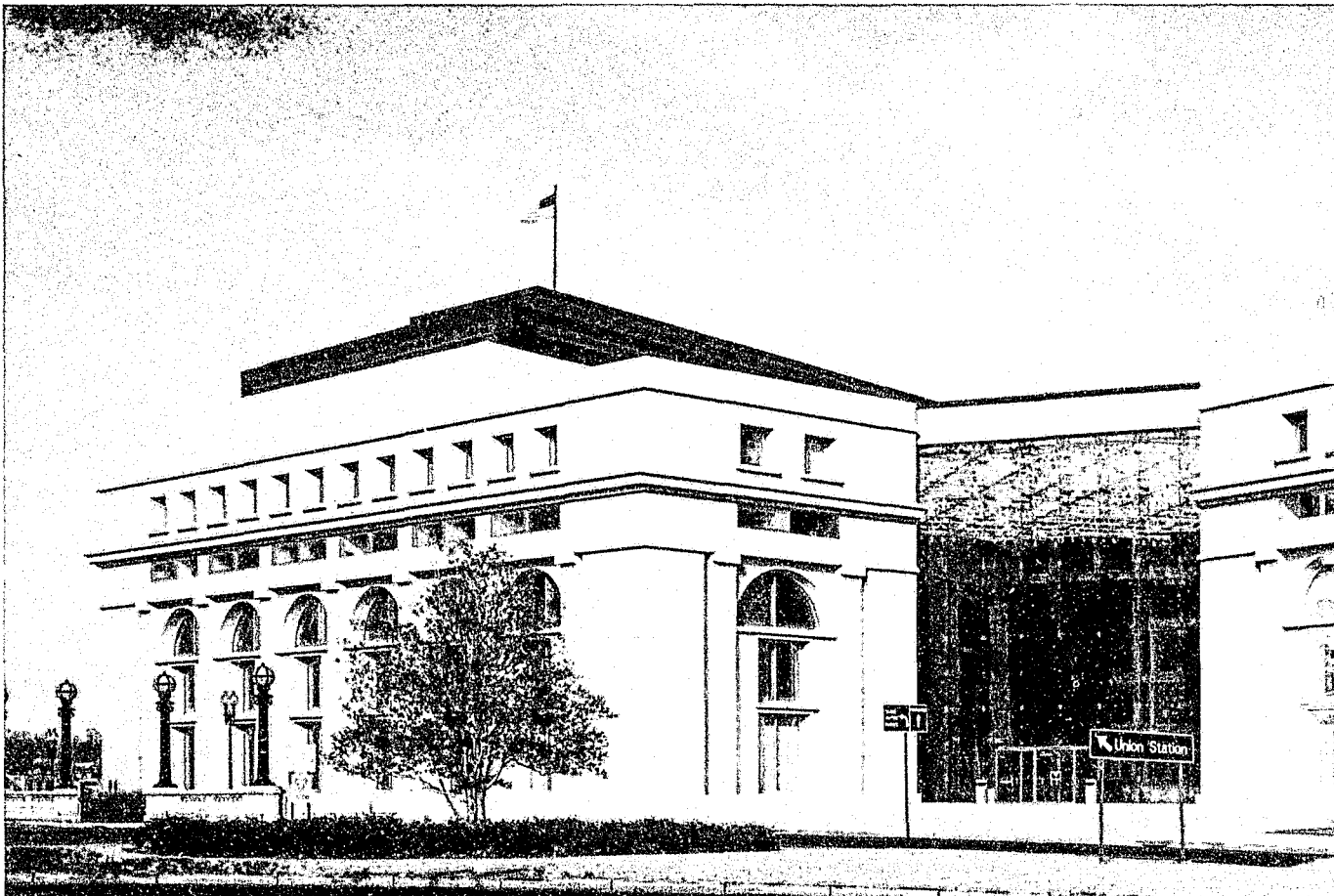
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After occupying the historic Dolley Madison House for the first 25 years of its existence, the Center moved in October to its new location in the Thurgood Marshall Federal Judiciary Building, which it shares with the Administrative Office, the U.S. Sentencing Commission, the Judicial Panel on Multidistrict Litigation, and offices for retired justices of the Supreme Court. The new building, which was named by statute in honor of the late Justice Marshall in February 1993, is located on Capitol Hill next to Union Station. It provides space for all of the Center's divisions and functions, offering the first opportunity in many years for all Center staff to be located in the same building. The building also houses the Center's new education center, which consists of a 100-seat, semicircular auditorium and three adjoining classrooms for Center seminars, workshops, and other education programs for all levels of court personnel (and, when available, for use by other judicial branch agencies). The building also contains the Center's state-of-the-art media center, with studio and editing space for its production of sophisticated educational and informational media programs.



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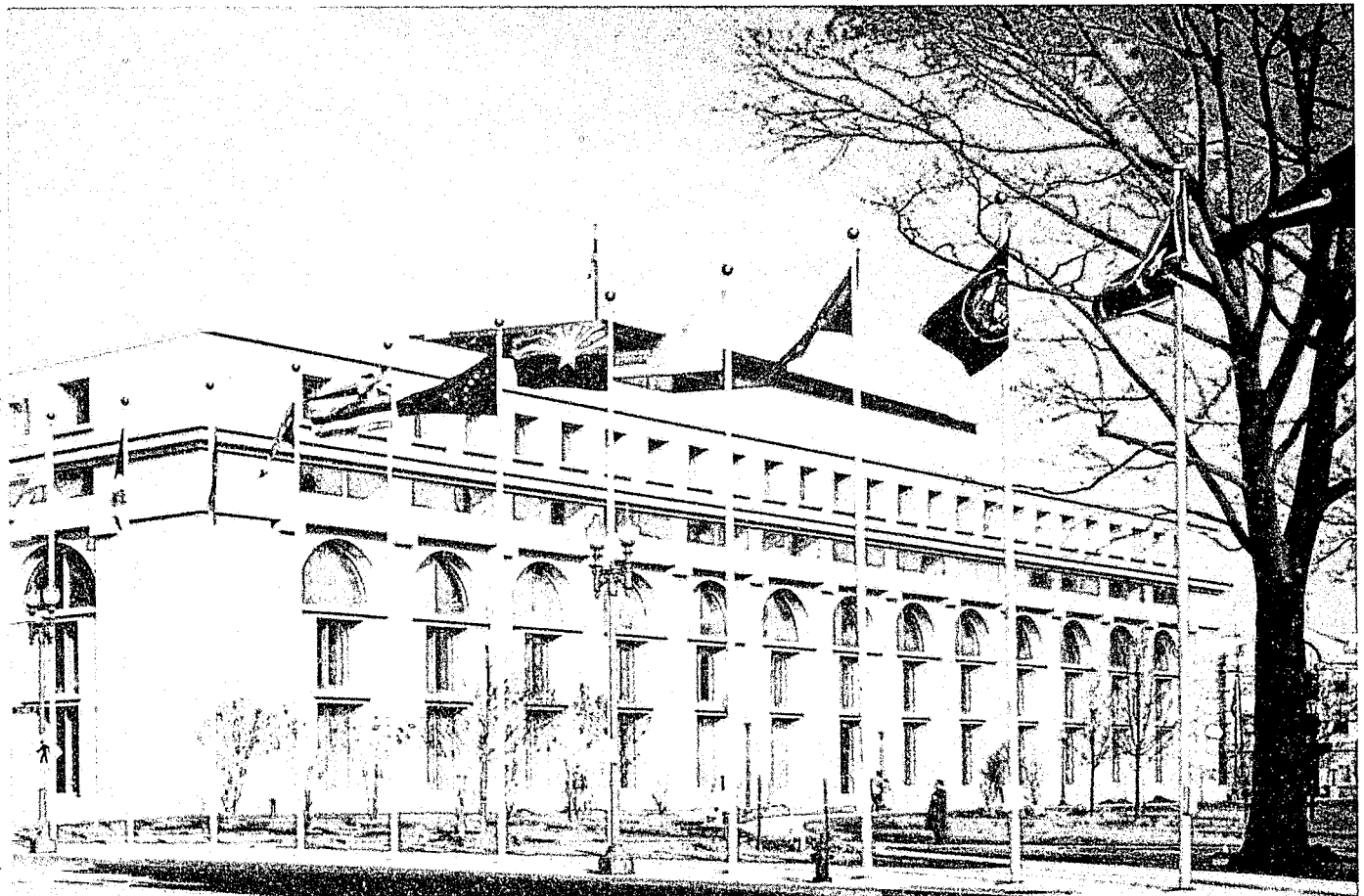
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# 1992 Annual Report Federal Judicial Center

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## **a message from the director**

Long-range planning came to the judiciary in 1990 when judges and staff, nationally and regionally, embraced the Federal Courts Study Committee's recommendation that the judicial branch "enhance its long-range planning capability." This decision put the focus on long-range planning, and both the Center and the Administrative Office of the U.S. Courts undertook concerted efforts to assist Conference committees as well as individual circuits and particular courts in long-range planning. This report describes the highlights of the Center's long-range planning activities during the past year.

