

# 1991 Annual Report

Federal Judicial Center

137186

## **The Federal Judicial Center**

### **Board**

The Chief Justice of the United States, *Chair*

Judge Edward R. Becker, U.S. Court of Appeals for the Third Circuit

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

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

Judge David D. Dowd, Jr., U.S. District Court for the Northern District of Ohio

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

### **Director**

Judge William W Schwarzer

### **Deputy Director**

Russell R. Wheeler

### **Division Directors**

Gordon Bermant, Planning & Technology Division

William B. Eldridge, Research Division

Denis J. Hauptly, Judicial Education Division

Sylvan A. Sobel, Publications & Media Division

Steven A. Wolvek, Court Education Division

Federal Judicial Center, 1520 H Street, N.W., Washington, DC 20005

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# Federal Judicial Center

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U.S. Department of Justice  
National Institute of Justice

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## Introduction

This year marks the twenty-fifth anniversary of the creation of the Federal Judicial Center. Responding to the strongly felt perception that a crisis existed in the federal courts, Congress in 1967 adopted legislation establishing the Center. Chief Justice Earl Warren had long sought a separate and independent research and education agency for the federal courts to help bring about what he had called for in a speech to the American Bar Association in 1958: "improved methods of adjusting caseloads, dispatching litigation for hearing, resolving complicated issues, eliminating non-essential ones, increasing courtroom efficiency, and . . . dispatch in decision making and appeal."

In 1966, the Judicial Conference of the United States had authorized "a study of the possible need for congressional authorization of a broad program of continuing education, training, research and administration" for the federal courts. A special committee of judges appointed by the Chief Justice and chaired by retired Justice Stanley Reed drafted the legislation. President Johnson included it in a crime bill at Chief Justice Warren's request (and, it is said, in appreciation for Warren's willingness to head the commission to investigate the assassination of President Kennedy). Congress adopted the legislation in 1967.

The Center began work in the spring of 1968 under its first director, retired Justice Tom C. Clark, operating out of his Supreme Court chambers until it moved to the Dolley Madison House on Lafayette Square later that year. In the years that followed, the Center expanded to

three locations with over 140 employees. In October 1992, it will move once again to the newly constructed Federal Judiciary Building near the Capitol.

When the Center came on the scene, the federal courts stood on the threshold of a new era that would bring civil and criminal litigation unprecedented in volume and complexity. Although congestion and delay in the courts were a concern then, no one could foresee what lay ahead: the rapid growth of civil rights, class action, mass tort, and other forms of new and complex litigation; the emergence of drugs and associated crime as a major component of the workload; and a plethora of new substantive and procedural law, including vast amounts of new legislation, that profoundly changed the work of the federal courts.

In the years that followed, the Center sought to respond to the resulting challenges posed and opportunities presented. Chief Justice Warren's words spoken in 1958 have resonated as a theme of Center activity as it worked to fulfill its statutory mission of furthering "the development and adoption of improved judicial administration in the courts of the United States." From rudimentary beginnings have grown extensive, sophisticated, and effective education programs and innovative research projects.

Center education programs, once provided by a staff of two, now occupy a staff of some fifty-five professionals—educators, lawyers, and administrators. The Center has moved from the traditional lecture to using panels, participatory discussions,

problem-based presentations, and sophisticated aids such as video. Specialized units in the Center develop and present programs for different groups of judicial officers, for probation and pretrial services officers, for employees of clerks' offices, and for other supporting personnel. Specialists develop management training programs and curricula for in-court training. These programs are augmented and supported by videos and publications produced by writers, producers, and technicians at the Center.

The Center's education programs have responded to the evolving needs of judicial branch personnel. One theme that has remained constant is case management—at all levels of the judicial system. The Center was an early leader in developing and teaching methods of judicial case management, and this remains a major emphasis of Center programs, particularly now as it becomes the object of legislative initiatives. Supporting personnel education also stresses case management. Constant and dramatic changes in the law have created needs for extensive, substantive education programs. Court supporting personnel, who have now increased to almost 25,000, require a broad range of programs, from training probation and pretrial services officers in new sentencing and supervision procedures, to preparing clerks' office personnel to perform duties formerly centralized in Washington, to developing management skills for senior personnel.

Center research activities have also responded to the

changing needs of the judicial branch. The growth in the size and complexity of the caseload of federal courts created new sets of problems. Studies were directed at evaluating case management practices, at the operation of the Federal Rules of Civil Procedure, and at developing innovative ways of expediting appellate dockets. The Center developed formulas and collected information to determine case weights and accurately assess the caseload burdens of courts. In numerous projects, large and small, the Center identified problems, collected data, and evaluated solutions to the problems confronting the administration of justice in the federal courts. Now the Center's research agenda embraces new issues, such as evaluation of criminal sentencing alternatives, long-term planning methods and techniques for the federal courts, and means for dealing with issues of science and technology in the courts.

Technology has undergone revolutionary change since 1967. When the Center was created, automation in the courts was little more than a small cloud on the horizon. Now it plays a dominant role in the administra-

tion and management of the courts. The Center's role too has changed, from system design and development to focusing on applications to support education and research and long-range research into prospective technologies.

The Center is a small agency, but its impact on the administration of justice in the federal courts has been significant. This impact is in no small part due to the close working relationships between the Center, the Administrative Office of the U.S. Courts, the Judicial Conference of the United States and its committees, and, more recently, the Sentencing Commission. While the Center is separate and independent, it does not stand alone or isolated. Its purpose is to serve the judicial branch, and it provides that service through those institutions as well as directly to the personnel of the branch, frequently in response to direct requests.

Although the Center's mission is directed at the federal courts, its presence reaches beyond to the state systems and abroad. It contributes to the development of more effective relationships between the state and federal court systems. It participates in research with

other interested groups and persons. To those around the world concerned with the administration of justice, the Center is widely known as a unique institution and a source of information and counsel.

The accomplishments of the Center are testimony not only to a diligent, committed, and highly competent staff, but also to the contributions by many outside the Center—lecturers and discussion leaders, authors, planning committee members, and others. Its achievements also bespeak the interest and leadership provided by the men and women who served on its Board. The Center is particularly grateful for the leadership of Chief Justice Warren E. Burger, who carried forward his commitment to judicial modernization while chairing the Board for some nineteen years. And since 1986, Chief Justice William H. Rehnquist has given the Center his strong and unstinting support.

The Center has been blessed by outstanding directors, beginning with Justice Tom C. Clark, an early proponent of improved judicial administration, Judge Alfred P. Murrah of the Tenth Circuit (1970–1974), a forceful (and by now legendary)

advocate of effective civil and criminal pretrial procedures, Judge Walter E. Hoffman of the Eastern District of Virginia (1974–1977), a pioneer of various case management methods, Professor A. Leo Levin of the University of Pennsylvania Law School (1977–1987), a strong supporter of the application of empirical analysis to court procedures, and Judge John C. Godbold of the Eleventh Circuit (1987–1990), who introduced major innovations into the Center's education program.

As the Center enters its second quarter-century, we look forward confidently to the challenges and opportunities ahead.



January 1992

# About the Federal Judicial Center

The Federal Judicial Center is the continuing education and research arm of the federal judicial system. Congress established it by statute in 1967 as a separate organization within the judicial branch at the request of the Judicial Conference of the United States (see 28 U.S.C. §§ 620–629). Its basic policies are determined by an eight-member Board, chaired ex officio by the Chief Justice of the United States. For fiscal 1991, it was funded by a congressional appropriation of \$15,551,000 and had an authorized permanent staff of 119 employees. Its fiscal 1992 appropriation is \$17,795,000 and provides for 134 authorized permanent positions.

## Responsibilities

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 four 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." In addition, the statute directs the Center 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."

### **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 examples of such "other persons."

### **Developing recommendations about the operation and study of the federal courts**

The statute provides that the Center will present recommendations

- to the Judicial Conference and the courts 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 on ways they can improve their programs; and
- to public and private agencies for research on federal court operations.

### **Providing staff assistance to the Judicial Conference**

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

## Reporting requirements

The Center must 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.

For most of its history, the Center released its annual report in late August, reflecting the charge in the 1967 statute to submit the report "to the Judicial Conference . . . at least one month in advance of its annual [i.e., September] meeting" (28 U.S.C. § 623(a)(3)). Because the Conference now meets in the spring as well as the fall, and to put the annual report on a calendar-year basis, the Center has shifted the report's release date to the end of the calendar year, but well in advance of the Conference's spring meeting. To accommodate this change, this 1991 report covers activities from September 1990 through December 1991.

## Organization

Since September 1990, the Judicial Conference elected to membership on the Center's Board Judge Edward R. Becker of the Third Circuit and Judge J. Harvie Wilkinson III of the Fourth Circuit, Judge Martin L. C. Feldman of the Eastern District of Louisiana, and Judge Sidney B. Brooks of the District of Colorado Bankruptcy Court. They replaced Judge Monroe G. McKay of the Tenth Circuit (who became chief circuit judge, and therefore a member of the Judicial Conference and statutorily ineligible for Board membership) and Judge J. Clifford Wallace of the Ninth Circuit, Judge William C. O'Kelley of the Northern District of Georgia, and Judge Robert F. Ginsberg of the Northern District of Illinois Bankruptcy Court (whose terms expired).

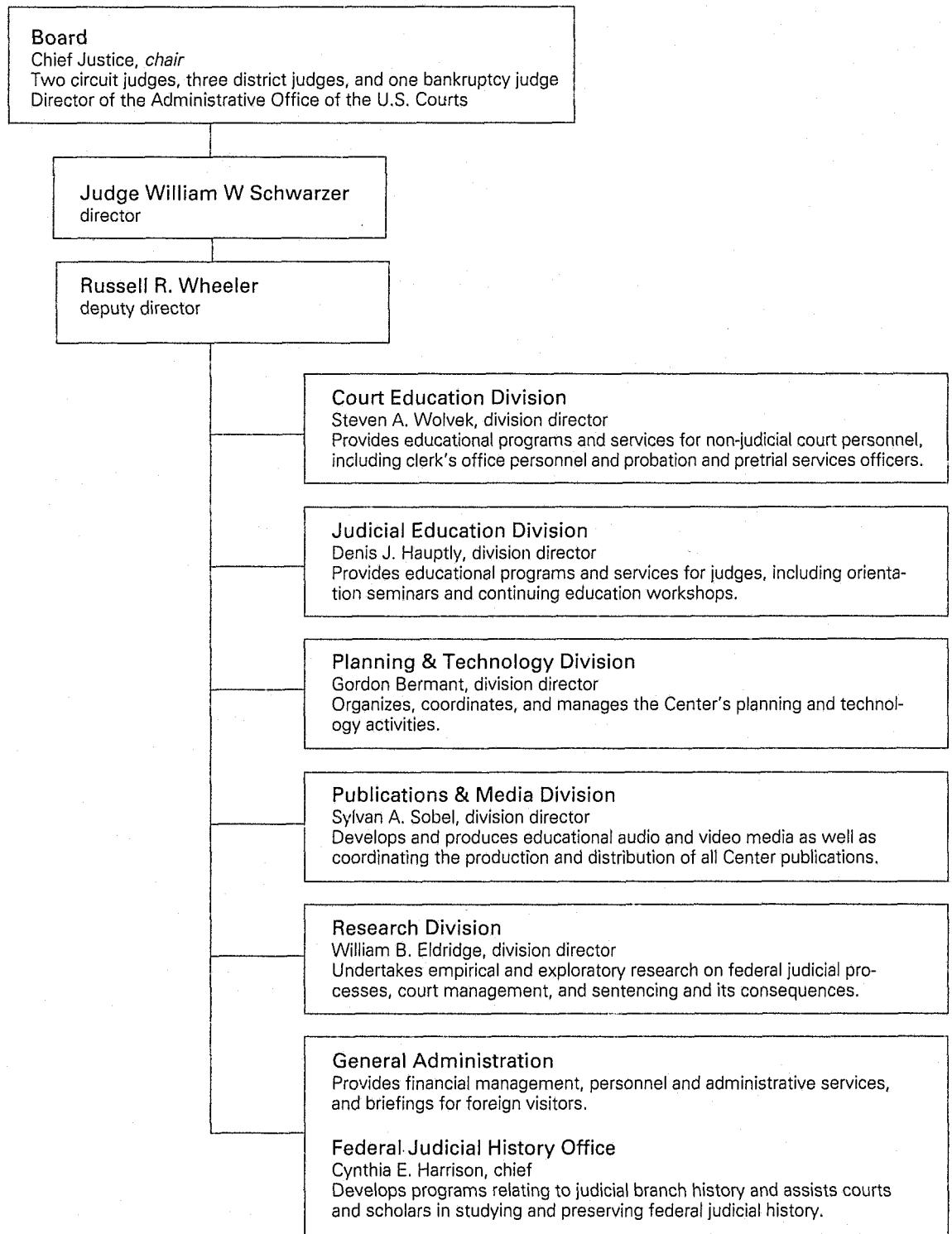
The Board appoints the Center's director and deputy director; the director appoints the Center's staff. In 1991, the Board appointed Russell R. Wheeler as deputy director, succeeding Charles W. Nihan, now the chief of the Long Range Planning Office of the Administrative Office of the U.S. Courts.