In fact, however, much of the Center's work in its 25-year history has been related in one way or another to planning—to helping the federal judiciary as a whole, or individual courts, analyze trends and develop options. The statutory functions of the Federal Judicial Center include "provid[ing] . . . research, and planning assistance to the Judicial Conference of the United States and its committees." Planning, for example, has involved testing innovations as a preface to possible wider implementation. The 1981 report of the Center's Advisory Committee on Experimentation in the Law remains a basic guide to the

ethical and legal issues in this aspect of planning. Center research has evaluated procedural experiments on the appellate level (such as preargument conferencing plans) and at the trial level (such as various ADR innovations), technological innovations (such as electronic mail and alternative court reporting methods), and sentencing options (such as sentencing councils and alternative punishments). Center time studies have produced case weights to help the Judicial Conference determine the need for additional district and bankruptcy judgeships. In the 1970s, the Center undertook some of the first sophisticated efforts to forecast future caseloads. Other work has suggested alternative means of creating judgeships and analyzed other policy options.

The Center's recent experience with long-range planning in the judiciary suggests several observations about the process. For one thing, the relevance of long-range planning to the judicial branch is not intuitively obvious. After all, under the Constitution, Congress determines the courts' jurisdiction and their resources. Litigants decide whether to take their disputes to the federal court. Courts therefore are not like other institutions,

whether profit or non-profit, that have considerable autonomy in targeting objectives and deciding how to allocate resources.

But a keystone of long-range planning is questioning assumptions. And on closer examination, the judicial branch is not as powerless as one might assume—and other institutions are not as powerful as they appear. All operate under constraints of law, resources, and tradition. It is true that courts cannot drop a line of cases, as a corporation might drop a product line. But that does not mean that courts must resign themselves to whatever future others design for them. There is nothing in the federal courts' constitutional or political posture to prevent them from positing what they should be in the future, identifying relevant constraints and opportunities that might affect that future, and developing plans by which to achieve the desired future.

The essence of long-range planning is the process of goal identification, trend analysis, and strategy formulation. Planning is not gazing into a crystal ball—it is, as Peter Drucker has described it, "the application of thought, analysis, imagination, and judgment."

For the courts, like any institution, "the application of thought, analysis, imagination, and judgment" means first arriving at an understanding of mission and of the goals to implement that mission, and this goal-setting process must be open enough to accommodate the perspectives of Congress, litigants, the bar, and the public.

While the mission and goals of the federal courts are not arcane, defining them with specificity is a useful exercise that builds a framework for addressing the myriad problems the courts confront. Goals can be defined in much detail, as

the Ninth Circuit Court of Appeals has done in its long-range plan, which commits the court to quality, timeliness, and consistency of decisions, fair treatment of litigants, ready and economical access to court, a positive work environment for employees, and public understanding and confidence.

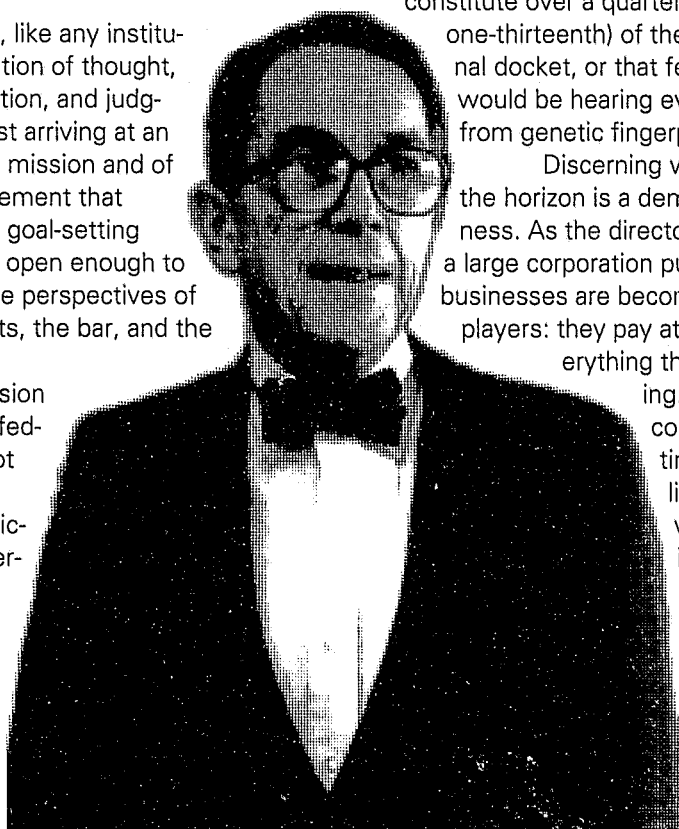
Next, courts need to think about the trends that will shape the future and affect the attainment of the stated goals. The environment of the federal courts 25 years from now may well be unrecognizable if viewed from a snapshot taken today. When the Federal Judicial Center began operations, for example, who would have thought that, a quarter century later, Congress would have created a sentencing system sharply limiting judges' discretion, a new bankruptcy court system (and revised it several times) and two new circuits, and would have adopted significant revisions in federal court governance and disciplinary procedures? Who would have anticipated the major procedural changes at the appellate and trial level, and the institutionalization of ADR? Who had an inkling 25 years ago that drug cases would

constitute over a quarter (rather than one-thirteenth) of the federal criminal docket, or that federal judges would be hearing evidence derived from genetic fingerprints?

Discerning what lies over the horizon is a demanding business. As the director of planning of a large corporation put it: "Smart businesses are becoming like poker players: they pay attention to everything that is happening."

The federal courts have sometimes paid too little attention to what is happening around them. Had the courts been more alert to growing public and legislative dissatisfaction with prevailing

The Center's Board named William W. Schwarzer as director in 1990. He is a senior judge of the U.S. District Court for the Northern District of California but now serves full-time as the Center's director.



sentencing practices, for example, they might have been able to avert the imposition of sentencing guidelines and mandatory minimum sentences. Similarly, greater responsiveness to complaints about cost and delay in civil litigation might have forestalled congressional intervention through the Civil Justice Reform Act. At the same time, long-range planning requires intelligent discrimination to filter out the false signals. They abound, carried forward on a wave of clichés: "litigation explosion," "junk science," and "war on drugs," to name a few. Things are rarely what they seem, and effective planning requires not only looking ahead but also looking closely at the present. (The point of these comments is not to criticize judicial leadership of the past. Hindsight is always 20/20, and the courts have probably done as well as many other institutions in reading trends. The point rather is that what was adequate in the past may not be good enough for the future.)

Having embarked on this process, what can the courts do to achieve their posited future? As I have said, they are not powerless. Courts have great inherent authority to manage their adjudicative functions. This authority is augmented by the rule-making power—for both local rules and national rules. The judiciary can do much to promote and influence legislation; that it has not always been successful should not be permitted to obscure its many accomplishments over time and especially in recent years. Judicial input into the legislative process is essential to inform Congress of the needs of the judicial system and the impact of proposed legislation. The judiciary can do much to influence its relations with litigants, the bar, and the general public, and how those relations develop has a powerful impact on the judiciary's ability to reach its goals. And the judiciary has control over its resources—human and material—and can do much to enhance their effective utilization.

Long-range planning, moreover, is not something simply to be left to Washington. Every court has cause to be concerned about how future developments will affect its ability to function—a concern that should go beyond courtrooms and computers. It can only benefit from a searching self-examination and an

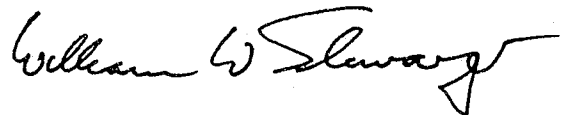
informed look toward the horizon.

Finally, long-range planning puts a premium on adaptability. In their recent book *Reinventing Government*, David Osborne and Ted Gaebler said:


Today's environment demands institutions that are extremely flexible and adaptable. It demands institutions that deliver high-quality goods and services, squeezing ever more bang out of every buck. It demands institutions that are responsive to their customers, offering choices of nonstandardized services; that lead by persuasion and incentives rather than commands; that give their employees a sense of meaning and control . . . (p.15)

Those words were not written with Article III courts in mind; they were intended to explain why in the present era of breathtaking change, bureaucratic institutions developed in the past increasingly fail us. But with only slight revisions, these words speak to the courts as well.

Long-range planning, in short, is an opportunity to prepare intelligently for an uncertain but challenging future. Planning prods us to develop informed strategies for strengthening the third branch's capacity to adapt in ways that will further its essential values.

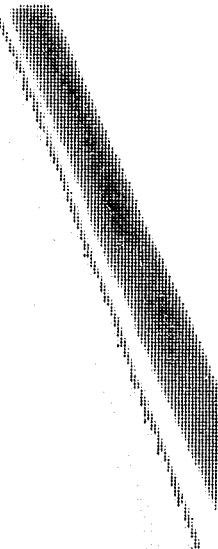


# the year in review



The Center directs many of its research and education activities to specific audiences in the judicial branch. Orientation programs for new judges and new probation and pretrial services officers, management training programs for clerks of court and other court managers, and time studies of the work of district and bankruptcy courts are examples of activities focused solely on specific types of courts and court personnel. Other Center activities have more general application, often involving judges and personnel of several or all courts. Many projects undertaken at the request of the Judicial Conference of the United States and its committees, including the Center's diverse planning activities, fall into this latter category. This 1992 annual report describes, in separate sections, Center activities that serve appellate courts, district courts, and bankruptcy courts. The remaining sections capture those aspects of Center work that serve a number of segments of the judicial branch.

Much of the work described throughout this report was performed in cooperation, coordination, and consultation with the Administrative Office of the U.S. Courts.



The Center laid over 18,000 feet of cable during the installation of its new media studio.

## activities serving the appellate courts

Helping the courts of appeals manage their heavy caseloads has long been a focus of Center activity. Research studies examine the structure and operation of the appellate courts and analyze alternative approaches. Education programs help judges and court staff develop the management skills necessary to meet their pressing workloads. Here are some highlights of these activities during 1992.

### education

Although circuit judges participated in Center circuit workshops and other programs described elsewhere in this report, Center education for the appellate courts in 1992 dealt mainly with supporting personnel. A seminar on mediation techniques for conference and settlement attorneys from seven circuits used hypothetical appellate mediation cases to enable participants to analyze common issues such as confidentiality and case selection and to enhance their case-settlement skills. The program attracted interest from several other circuits that are considering establishing mediation programs.

A workshop for clerk's office appellate case managers featured sessions on docketing, jurisdictional screening programs, and the future of automation in the courts. A four-day workshop for clerks and chief deputies included training on effective quality control systems, legal issues affecting clerk's office operations, and managing cultural diversity in the workplace. The first-ever formal meeting of deputy and assistant circuit executives offered sessions on improving human resources management skills, problem solving, and enhancing organizational communications. One program brought appellate judges and senior court managers together to develop a team approach to case and court management. In this workshop, each team developed an action plan for a specific circuit project.

### research

The Judicial Improvements Act of 1990 directed the Center to conduct major studies of (1) intercircuit conflicts that remain unresolved by the Supreme Court and (2) structural alternatives for the federal appellate courts. Congress pointed to several concerns about unresolved circuit conflicts, for example, that they may encourage non-acquiescence by federal agencies and forum shopping. In 1991, the Center delivered its report to Congress on the nature and frequency of intercircuit conflicts. Last year it moved to the question of the tolerability and persistence of unresolved intercircuit conflicts. Its research thus far indicates that at least some of the conventional wisdom about these conflicts may not be correct. The final report will be available by mid-1993.

The Center's report on structural alternatives will analyze the problems said to beset the federal appellate courts and review the numerous alternatives others have offered to restructure those courts. The project also pursues several more specific inquiries, including a comparison of the handling of appeals involving oil and gas issues in the Fifth Circuit (which uses a specialized panel) and the Tenth Circuit (which does not), and special procedures for processing prisoner prose appeals in the Sixth Circuit. The Center will deliver its final report on this project to Congress and the Judicial Conference by September 1993.



## activities serving the district courts

Three high-profile areas critical to the work of district courts continue to receive substantial Center attention: civil justice reform, sentencing and supervision of offenders, and treatment of complex scientific and technical evidentiary matters. The Center has directed special efforts at each of these areas, as well as making them major components of its orientation, continuing education, research, and planning. These special subject areas and other highlights of 1992 activities for district courts are described below.

### Civil Justice Reform Act implementation

The Civil Justice Reform Act of 1990 (the CJRA) brought national attention to the administration of justice in federal district courts. The Center has continued its work with the Judicial Conference Committee on Court Administration and Case Management in helping the courts and advisory groups to implement the Act. The Center worked with the Administrative Office in assisting the committee with its review of advisory group reports and court plans. Staff from both agencies also assisted the Conference in preparing its June 1992 CJRA report to Congress and in developing its Model Plan for Litigation Cost and Delay Reduction. A Center study of the experiences of the five CJRA demonstration districts will report the effects of each demonstration program on the costs and disposition time of civil litigation and the views and experiences of those involved in the programs.

The Act also mandates preparation of a *Manual for Litigation Management and Cost & Delay Reduction*. Working with the Committee on Court Administration and with the Administrative Office, the Center completed and published the manual at year's end. The manual reflects the results of the analyses mandated by the Act as well as the general experience of many judges. It is a guide to essentially generic litigation management techniques applicable to the entire spectrum of civil cases.

The Center also conducted two seminars for non-early implementation districts, reaching some 130 participants from 45 courts.

### sentencing and supervision of offenders

In conjunction with the Judicial Conference Committee on Criminal Law and with the cooperation of the Bureau of Prisons and the U.S. Sentencing Commission, the Center conducted sentencing institutes for the Second and Eighth Circuits at Lexington, Kentucky, and for the Third, Seventh, and D.C. Circuits at Tallahassee, Florida. Sentencing institutes are authorized by statute (28 U.S.C. § 334) for the purpose of "studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing." Participants included appellate, district, and selected magistrate judges as well as U.S. attorneys, chief U.S. probation officers, federal defenders, and selected Criminal Justice Act panel attorneys. The programs are structured to encourage interaction and exchange between all of the key actors in the federal sentencing process.

At the committee's request, the Center began a project to construct and validate a new statistical risk prediction device to replace the RPS 80 scale, which has been used for over a decade to assist probation officers in gauging the likelihood that a convicted defendant will be a recidivist.

The committee has also asked the Center to examine the use of sentencing alternatives under the current federal sentencing guidelines system. A first product of this research will be a forthcoming *FJC Directions* article describing the expanded availability of alternatives under the November 1992 amendments to the guidelines.