The Board also approved creation of a Judicial Education Division and a Court Education Division in place of the Continuing Education and Training Division. The Board approved a substantial expansion of the Publications Division into a Publications & Media Division, absorbing the functions of the Special Educational Services Division, which was abolished. Judge William W Schwarzer, FJC director, appointed Denis

Hauptly (formerly a special master with the U.S. Claims Court) as director of Judicial Education and Steven Wolvek (formerly deputy director of Continuing Education and Training) as director of Court Education.

In late 1990, most of the staff of the Center's Innovations and Systems Development Division was absorbed by the Administrative Office. The Center's Board determined to reorganize the division to direct its automation and technology development work toward support for the Center's education and research missions and for its administration. The Planning & Technology Division, which began its work in early 1992, will carry out this mission and will also provide research support to the Judicial Conference Committee on Automation and Technology and to the Judicial Conference Committee on Long Range Planning.

**Internal organization of the  
Federal Judicial Center (see 28  
U.S.C. §§ 620–629)**





## Location

The Center has its headquarters in Washington, D.C., in the Dolley Madison House on Lafayette Square, near the White House. Because of the need for additional space, the Research Division, the Court Education Division, and the Judicial Education Division are located in separate buildings nearby.

All Center operations will be consolidated when the Center moves to the new Federal Judiciary Building in the fall of 1992.

# Activities—September 1990 to December 1991

The work of the Federal Judicial Center in carrying out its statutory mandate to "further the development and the adoption of improved judicial administration in the courts of the United States" touches virtually all phases of the administration of justice in the federal courts — from filing a case to the end of the appeals process. This section reports highlights of the Center's work in each of the various phases of

the litigation process — pretrial activity, trials and trial management, sentencing and supervision, and appellate activity—and in federal court management and federal judicial administration. The section that follows, "Educational Programs, Information Resources, and Service Activities," reports on other aspects of Center work not tied to a particular phase of the litigation process.



*Judge William Schwarzer, director of the Center, and June Jones, an attorney in the Center's Judicial Education Division, at the seminar for district judges with three to five years' experience held in Breckenridge, Colo., in August 1991.*

## Pretrial activity

"Pretrial" is a somewhat misleading adjective. It is misleading because more than nine out of ten civil cases, and nearly as many criminal ones, are in fact resolved short of trial. For that same reason, however, it is a convenient term: "pretrial activity" describes much of what happens in federal courts and is critical to the administration of justice. Thus, much of the Center's work is directed toward enhancing the utility and effectiveness of pretrial activity. Center research often focuses on procedural rules, discovery and motion practice, settlement, and alternative dispute resolution techniques. Pretrial case management — civil and criminal — is a large part of judicial educational programs, especially orientation programs. Some activities in these areas during the past reporting period are described below.

### Civil pretrial activity

#### *Fed. R. Civ. P. 11*

In response to a request from the Judicial Conference Advisory Committee on Civil Rules, Center research staff examined the operation of Rule 11 of the Federal Rules of Civil Procedure through three separate, but related, studies. They documented all Rule 11 activity in five districts during a three-year period, surveyed federal district judges about their experiences with the rule, and analyzed all published Rule 11 opinions during 1983 to 1989. The results showed that, notwithstanding the controversy surrounding the rule, overall it was working as intended, but that some problems existed with regard to indeterminate application, disproportionate use against plaintiffs, overuse of monetary sanctions, and lack of procedural safeguards. The Advisory Committee, relying in part on the Center's study, has promulgated proposed amendments that address these and other issues.

#### *Summary judgment*

Building on prior Center studies of summary judgment practice, Center researchers studied summary judgment practice in six district courts during the years 1975, 1986, 1988, and 1989. They discovered, contrary to the conventional wisdom and their own expectations, that summary judgment activity had increased from 1975 to 1986. Equally surprising was their finding that three significant 1986 Supreme Court decisions on summary judgment did not affect the overall filing rates in 1988 or 1989, as compared with the filing rates in 1975 and 1986. The researchers also found that the rate at which summary judgment motions were granted remained relatively constant over the years. The Center also completed a monograph analyzing the decisions and practice under the summary judgment rule.