Sentencing-related educational programs were presented at orientation seminars for new district judges and new probation and pretrial services officers in 1992. Sentencing and supervision were the major topics at regional workshops for experienced probation and pretrial services officers and at special focus workshops and seminars on pretrial

supervision, home confinement, and drug treatment contracting. The Center, in cooperation with the AO's Probation Division, developed a curriculum and conducted train-the-trainer programs to instruct probation officers who write presentence investigation reports on Publication 107, which prescribes a new presentence format. The Center also continued its local training programs on enhanced supervision of offenders.

The Center published *Sentencing Federal Offenders for Crimes Committed Before November 1, 1987* and *The General Effect of Mandatory Minimum Prison Terms*. It continued publication of *Guideline Sentencing Update*, a periodic report on recent case law interpreting the sentencing statutes and guidelines, and released several cumulative outlines of appellate case law on sentencing-related issues.

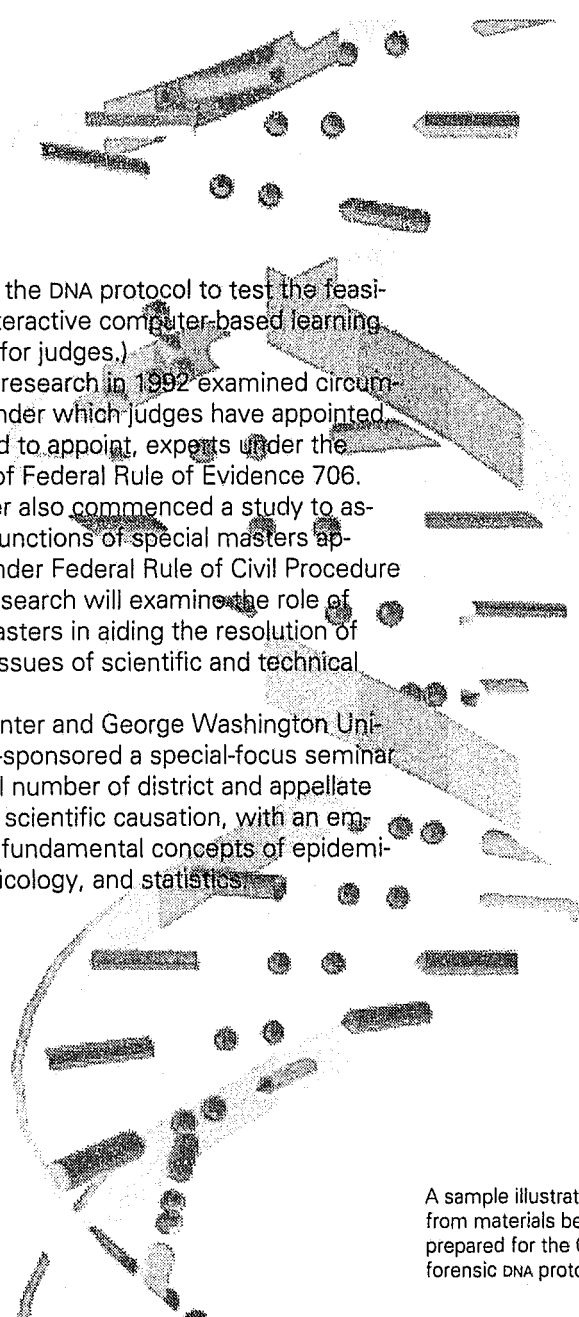
### science and technology

The Center has embarked on a multi-year education and research project to help federal judges deal effectively with scientific and technological issues arising in litigation in the context of the adversary process. One element is a "protocol" to help judges understand the issues raised by forensic DNA evidence. The protocol identifies and analyzes questions that courts may have to confront in determining the admissibility and proper use of such evidence. This protocol will serve as a model for protocols on other types of scientific and technical evidence in such areas as epidemiology, toxicology, survey research, and multiple regression analysis. The protocols will be included in a science and technology manual that will also include guidance respecting the use of court-appointed experts and special masters, and an analysis of the admissibility of expert evidence under the Federal Rules of Evidence. (The Center is

also using the DNA protocol to test the feasibility of interactive computer-based learning programs for judges.)

Center research in 1992 examined circumstances under which judges have appointed or declined to appoint experts under the authority of Federal Rule of Evidence 706. The Center also commenced a study to assess the functions of special masters appointed under Federal Rule of Civil Procedure 53. The research will examine the role of special masters in aiding the resolution of disputed issues of scientific and technical evidence.

The Center and George Washington University co-sponsored a special-focus seminar for a small number of district and appellate judges on scientific causation, with an emphasis on fundamental concepts of epidemiology, toxicology, and statistics.



A sample illustration of DNA from materials being prepared for the Center's forensic DNA protocol.

## education

Orientation programs for new district judges have long been a key component of the Center's education efforts. Groups of 12 or fewer new judges attend an initial one-week regional seminar, which uses Center-produced video programs along with discussions led by experienced judges to introduce the new judges to important procedural and case-management concepts. (The Center continually updates these video programs, and last year produced new versions on criminal pretrial and trial procedures.) Later in their first year, new district judges attend an intensive one-week program in Washington, D.C., of lectures, panel presentations, and round-table discussions on both management and substantive issues. The Center conducts a similar orientation program for new magistrate judges. Last year, two groups of new magistrate judges attended week-long orientation programs at the Center and a new video orientation series is in production.

### numbers of participants in Center orientation programs

new district judges	108
new magistrate judges	52
new bankruptcy judges	13
new probation & pretrial services officers	579
total	752

The Center also released a pamphlet, *Individual Orientation for Newly Appointed District Judges*, which provides district courts with suggestions on in-court orientation programs for new judges and includes a detailed checklist of topics to help new judges recognize areas in which they need assistance and to direct them to relevant Center, Administrative Office, and Sentencing Commission reference materials.

The Center's 1992 conference for chief district judges dealt with effective selection and use of magistrate judges, attacking civil case delay, district court/bankruptcy court relations, district court/tribal court relations, and personnel management. The conference included a special orientation seminar for

new chief judges and chief judges-to-be. A new edition of the *Deskbook for Chief Judges of U.S. District Courts* will be distributed early in 1993.

The third annual case management skills development seminar for judges with three to six years of experience used a problem-based approach, supported by Center-produced video and written materials, for analysis and discussion of case-management issues and techniques.

The Center introduced a special focus program for magistrate judges on settlement techniques. The three-and-a-half day program was built around a series of carefully sequenced simulations that allowed the participants to wrestle with ADR issues and to participate in case settlement in a variety of contexts. The program included panel discussions on the particular issues and concerns that arise when using ADR in specific substantive areas. Participants in the workshop have agreed to help plan and conduct future settlement programs.

Other education programs for district courts included:

- three regional workshops for magistrate judges on such topics as summary judgment, discovery, jury selection, the Civil Rights Act of 1991, the Americans with Disabilities Act, and asset forfeiture;
- an orientation seminar for new assistant federal defenders, a national workshop for some 250 federal defender attorneys, and a seminar for federal defender investigators and paralegals, all conducted in cooperation with the Federal Defender Education Committee and the Administrative Office;
- workshops for chief judges and clerks of court, and a similar workshop for chief judges and clerks of both district courts and bankruptcy courts, which encouraged a team approach to court management.

District judges were also the major participants in the Center's annual circuit workshops (see page 18).

## research

In addition to the CJRA, sentencing, and science and technology research, the Center also provided the following research services in 1992. It continued its district court time study, which has tracked judge and magistrate judge time spent during the lives of approximately 11,000 civil and criminal cases. The final results of this study will be used to update district court case weights, a measurement of judicial resources expended on particular types of cases that the Judicial Conference relies on when making requests for new district court judgeships, as well as for other research. While final results await termination of remaining cases in the study, its data are already being used by CJRA panels, long-range planning groups, and other judicial agencies.

The Center assisted the Administrative Office in preparing a manual for remote tele-

phonic interpreting in the federal district courts. This is part of a larger Center research effort on pilot procedures for remote telephonic court interpreting.

Research begun in 1992 on the use of special verdicts and interrogatories under Federal Rule of Civil Procedure 49 will explore the use of these two types of verdicts, with the goal of developing guidelines for their use in the district courts.

The Center continues to monitor the judiciary's pilot program on cameras in the courtroom. This program gives media organizations access to civil proceedings in two courts of appeals and six district courts. The Center will report the results of its evaluation of the program to the Judicial Conference Committee on Court Administration and Case Management by March 1994.

## **making a difference: Center workshops reduce juror costs**

Saving money and operating the courts more efficiently are two goals of Center education programs. One long-time staple of the Center's curriculum, juror utilization workshops, provides particularly striking benefits. The 13 courts that participated in the 1990 workshop, produced at a cost of \$50,000, were able to decrease the number of individuals called to jury service by more than 7,000 persons and save \$380,000 in juror fees. Of the 10 courts that participated in the 1991 workshop, 5 have reported improvements in juror utilization. Statistics are not yet available from the 13 courts that participated in 1992.

The juror utilization workshops bring together chief judges or jury judges with their clerks and jury administrators and introduce them to techniques for using prospective jurors more efficiently. The techniques include juror pooling (sharing a group of prospective jurors among several judges), staggering the times that trials start, bunching jury trials on specified days of the week, and multiple voir dire, in which one judge calls large groups of jurors together to select panels for several trials. The workshops also cover techniques for using prescreening questionnaires for prospective jurors in lengthy trials.

## activities serving the bankruptcy courts

The following describes some of the Center research, education, and planning activities that address the special needs of bankruptcy courts.

### education

Regional video and Washington, D.C., orientation programs for 13 new bankruptcy judges covered a range of topics on case management, substantive law, and "judging." Small-group discussions centered on the particular concerns of the new judges.

The Center offered three regional programs for the entire bankruptcy bench. Presentations and round-table discussions at those programs included municipal bankruptcies, the Center's bankruptcy court time study, the relationship between caseload and case management, divorce and bankruptcy, promoting gender fairness, and case management. A workshop for chief bankruptcy judges and judges from single-judge courts provided updates on automation, budget decentralization, human resources, and space, facilities, and design. The program also considered the problems of small courts and how to achieve uniform case management in multi-judge courts.

In cooperation with the University of Pennsylvania, the Center conducted a special-focus program that included sessions on health care economics into the twenty-first century, historical treatment of debt in America, and statutory authority and international law.

The Center provided workshops on management and technical training for bankruptcy court clerks and on case review and audit procedures for bankruptcy administrators and staff.

It published a *Guide to the Judicial Management of Bankruptcy Mega-Cases*, by Professor S. Elizabeth Gibson of the University of North Carolina at Chapel Hill.

### research

In cooperation with the Bankruptcy Division of the Administrative Office, the Center is working with a subcommittee of the Judicial Conference Committee on the Administration of the Bankruptcy System to develop a case-management manual for bankruptcy judges.

At the request of the committee, the Center analyzed variations among districts in their treatment of home mortgages in Chapter 13 personal bankruptcy cases. Preliminary findings from the study have provided the committee with empirical information to determine the level and character of variations in personal bankruptcy practices across the districts.

Several follow-up issues emerged from the Center's 1991 bankruptcy court time study. One is the study's treatment of Chapter 11 mega-cases. When the Center conducted the time study, the data available did not permit it to differentiate Chapter 11 filings that involved substantial amounts of assets and calculate different weights for them, nor could it determine the effect of consolidations on Chapter 11 case weights. The Administrative Office is now collecting data that will allow the Center to develop further insights on the effects of mega-cases, and the Center is designing research to provide a more reliable indicator of the impact of these cases on judges' time.

## **assisting the Judicial Conference of the United States**

The Center's work, including that described in earlier sections, is often shaped by the requests and interests of Judicial Conference committees. The following describes other major assistance provided in 1992. Many of these projects are carried on in cooperation with the Administrative Office.

### **Committee on Long-Range Planning**

The Center designed a national long-range planning seminar to introduce Judicial Conference committee chairs, chief circuit judges, and other judicial branch leaders to the concepts of long-range planning (see box). The Center has continued to assist the committee in developing priorities. It prepared and distributed a questionnaire on a broad range of planning issues to every federal judicial officer, more than 1,800 in all. (The survey will also inform the Center's mandated report to Congress on appellate restructuring alternatives.) Related surveys of state judges, attorneys who practice in both state and federal

courts, and senior federal court managers will make the views of these groups available to the federal courts' long-range planners. The Center has also launched a program to improve methods of caseload forecasting and to develop refined estimates of the caseload impact of particular forms of statutory language.

The committee's activities have stimulated the long-range planning consciousness of many courts, and the

Center has participated in a number of planning exercises in conjunction with circuit councils and circuit conferences. A collection of papers presented at the Ninth Circuit Judicial Council's planning program is being published by the Center in a booklet entitled *Long-Range Planning for Circuit Councils*.

### **Committee on Automation and Technology**

At the committee's June meeting, Center staff introduced for analysis the concept of the "virtual courthouse," a geographically dispersed courthouse in which only electronic media link judges, lawyers, parties, and staff. The Center is now working with the University of Arizona, the American Bar Association, and the American Law Institute to sponsor a 1994 conference on automation in the courts, with special reference to the virtual courthouse. The Center is also preparing demonstrations for the committee on the use of interactive multimedia educational packages for various training purposes.

### **planning for the future begins with looking at the past**

The March 1992 conference that the Center designed on long-range planning began, not by looking forward, but by looking backward. Using Center case studies in major legal areas, chief circuit judges, Judicial Conference committee chairs, and others analyzed the potential and limits of long-range planning today by asking: What if 25 years ago the federal judiciary had in place mechanisms to accomplish what Chief Justice Warren had then called "the planning function of court administration" and what Chief Justice Rehnquist recently termed "the daunting task of anticipating trends and planning for the future"?

Could the federal courts, in concert with Congress, the bar, and the public, have developed consensus on what the courts should look like some years hence?

Might the courts have perceived the implications of growing concerns about sentencing disparity? the tendency to shift what had historically been state criminal cases to federal dockets? the significant increase in appellate caseload per judge? other developments?

Could they have developed strategies to achieve futures they envisioned as desirable?

Most important, how can we apply the lessons of the last 25 years to current efforts to fashion federal court planning capabilities?

### **Committee on Court Administration and Case Management**

In addition to supporting the committee in implementing the Civil Justice Reform Act and in evaluating the cameras in the courtroom pilot program, the Center assisted the subcommittee on structure and governance

with its report to the Committee on Long-Range Planning on alternative structures for district and appellate court governance. The work included research on the duties of chief judges and circuit councils and identifying patterns of assignments of visiting district and appellate judges. Other materials the Center prepared for the subcommittee were published under the title *Origins of the Elements of Federal Court Governance*. The Center continued to evaluate the two-year experimental use of videotape as the official record of proceedings conducted in five test districts and in the two circuits that hear cases appealed from the test courtrooms. The final report is anticipated in late 1993.

#### **Committee on Criminal Law**

In addition to activities regarding sentencing and supervision, the Center began a study of pretrial release outcomes. The research will compare detained and released offenders to assess the effects of conditions of release as well as to determine how changes in screening practices and detentions have affected the crime rate among releasees.

#### **Standing Committee on Rules of Practice and Procedure**

As part of a study requested by the committee, the Center surveyed judges to determine the extent and nature of expert testimony, particular aspects of use of experts in recently concluded civil trials, and their assessment of proposed changes in the Federal Rules of Evidence.

#### **Advisory Committee on Criminal Rules**

The Center reviewed the district courts' local rules governing probation officer activities under the sentencing guidelines so as to assist the committee in developing its proposed new model rule. Further study of the actual operation of local rules is now under way at the committee's request.