#### *Alternative dispute resolution*

The Center provided the courts and Congress with guidance on the use of alternative dispute resolution mechanisms. It published its statutorily mandated report on the ten pilot mandatory court-annexed arbitration courts and, in response to the statutory mandate to recommend whether Congress should curtail or broaden arbitration authority, recommended expanding the authority for mandatory or voluntary arbitration to all courts. The Center continued to study voluntary arbitration and sponsored a workshop primarily for the ten voluntary arbitration pilot courts.

#### *Implementation of the CJRA*

The Civil Justice Reform Act of 1990 requires that each federal district court adopt a cost and delay reduction plan by December 1993. These plans are to be adopted after the court has considered the report and recommendations of an advisory group that is representative of those who litigate in the district. The advisory groups and courts are instructed by the Act to consider adopting a variety of litigation management procedures, including discovery innovations, alternative dispute resolution programs, and firm, early trial dates. Ten pilot courts were required to adopt cost and delay reduction plans by December 1991. An additional twenty-four courts indicated their intention to seek early implementation status by adopting a plan by December 31, 1991.

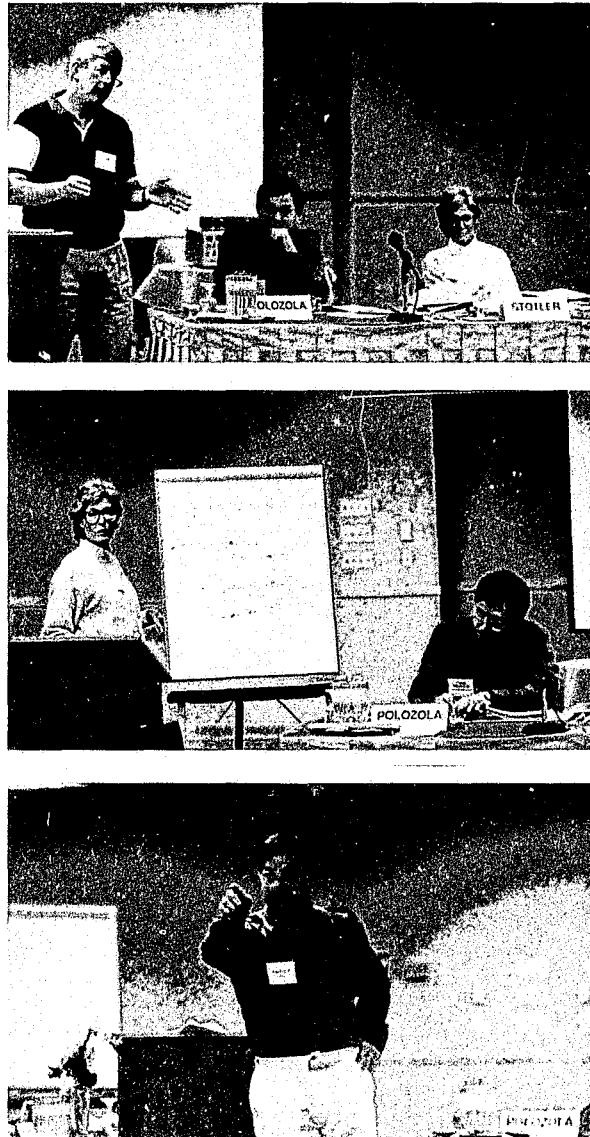
The Center has provided both educational and research assistance to the courts and advisory groups in their implementation of the Act. Through seminars and memoranda, some prepared in conjunction with the Administrative Office, the Center has provided guidance on establishing advisory groups, on analyzing the civil and criminal dockets, and on identifying the causes of cost and delay. The

Center has also worked with many advisory groups in selecting samples and designing surveys to collect data about cost and delay.

The Center also provided advisory memoranda, a videotaped panel discussion, and special seminars in May, August, and September to help the courts implement the statute. Throughout the year, the Center also provided technical assistance and advice on data analysis, questionnaire preparation, and evaluation structuring.

As the courts adopt their cost and delay reduction plans, the Center will work with the Administrative Office and the Judicial Conference Committee on Court Administration and Case Management to review the plans and to prepare a report to Congress on the experience of the early implementation districts. Based on the experiences of these courts, the Center will prepare a litigation management manual for use by federal judges.

For the five courts designated by the statute as demonstration districts, the Center will evaluate the effectiveness of the programs adopted and report this evaluation to the Judicial Conference in 1995.



*Experienced judges share their knowledge with those more recently appointed to the bench at the seminar for district judges with three to five years' experience held in Breckenridge, Colo., in August 1991. (top photo, l. to r.: Judge Michael M. Mihm (C.D. Ill.), Judge Frank J. Polozola (M.D. La.), Judge Alicemarie H. Stotler (C.D. Cal.)*

#### *Case management*

The Center presented programs on civil case management and the Civil Justice Reform Act at workshops for circuit, district, bankruptcy, and magistrate judges throughout the country. The Center's second case management seminar for district judges with from three to five years' experience, held in August 1991, focused on the pretrial management of a hypothetical complex environmental case, presented through a Center-produced video and written materials.

The Center produced a new video program on case management and civil pretrial procedure, as part of its video orientation series for new district judges. The program offers suggestions for managing Rule 16 conferences, discovery disputes, motions, and other aspects of civil pretrial procedure. It was accompanied by a booklet on the elements of case management.

As part of its video orientation series for bankruptcy judges, the Center updated a video program on settlement techniques, expanding it to include vignettes as well as a lecture.

#### *Conference on civil discovery*

In September, the Center hosted a one-day conference to help establish a research agenda to inform the debate over the desirability and direction of changes to civil discovery rules and practice. Conferees included trial lawyers, legal scholars, researchers, and representatives of interested groups such as the National Center for State Courts, the State Justice Institute, and the National Science Foundation.

The conference on research in civil discovery was the first in a planned series of conferences to assess the state of research on topics of current interest and to stimulate research within and beyond the Center.

#### **Criminal pretrial activities**

The Center began the design of a study of current issues in criminal discovery, including the effects of proposed amendments to the Federal Rules of Evidence and the Federal Rules of Criminal Procedure on discovery practices.

The Center completed an analysis of plea-bargaining problems in light of the sentencing guidelines.

It held two seminars for district court pro se law clerks.

It conducted educational programs for pretrial services officers and probation officers performing pretrial services functions.

## Trials and trial management

Trial management, like pretrial activity, occupies a prominent place on the Center's research agenda and plays a major part in the Center's orientation and continuing judicial education curricula. Programs have focused on general trial management techniques as well as on such specific topics as dealing with pro se litigants, jury utilization, racial discrimination in jury selection, attorney sanctions, and evidence issues (including scientific evidence). Many programs feature roundtable exchanges in which judges share approaches to trial management problems. Recent and ongoing trial-related activities are described in the following paragraphs.

### **Scientific and expert evidence**

Three projects focus on the use of scientific evidence, generally through expert witnesses, a subject of current controversy. One project reports and analyzes the results of interviews with judges who have used court-appointed experts. It identifies problems judges have perceived and encountered, and offers guidance and alternative approaches.

Another study in progress surveys district judges to gain the benefit of their experiences in working with expert witnesses in recent cases. This study will document the use of experts in a cross-section of recent cases and will identify problems, if any, related to the screening of expert testimony.

The Center is also designing a protocol — primarily a checklist of issues — to aid judges faced with questions concerning the admissibility of DNA evidence in civil and criminal trials.

The Center also provided special focus seminars in areas that create particular difficulties for judges: seminars on scientific issues with George Mason University's Law and Economics Center, on financial statements with the American Institute of Certified Public Accountants, and on scientific or expert evidence with the Georgetown University Law Center.

### **Trial practices**

Several current research projects examine aspects of trial management. A litigation management manual is being prepared that describes innovative approaches used by judicial officers and courts to facilitate the just and expeditious resolution of litigation. Another project involves an evaluation of a wide range of technologies for use by judges in cases requiring language interpretation. Finally, as part of the Center's current district court time study, a number of questions relevant to trial management will be examined, including the impact of case-management innovations on motions practice.

The Center held its third annual juror utilization workshop for judges, clerks, and jury administrators from across the districts.

As part of its video orientation series for new district judges, the Center produced video programs on the final pretrial conference and civil trial management and on the administration of the jury system and conduct of a jury trial.

The Center's educational programs for federal defenders dealt primarily with trial practices.

### **Recording courtroom proceedings**

Three unrelated research efforts deal with recording courtroom proceedings. The Center is monitoring and evaluating the experiences of the pilot courts participating in the Judicial Conference's Cameras in the Courtroom Project. The Center will look at the effects of cameras on litigants, jurors, attorneys, witnesses, and judges. In a two-year pilot program conducted with the Administrative Office, the Center is also examining the impact on judges and attorneys of using videotape as the official record of court proceedings. After completing a study of off-site court interpreting using the telephone, the Center is now conducting an evaluation of a wider range of technologies for such interpreting.

## Sentencing and supervision

Sentencing law and procedure are major elements of the Center's orientation programs for district judges and newly appointed probation officers. The Center also conducts other research and continuing education activities to help judges and probation officers as they fashion sentences and supervise offenders. Some of these activities since the last annual report are described below.

### Sentencing education

In conjunction with the Judicial Conference and with the cooperation of the Bureau of Prisons and the Sentencing Commission, and pursuant to 28 U.S.C. § 334, the Center conducted a sentencing institute for the Ninth Circuit. Sentencing Institutes will be conducted in calendar year 1992 for the Second and Eighth Circuits at Lexington, Kentucky, and for the Third, Seventh, and D.C. Circuits at a place to be determined.

The Center continued to publish *Guideline Sentencing Update*, a periodic update on recent case law interpreting the sentencing statutes and guidelines.

Virtually all Center circuit workshops included a session on sentencing guidelines.

### Analyzing sentencing policies

The Center assisted the Sentencing Commission by conducting research on mandatory minimum sentences. At the request of the Judicial Conference Committee on Criminal Law and Probation Administration, the Center also provided technical assistance relating to evaluations of the sentencing guidelines by the Sentencing Commission and the General Accounting Office.

### Supervising offenders

Heavy emphasis in recent years on presentence report preparation under the guideline sentencing system has diverted resources from the probation service's supervision function. To address this problem, Center staff worked this year with probation officers and the Administrative Office Probation and Pretrial Services Division to develop a new model for supervision — "Enhanced Supervision."

Center training helped in implementing Enhanced Supervision. This training program included two videotapes:

- *Catch the Vision*, which serves as an introduction to the new system, tracing its history and discussing its advantages; and
- *The Jack Kaiser Story*, which demonstrates enhanced supervision in action by following the progress of one fictional probation officer and her supervisee.

The Center developed and conducted seminars on home confinement, electronic monitoring, and drug treatment contracting. Training activities also focused on supervised release and fine collection.

The Center is also developing a revision of its risk prediction scale, which is used in assessing the level of supervision practitioners need.



*The Jack Kaiser Story* traces a fictitious supervised releasee from his initial visit to his probation officer, through some stormy adjustments to the supervision process, to a tentative start at a new life.

## Appellate activity

Commentators have for many years seen a "crisis of volume" in the federal appellate courts. The Center has devoted substantial research and education efforts to helping the courts of appeals cope with their workload. Research has examined the case management and procedural aspects of appellate litigation as well as the court management and administrative aspects of the business of the courts of appeals. Educational programs help to sharpen skills of appellate judges and court staff to handle their heavy workloads. The following highlights some of these activities during the past reporting period.

### Research

The Center began two major studies mandated by section 302 of the Judicial Improvements Act of 1990, based on recommendations of the Federal Courts Study Committee. One study explores the nature and frequency of intercircuit conflicts that remain unresolved by the Supreme Court. The report of the first phase of this study has been completed, and the results have been forwarded to Congress. The second phase of the study, focusing on the question of the tolerability of unresolved intercircuit conflicts, is currently under way.