#### **Committee on Judicial Resources**

The Center made a study of the law clerk needs of the judges of the U.S. Court of Federal Claims to assist the committee in responding to the court's request for additional clerks. The Center is also preparing a report, requested by the subcommittee on statistics, describing appellate caseload management procedures in the 13 federal circuits. This re-

port compares practices of the courts of appeals in using staff attorneys, deciding motions, deciding cases without arguments, and hearing cases en banc. Information on en banc practices and other less formal means of avoiding intracircuit conflict will be collected and shared with the Advisory Committee on Appellate Rules.

#### **Committee on the Judicial Branch**

The Center prepared materials for and helped the committee conduct a long-range planning session at its June meeting and has developed additional materials that the committee is using in its planning activities.

#### **Committee on the Administration of the Bankruptcy System**

In addition to working with the committee in developing a case management manual, collecting data on personal bankruptcy practices, and following up the bankruptcy court time study, the Center helped the planning subcommittee to assess the long-range planning needs of the bankruptcy system.

#### **Committee on Defender Services**

The Center studied the costs to the federal courts of providing representation to defendants who become eligible for appointment of counsel under the Criminal Justice Act as a result of the forfeiture of assets.

#### **Committee to Review Circuit Conduct and Disability Orders**

The Center examined a sample of complaints in eight circuits to assist the committee and the National Commission on Judicial Discipline and Removal. The study also documents the informal processes that the courts use to respond to complaints and will provide data for evaluation of the efficacy of those processes. The Federal Judicial History Office provided background research on the circumstances surrounding the resignation of Article III judges from 1789 to the present.

#### **Ad Hoc Committee on International Judicial Relations**

The Center assisted the committee's inquiry into how the federal judiciary can provide support for ongoing efforts to promote the rule of law abroad.

## history, state-federal, and foreign visitor programs

### **federal judicial history programs**

The Center's Federal Judicial History Office, with the support of the Supreme Court Historical Society, launched an oral history project beginning with a series of recorded interviews with retired Supreme Court Justices William J. Brennan, Jr., Lewis F. Powell, Jr. and Thurgood Marshall. In the ten months before his death, the Center taped more than 20 hours of interviews with Justice Marshall. The interviews were conducted by Professor Stephen Carter of Yale Law School.

Working with staff of the Administrative Office and the National Archives, the Center undertook a project to preserve the historically significant records of the U.S. district courts and began preparation of a manual to assist federal judges in the preservation of their chambers papers. It is also preparing a directory to the papers of federal judges in manuscript repositories.

With the support of the former Judicial Conference Committee on the Bicentennial of the Constitution, the Center is developing a new biographical directory of federal judges and a database of judicial biography.

The Center published *A Directory of Oral History Interviews Related to the Federal Courts* and the History Office's occasional newsletter, *The Court Historian*, and prepared a volume commemorating the twenty-fifth anniversary of the Center's establishment, to be published in early 1993.

The Center provided historical research for the National Commission on Judicial Discipline and Removal. It continued its work with allied organizations, such as the American Society for Legal History, in support of judicial history and provided reference service on judicial history to court staff, scholars, and the public.

### **Center support for state courts and courts of foreign countries**

In April, the Center and the State Justice Institute, along with the National Center for State Courts and the Judicial Conference Federal-State Jurisdiction Committee, co-sponsored the first National Conference on State-Federal Judicial Relations, held in Orlando, Florida. Over 325 state and federal judges, court administrators, legal scholars, and attorneys discussed major issues such as coordination of litigation in state and federal courts, the effects of diversity jurisdiction, and administrative cooperation. Conference papers were published in 78 *Virginia Law Review*, including a Center paper, *Judicial Federalism in Action: Coordination of Litigation in State and Federal Courts*.

Responding to interest expressed at the conference, the Center in April also established its Interjudicial Affairs Office to promote and support more effective state-federal judicial relations and to work with the State Justice Institute, the National Center, and other organizations that support state court systems. The Center has prepared a reference guide to assist in organizing and operating state-federal judicial councils, and it inaugurated the *State-Federal Judicial Observer*, a newsletter of information on judicial federalism.

The Center assisted the U.S. Department of State with a three-week seminar on the U.S. legal system for 20 high-ranking judicial and legal officers from the newly independent states of the former Soviet Union. It presented several brief seminars for foreign judges and legal officers, including a two-day program for five justices from the Constitutional Court of the Russian Federated Republic. In all, judges and legal officers from 95 countries received Center briefings. A Center-produced video program gives foreign visitors an overview of the structure of the federal court system and of the Center's work.

Judges from Australia and Czechoslovakia were in residence at the Center under its Visiting Foreign Judicial Fellows Program, which offers office space and other non-financial assistance to visiting foreign judges.



## education programs and information resources

Many Center activities cut across all segments of the judicial system, providing education and information to several components of the federal judicial branch as well as to public and private organizations and individuals. The Center develops and monitors the effectiveness of its educational programs, publications, and media productions through evaluations and consultation with planning and advisory committees, user groups, and Administrative Office and Sentencing Commission staff.

### interdisciplinary programs

Some Center educational programs offer judges a range of perspectives beyond the judicial disciplines. In 1992, the Center presented two programs emphasizing humanities. It co-sponsored the Harold F. Medina

integrating the humanities and science in the art of judging. A two-day program on ethics and values for judges from the Washington-Baltimore area featured sessions on justice and power, justice and society, the nature of humankind, and people and society. This program served as a pilot for a series of traveling seminars that the Center will offer in 1993 on law and ethics, critical issues in bioethics, quantitative evidence, and judicial roles in encouraging settlement.

### Judicial Education Division seminars and workshops, Jan. 1- Dec. 31, 1992

Court Personnel	Number of Seminars & Workshops	Number of Participants
Circuit and district judges	26	861
Bankruptcy judges	6	291
Magistrate judges	6	372
Federal public & community defender personnel	2	390
Staff attorneys	3	63
Civil Justice Reform Act programs	2	131
Total	45	2,108

### Court Education Division seminars and workshops, Jan. 1- Dec. 31, 1992

#### Seminars and Workshops

Court Personnel	Number of Seminars & Workshops	Number of Participants
Clerks of court and clerk's office personnel (circuit, district, bankruptcy)	12	630
Probation and pretrial services officers	33	1,260
Court training specialists	3	76
Programs for personnel in several categories	23	553
Total	71	2,519

#### In-Court Training Programs

Court Personnel	Number of Seminars and Workshops	Number of Participants
Clerks of court and clerk's office personnel (circuit, district, bankruptcy)	175	6,888
Probation and pretrial services officers	234	7,475
Programs for personnel in several categories	35	394
Total	444	14,757

### circuit workshops

The Center has long used circuit workshops for appellate and district judges from one or several circuits to provide updates on various substantive, procedural, and management topics. Judges from eight circuits participated in these Center workshops in 1992. The Center will modify the format in 1993 and offer a national workshop for appellate judges and three national workshops for district judges, and one each for bankruptcy judges and magistrate judges. This will provide judges the chance to meet and interact with judges from other parts of the country, and the larger size of these workshops will allow the Center to offer a broader selection of topics. The circuit workshop format will return in 1994.

Seminar on "The Humanities, Science, and the Art of Judging" at Princeton University for district and appellate judges, state judges, and administrative law judges. The program featured discussions on the federal courts and the future; legal and judicial developments in former Warsaw Pact nations; and

## court management and administration

Federal court managers and supervisors face special challenges in the 1990s, as the courts' workforce becomes more diversified and is expected to perform more tasks, and more different kinds of tasks, with comparatively fewer resources than in the past. Some of the Center's major management and supervisory education efforts are described below.

The Summer Institute for Senior Court Administrators provided executive training on current issues of court management, including developing staff, negotiations skills, and using managerial power and influence constructively.

A workshop for deputies-in-charge of divisional offices of the Fifth and Eleventh Circuits featured sessions on managing change, motivating and supervising difficult employees, and developing performance management systems.

The Center has augmented *FrontLine Leadership*, a commercial package, with

Center-produced video segments and a trained corps of facilitators in order to provide court-specific management training for first-line and mid-level managers. The program was conducted in 26 court units in 1992 for a total of 336 participants.