The second study examines structural alternatives for the federal appellate courts from a variety of perspectives. That report is due to be completed and the results submitted to Congress in 1993.

### Education

Center educational programs for appellate judges and their staffs included the following:

- circuit workshop programs for appellate judges on such issues as appellate case management, mediation, and handling frivolous appeals;
- an orientation program for newly appointed circuit judges;
- publication of the *Judicial Writing Manual*, written primarily for appellate judges and their law clerks;
- programs for appellate staff attorneys that included such topics as case management, sentencing guidelines, habeas corpus, and section 1983 actions; and
- a workshop for clerical personnel on handling death penalty appeals.

## Federal court management and federal judicial administration

Center research and education also deals with court management and system maintenance. This work cuts across all phases of the litigation process. It ranges from helping middle managers be better supervisors to helping the federal judicial system's policy makers plan for the future. Some other examples of this work are described below.

### Court management

The Center presented national conferences on court management for chief district judges, clerks of court, chief probation and pretrial services officers, circuit executives, and senior staff attorneys.

The Center also conducted education programs on management, administration, and supervision. Some were national programs (e.g., the Summer Institute for Senior Court Administrators) or regional programs; others were local programs (e.g., ones using the commercially produced *FrontLine Leadership* series). On the national level, a team-building workshop was piloted for four circuit court teams consisting of the chief judge, circuit executive, circuit court clerk, and other court managers. Three seminars were also held for district and bankruptcy court teams.

The Center developed court-based video vignettes to accompany *FrontLine Leadership*. The series uses vignettes and written materials to teach management techniques to supervisors in a variety of organizations. The Center modified several of these vignettes to address management issues that arise in the federal courts. At the suggestion of the Judicial Conference Committee on Criminal Law and Probation Administration, it is also designing a three-year leadership development program for probation and pretrial services officers to prepare them to take on supervisory and management responsibilities.

### Quantifying judgeship needs

During the past year, the Center completed a study of the relative burdens that various bankruptcy proceedings impose on bankruptcy judges' time. The Judicial Conference Committee on the Operation of the Bankruptcy System used the case weights derived from the study to reassess the formula for recommending authorization of new bankruptcy judgeships.

Collection and analysis of data from the district court time study continues. The study has been expanded to generate additional information about death penalty cases and about post-guideline sentencing. The Center expects to generate new case weights in 1993, as well as other useful information about the civil litigation process.

The Center is currently studying the workload of the U.S. Claims Court and exploring options for an appellate case weighting study.

### Long range planning

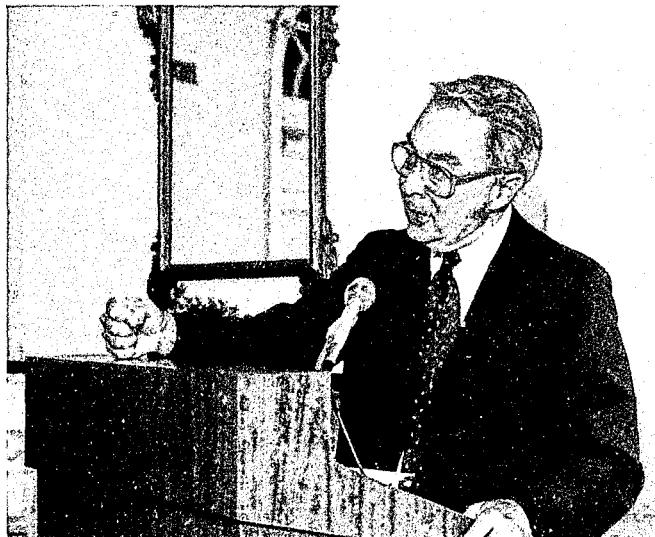
The Center is assisting the Judicial Conference Committee on Long Range Planning in assessing legislative impact and planning goals, and developing planning methods.

### Judicial evaluation

Center staff wrote a synopsis of the Judicial Evaluation Project of the Committee on the Judicial Branch, following a Judicial Conference action asking the Center to prepare such a report. The report focuses on a voluntary, confidential evaluation of district, magistrate, and bankruptcy judges by attorneys in the Central District of Illinois. The report also surveys other judicial evaluation efforts and provides a checklist for courts that wish to conduct such a program.

## **Education programs, information resources, and service activities**

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*George M. Treister, Esq., makes a point at the Center's orientation seminar for newly appointed bankruptcy judges, held in Washington, D.C., in June 1991.*

## Education programs

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Some highlights of Center education activities since the last annual report were presented above. The tables below provide a more complete summary of all educational programming.

### **Seminars and Workshops for Judicial Officers, Court Legal Staffs, and Defenders**

**October 1, 1990, through December 31, 1991**

Court Personnel	Number of Seminars and Workshops	Number of Participants
Circuit and district judges	34	1,122
Bankruptcy judges	5	395
Magistrate judges	4	284
Federal public and community defender personnel	5	540
Staff attorneys	2	63
Total	50	2,404

### **Seminars and Workshops for Court Personnel**

**October 1, 1990, through December 31, 1991**

#### *Seminars and Workshops*

Court Personnel	Number of Seminars and Workshops	Number of Participants
Clerks of court and clerk's office personnel (circuit, district, bankruptcy)	21	1,053
Probation and pretrial services officers	44	1,873
Training coordinators	3	64
Programs for personnel in more than one of the above categories*	11	223
Total	79	3,213

#### *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)	103	2,232
Probation and pretrial services officers	55	1,322
Programs for personnel in more than one of the above categories*	283	9,302
Total	441	12,856

\* This category comprises programs that are attended by, for example, a judge and a clerk from a court. Examples include the Team Development Workshops for Chief Judges and Clerks, the Presentation Skills Seminar, or the instructor training for *FrontLine Leadership*.