*Applied Supervision* is a 40-hour independent study package that provides basic supervisory skills training to court employees. In 1992, 635 employees completed the course.

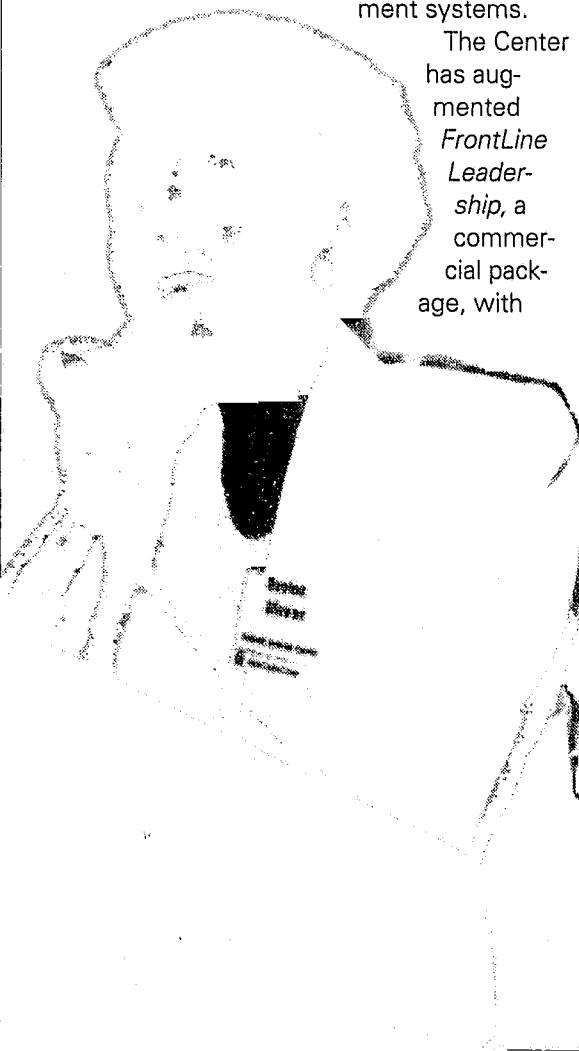
A workshop for managers in courts that implement the automated Integrated Court Management System (ICMS) provided management and supervisory training on the ICMS database for appellate, district, and bankruptcy applications.

## leadership development

Concerned about the large number of chief probation and pretrial services officers nearing retirement age, the Judicial Conference Committee on Criminal Law asked the Center to develop a comprehensive leadership development program to prepare a new generation of probation and pretrial services officers for management responsibilities. The Center responded with a rigorous three-year program, open to all officers who meet certain criteria. Although successful completion of the course does not guarantee that the graduates will be selected for leadership positions, the participants will benefit from learning critical management skills. Last year, 125 officers completed the first phase of the program, which began with a Center-produced video that welcomes participants and takes the place of an introductory seminar. A similar leadership development program for other court personnel is now in development.

## local training programs

Educational programs offered in or near the courthouse allow the Center to provide quality training at greatly reduced cost. As part of a major effort to enhance and expand local training, the Center has developed a network of more than 300 training specialists. With Center



staff orientation, assistance, and funding support, these specialists develop, deliver, and administer educational programs tailored to the particular needs of their court units. Some 11,000 participants attended 283 locally developed training programs in 1992. The Center also publishes *Connections*, a newsletter for court training specialists, judges, chief probation and pretrial services officers, and other court administrators that reports on training and education methods and techniques, training activities of national significance, management innovations, and initiatives from the Center.

The Center has in development a number of training programs that Center staff will deliver directly in the courts, thereby obviating the need for any travel by participants. These programs include negotiation and problem-solving skills for court managers and team development training for employees in a court unit.

### **tuition assistance**

In 1992, the Center ended its policy of providing small tuition grants to help employees attend courses offered by universities, colleges, and training companies. It did so partly for budgetary reasons and partly because Center programs now meet many of the needs that tuition assistance once met, and more cost-effectively.

### **information resources**

Last year the Center distributed nearly 40,000 publications to federal judges, judicial branch personnel, and others. The Center also responded to over 5,000 audiovisual loan requests from within the judicial branch.

The Center maintains a specialized collection of books and journals and published and unpublished documents relating to the work of the federal courts. Drawing from these, it serves as a national clearinghouse for information on federal judicial administration. In 1992, the Center answered nearly 1,500 requests for information from judges, court personnel, libraries, government agencies, academic institutions, research organizations, bar groups, and the media.

### **making a difference:**

#### **Center expands its reach with packaged programs for local training**

When court employees receive local training, they are often using educational materials that the Center has developed or customized for use in the federal courts. These "packaged programs" typically include written and audiovisual materials. For example, a workshop for courtroom deputies in district and bankruptcy courts includes Center-produced video panel presentations with a judge, clerk, and courtroom deputy from each type of court discussing the role of the courtroom deputy. A program on ethics for probation and pretrial services officers provides information and practice in ethical decision making. Through its "train the trainer" seminars, the Center prepares cadres of court personnel to teach specific programs in their courts. Locally delivered packaged programs in 1992 reached almost 3,600 participants. Programs on AIDS education, gender fairness, and managing diversity in the workplace are among those scheduled for development in 1993. Several packaged programs are also being prepared specifically for probation and pretrial services officers, including programs on staff safety, financial investigations, and substance abuse identification.

## publications

The following publications were either in production or released in 1992. Except as indicated, they are by Center authors.

### education manuals & research reports

*Manual for Litigation Management and Cost & Delay Reduction*

*Origins of the Elements of Federal Court Governance*

*Deskbook for Chief Judges of U.S. District Courts*

*A Guide to the Judicial Management of Bankruptcy Mega-Cases*, by Professor S. Elizabeth Gibson (University of North Carolina at Chapel Hill)

*Organizing and Using a Council of State and Federal Judges*

*Long-Range Planning for Circuit Councils*  
*Individual Orientation for Newly Appointed District Judges*

*A Directory of Oral History Interviews Related to the Federal Courts*

*Sentencing Federal Offenders for Crimes Committed Before November 1987*

*The General Effect of Mandatory Minimum Prison Terms*

### periodicals

*FJC Directions*—a magazine reporting Center activities in research and education

*Bench Comment*—recent appellate trends in civil and criminal procedure

*The Court Historian*—information on judicial history resources and programs in the circuit, district, and bankruptcy courts

*Guideline Sentencing Update*—summaries of recent decisions interpreting the Sentencing Reform Act and Sentencing Guidelines. (A companion publication, *Guideline Sentencing: An Outline of Appellate Case Law*, is a periodic cumulative outline that synthesizes the material in all *Guideline Sentencing Updates* at the time it is issued.)

*Connections*—a newsletter for court personnel that features examples of local court training and management programs of national significance, updates on Court Education Division systemwide training initiatives, and tips on training methods and techniques

*State-Federal Judicial Observer*—a newsletter containing articles and items of inter-

est to state and federal judges in support of improved state-federal judicial relations

### legal monographs

The Center has produced a series of monographs designed specifically to provide federal judges with quick overviews and bibliographies on federal legal subjects. Titles in this series include employment discrimination, immigration, patent, and copyright law. A publication on business bankruptcies will be released in early 1993. Monographs on securities law and civil rights litigation are under development.

### video productions

In addition to video programs described elsewhere in this report, the Center continued development of its *Introducing the Federal Courts* series, a five-part orientation program to help new court employees better understand their jobs and the important role they play in the effective administration of justice. The first two parts were distributed to the courts in 1991. Program one is a general introduction to the federal court system's organization, jurisdiction, and administration. Program two describes how criminal cases move through the district courts by following a hypothetical criminal case from arrest through sentencing and post-trial motions. A four-part program on the bankruptcy process is in production and will be released in 1993. Script development began on programs on the civil and appellate processes and they will go into production in 1993.

The Center's media production studio was closed in late summer to allow for the removal of equipment and installation in the new facilities. It will reopen in winter 1993.

### Center publications on WESTLAW

More than 50 Center publications are now available for on-line searching and retrieval through WESTLAW, the national computer-assisted legal research network maintained by West Publishing Co. Recent titles added to the database include *Manual for Litigation Management and Cost and Delay Reduction*, the popular *Manual on Recurring Problems in Criminal Trials*, and *A Guide to the Judicial Management of Bankruptcy Mega-Cases*.

## Federal Judicial Center Foundation Board

As authorized by statute, the Center provides staff support to the Board of the Federal Judicial Center Foundation, whose members are:

Philip W. Tone, Esq., Chicago, Ill., *Chair*  
E. William Crotty, Esq., Daytona Beach, Fla.  
Laurie L. Michel, Esq., Washington, D.C.  
Dianne M. Nast, Esq., Philadelphia, Pa.  
Robert D. Raven, Esq., Los Angeles, Cal.  
Richard M. Rosenbaum, Esq., Rochester, N.Y.  
Benjamin L. Zelenko, Esq., Washington, D.C.

## Federal Judicial Center Advisory Committees

The Center calls on advisory committees for advice and guidance when preparing educational programs and publications and gratefully acknowledges the assistance they have provided. These committees had the following membership during 1992.

### *Committee on Appellate Educational Programs*

Judge James C. Hill (11th Cir.), *Chair*  
Judge Richard D. Cudahy (7th Cir.)  
Judge David A. Nelson (6th Cir.)  
Judge Dorothy W. Nelson (9th Cir.)  
Judge James L. Ryan (6th Cir.)

### *Committee on Bankruptcy Education*

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*Chair*  
Bankruptcy Judge David H. Coar (N.D. Ill.)  
Chief Bankruptcy Judge Robert F. Hershner, Jr.  
(M.D. Ga.)  
Chief Bankruptcy Judge Larry E. Kelly (W.D.  
Tex.)  
Chief Bankruptcy Judge Lloyd King (D. Haw.)  
Professor Elizabeth Warren (University of Penn-  
sylvania Law School)  
Mr. Francis F. Szczebak (Administrative Office  
of the U.S. Courts), *ex officio*

### *Committee on the Bench Book for U.S. District Court Judges*

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

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Judge Marvin E. Aspen (N.D. Ill.)  
Judge Maryanne Trump Barry (D.N.J.)  
Judge Leonard B. Sand (S.D.N.Y.)  
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Magistrate Judge Richard W. Peterson (S.D.  
Iowa)  
Magistrate Judge Claudia Wilken (N.D. Cal.)  
Mr. Thomas Hnatowski (Administrative Office  
of the U.S. Courts), *ex officio*

*Advisory Committee for FJC History Program*

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Judge Pierre N. Leval (S.D.N.Y.)  
Dr. Richard A. Baker (Historian of the Senate)  
Professor Stephen L. Carter (Yale University)  
Professor Peter Fish (Duke University)  
Mr. Steven Flanders (Circuit Executive, 2d Cir.)  
Professor Kermit L. Hall (University of Tulsa)  
Professor J. Woodford Howard (Johns Hopkins University)  
Professor Laura Kalman (University of California)  
Mr. Michael Kunz (Clerk of Court, E.D. Pa.)  
Mr. R. Michael McReynolds (National Archives)  
Ms. Janet Wishinsky (Librarian, 7th Cir.)

*Advisory Committee on Appellate Court Clerk Education*

Mr. Leonard Green (Clerk of Court, 6th Cir.),  
*Chair*  
Ms. Kay E. Duley (Librarian, 5th Cir.)  
Mr. Patrick Fisher (Chief Deputy Clerk, 10th Cir.)  
Ms. Terri Nafisi (Assistant Circuit Executive, 9th Cir.)  
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*Advisory Committee on District Court Clerk Education*

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Mr. Robert R. Ditrollo (Clerk of Court, W.D. Tenn.)  
Mr. Stephen P. Ehrlich (Chief Deputy Clerk, D. Colo.)  
Ms. Nancy Mayer-Whittington (Clerk of Court, D.D.C.)  
Mr. John T. Shope (District Court Executive, N.D. Ga.)  
Ms. Geri M. Smith (Clerk of Court, N.D. Ohio)  
Mr. Jack L. Wagner (Clerk of Court, E.D. Cal.)

*Advisory Committee on Bankruptcy Court Clerk Education*

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Mr. Patrick G. Dewane (Clerk of the Bankruptcy Court, D. Minn.)  
Ms. Mollie C. Jones (Clerk of the Bankruptcy Court, S.D. Miss.)  
Mr. Barry K. Lander (Clerk of the Bankruptcy Court, S.D. Cal.)  
Mr. Bernard F. McCarthy (Clerk of the Bankruptcy Court, D. Mont.)  
Ms. Frances Rios de Moran (Clerk of the Bankruptcy Court, D.P.R.)  
Mr. George A. Vannah (Clerk of the Bankruptcy Court, D.N.H.)

*Training and Education Committee of the Probation and Pretrial Services Chiefs' Management Council*

Mr. Robert L. Brent (Chief U.S. Probation Officer, W.D. Mich.), *Chair*  
Mr. Daniel W. Stowers (Chief U.S. Probation Officer, M.D. Fla.)  
Mr. Barry W. Polsky (Chief U.S. Probation Officer, D. Del.)  
Mr. Glenn Baskfield (Chief U.S. Probation Officer, D. Minn.)  
Mr. James R. Behm (Chief U.S. Pretrial Services Officer, E.D. Mo.)  
Mr. Jeffrey L. Burkholder (Chief U.S. Pretrial Services Officer, S.D. Ohio)  
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Mr. John P. Meyer (Chief U.S. Probation Officer, C.D. Ill.)  
Ms. Cheryl L. Johnson (Chief Pretrial Services Clerk, S.D.N.Y.)

### **The Federal Judicial Center Board**

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Judge J. Harvie Wilkinson III, U.S. Court of Appeals for the Fourth Circuit

Judge Martin L. C. Feldman, U.S. District Court for the Eastern District of Louisiana

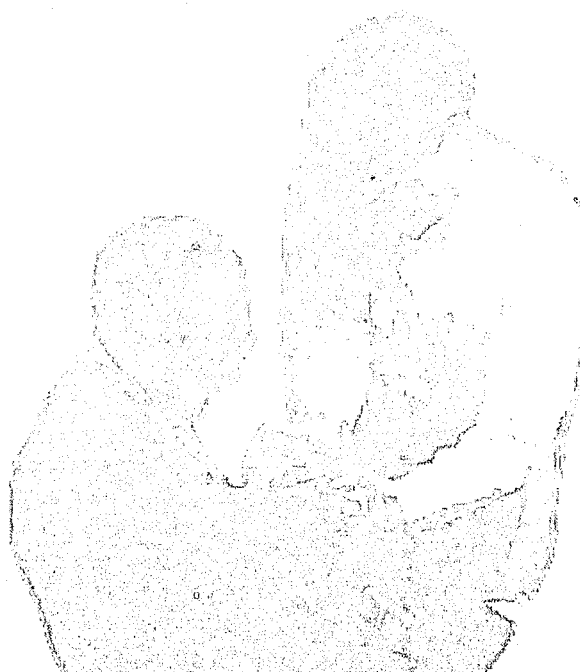
Chief Judge Diana E. Murphy, U.S. District Court for the District of Minnesota

Chief Judge Michael A. Telesca, U.S. District Court for the Western District of New York

Judge Sidney B. Brooks, U.S. Bankruptcy Court for the District of Colorado

Hon. L. Ralph Mecham, Director of the Administrative Office of the U.S. Courts

Chief Judge Telesca joined the Board in 1992, replacing Judge David D. Dowd, Jr. (N.D. Ohio), whose term expired. Also in 1992, the Board formed a committee on education and a committee on research to help focus Board assistance to Center planning.



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