### **In-court training programs**

The Center has developed an extensive network of training coordinators, who are appointed by court administrators in the local courts. With the support of the Center, training coordinators develop education programs and conduct training for the employees in their respective courts.

### **Tuition assistance**

The Center provides tuition assistance grants for job-related educational programs that meet the needs of individual court employees (the grants are for up to \$350 per course). The total amount of tuition assistance funding allocated from October 1, 1990, through December 31, 1991 was \$475,466.

### **Automation training**

The Center offers training for managers of courts that implement the Integrated Case Management System (ICMS), a database for appellate, district, and bankruptcy applications. A training program is also conducted for managers in courts that rely on personal computers for daily operations.

A training program on chambers automation is being developed for presentation in 1992.



Clerks of Court Nancy Mayer-Whittington (D.D.C.) and Markus Zimmer (D. Utah) (in the foreground), along with Center training specialists Robert Fagan and Michael Siegel, at the meeting of the Clerks' National Education & Training Committees for the Appellate, District, and Bankruptcy Courts, which was held in Washington, D.C., in July 1991.  
(l. to r.: Fagan, Siegel, Mayer-Whittington, Zimmer)

## Information resources

During this reporting period, the Center distributed nearly 40,000 publications in response to requests, primarily from federal judges and judicial branch personnel. The Center also responded to over 5,000 audiovisual loan requests.

The Center maintains a specialized collection of books and journals and published and unpublished documents relating to the work of the federal courts. Drawing on these, it serves as a national clearinghouse for information on federal judicial administration. This year, the Center answered nearly 1,000 written or telephone requests for information from federal court libraries, government agencies, academic institutions, research organizations, bar groups, and the media.



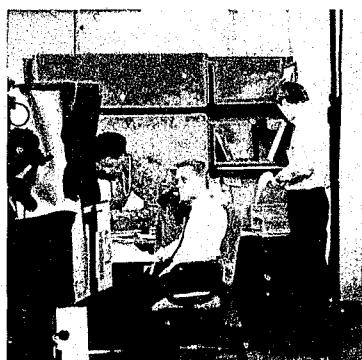
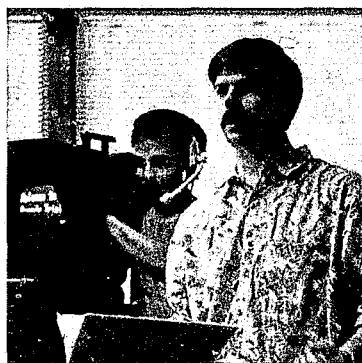
### Video productions

Since October 1990, the Center has produced eighteen video programs. In addition to specific videos mentioned elsewhere in this report, the Center produced the following:

- *Introducing the Federal Courts*, a five-part orientation series intended to help court employees better understand their jobs and the important role they play in the effective administration of justice. The first two parts were produced in 1991. Program 1 is a general introduction to the federal court system's organization, jurisdiction, and administration. Program 2 describes how criminal cases move through the district courts. It follows a hypothetical criminal case from arrest through sentencing and post-trial motions. Subsequent programs on the bankruptcy, civil, and appellate processes are in development.

- An updated video program for bankruptcy judges on retention and payment of attorneys and other professionals. This program is one of an eighteen-part video orientation series.
- A video introduction to the federal judicial system for new appellate judges and introductory programs for the Center's video orientation series for new district, bankruptcy, and magistrate judges. These programs discuss assistance available from the Center and explain the roles of national and local agencies and other entities responsible for various aspects of federal court administration.

*The Center's staff of attorney/producers and media professionals provides videos specially designed to suit the training and information needs of the federal courts.*



## Publications

### Monographs

The Center has produced a series of monographs with bibliographies designed to provide federal judges with quick overviews on federal legal subjects. A publication on copyright law was released in 1991, joining titles on employment discrimination, immigration, and patent law. Monographs on securities law, bankruptcy, and civil rights litigation are in development.

### Reports and manuals

The Center publishes a variety of educational manuals and research reports. The following publications were either in production or released in 1991.  
*Court-Annexed Arbitration in Ten District Courts*, by Barbara Meierhoefer  
*Manual on Recurring Problems in Criminal Trials 3d ed.*, by Donald Voorhees  
*Judicial Writing Manual*  
*The Elements of Case Management*, by William W Schwarzer and Alan Hirsch  
*Copyright Law*, by Robert Gorman  
*The Analysis and Decision of Summary Judgment Motions*, by William W Schwarzer, Alan Hirsch, and David Barrans  
*The General Effect of Mandatory Minimum Prison Terms*, by Barbara Meierhoefer

### Periodicals

On a periodic basis, the Center publishes and distributes the following titles to various audiences in the judiciary.  
*FJC Directions*—a magazine designed to report Center research and education activities in a concise format  
*Bench Comment*—advisories on recent appellate trends in civil and criminal procedure  
*The Court Historian*—an occasional newsletter providing information on judicial history resources and programs in the district and circuit courts  
*Guideline Sentencing Update*—summaries of recent decisions interpreting the Sentencing Reform Acts and Sentencing Guidelines  
*Connections*—a newsletter for court personnel that features examples of local court training and management programs of national significance, updates on Court Education Division system-wide training initiatives, and tips on training methods and techniques

## Service activities

### Judicial Conference of the United States

Center staff provide research and assistance to Judicial Conference committees. Major assistance was provided in 1991 to the following committees:

- Criminal Law and Probation Administration Committee: evaluating the Enhanced Supervision program and preparing a monograph on pretrial supervision; developing a training program to implement Enhanced Supervision, including video programs; studying the effects of mandatory minimum sentences; developing information and data to support proposed revisions to sentencing guidelines; and examining the Sentencing Commission and General Accounting Office evaluations of the operation of the guidelines. Work in progress for this committee includes revision of the Risk Prediction Scale (RPS 80) used in assessing the level of supervision probationers need.
- Committee on Court Administration and Case Management: assisting district courts and advisory groups in implementing the provisions of the Civil Justice Reform Act of 1990 and designing studies of the demonstration districts; generating data on costs of litigation through a survey of counsel in closed district court time study cases; formulating evaluation criteria and monitoring the Cameras in the Courtroom experiment; evaluating the videotape-as-official-record
- and the off-site-court-interpreter projects; obtaining information relevant to the governance structure of the courts; and developing a litigation management manual;
- Committee on Judicial Resources: conducting the district court time study to improve the case weighting system; studying the workload of the U.S. Claims Court; and exploring the feasibility of a study of appellate case weighting;
- Committee on the Operation of the Bankruptcy System: conducting the bankruptcy time study and initiating a study of the treatment of mortgage debt in the administration of Chapter 13 proceedings;
- Committee on the Judicial Branch: preparing a synopsis of the Judicial Evaluation Pilot Project;
- Standing Committee on Rules: initiating a study of the characteristics of expert testimony in recent civil trials;
- Advisory Committee on Civil Rules: completing a three-part study of the operation of Rule 11 in the district courts;
- Ad Hoc Committee on Asbestos Litigation: conducting research and assisting in preparation of the Committee's report;
- Committee on Codes of Conduct: preparing a two-part program on judicial ethics. Part 1 is a video lecture that explains the Code of Conduct, various statutory proscriptions, and disclosure requirements. Part 2,

prepared as a supplement to Part 1, is a panel discussion of three hypothetical cases by three judges on the Committee;

- Committee on Long Range Planning: preparing a background paper on planning techniques and concepts for the Committee's first meeting. Later in 1991, the Committee asked the Center to undertake a broad survey of those within and outside the federal judiciary on the preferred future of the federal court system.

### State-federal judicial relations

The Center provides funding to enable federal judges to attend state-federal judicial councils and offers advice on the operation of councils.

Section 620(b)(5) of title 28, United States Code, directs the Center to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice. Throughout 1991, the Center's director and other staff members helped the State Justice Institute and the National Center for State Courts, as well as other groups, plan a major conference on state-federal judicial relationships, scheduled for April 1992, to analyze points of friction and mechanisms for cooperation between state and federal courts. The Judicial Conference of the United States is also a co-sponsor.

## **Administrative Office of the U.S. Courts**

The Center and the Administrative Office formalized the coordination of their education activities with the adoption in November 1990 of the report of the AO-FJC Task Force on Third Branch Education and Training Programs and Their Management. The report identifies the educational roles of both agencies and establishes a coordinating committee of senior staff from both agencies to implement and carry forward the work of the task force.

The Center supported the training needs of the Administrative Office by, among other things

- producing a video program that explains the method by which the Administrative Office provides courts with information regarding their future staffing needs;
- producing a three-part pilot video program to acquaint newly appointed procurement clerks with the fundamentals of procurement in the federal courts, and developing additional programs in the procurement series;
- producing a video program designed to give docket clerks an overview of how the Speedy Trial Act affects their docketing responsibilities in criminal cases, to be viewed by docket clerks before they receive instruction on the ICMS Criminal docketing system at the training centers in San Antonio and Phoenix.

## **U.S. Sentencing Commission**

The Center and the Sentencing Commission developed a protocol to avoid duplication and promote coordination to aid both agencies in meeting their statutory mandates to provide education on sentencing to federal court personnel. The Center assisted the Commission in its research on mandatory minimum sentences.

## **Briefings for foreign visitors**

Center staff conducted briefings on the American court system and the work of the Center for legal and judicial officers and groups of individuals from more than eighty countries during fiscal 1991.

## **Federal Judicial History Office**

The principal activities pursued by the Federal Judicial History Office since its creation in 1989 have been:

- assisting history programs in the district and circuit courts with materials and guidelines for specific projects;
- developing research and reference tools, such as directories to oral history interviews and manuscript collections and an updated and revised biographical database;
- working with the Administrative Office and the National Archives to ensure the preservation of the record of the federal courts.

The History Office also provides research assistance to scholars and the public and works with allied organizations, like the American Society for Legal History and the Society for History in the Federal Government.

It is preparing to conduct comprehensive oral history interviews with the retired Justices of the Supreme Court, a project undertaken in cooperation with the Supreme Court Historical Society.

In October 1990, the History Office held the first federal court history seminar for court staff. Representatives from all the circuit courts and seventy-eight of the district courts heard panels on records preservation, the papers of judges, oral history programs, bicentennial commemorations, and court history program administration.

The History Office also publishes an occasional newsletter, *The Court Historian*.

## Federal Judicial Center Foundation

The Federal Judicial Center Foundation is a private, non-profit corporation established by Congress in 1988 and chartered by the District of Columbia to receive gifts made to support the work of the Center. The Foundation is governed by a seven-person Board, whose members are appointed by the Chief Justice of the United States, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. No member of the Board may be a judge. The Center provides staff assistance to the Foundation, as authorized by statute.

The current members of the Foundation's Board are:

Philip W. Tone, Esq., Chicago, Illinois, *Chair*

Robert D. Raven, Esq., Los Angeles, California

E. William Crotty, Esq., Daytona Beach, Florida

Dianne M. Nast, Esq., Philadelphia, Pennsylvania

Laurie L. Michel, Esq., Washington, D.C.

Richard M. Rosenbaum, Esq., Rochester, New York

Benjamin L. Zelenko, Esq., Washington, D.C.

The Center has identified several projects that would be advanced through the availability of non-appropriated funds received by the Foundation. Some of the projects that could be funded by gifts to the Foundation are:

- a foreign judicial fellows program under which a small number of foreign judges would come to the Center for a period of three to six months for research and study and to learn education and training techniques

- a program for state judges to come to the Center for short periods of time for purposes of research and study

- ethics and values seminars and other non-traditional seminars, such as those on science, the environment, and economics, for federal judges

- a program to support the attendance of foreign judges at regular Center seminars

In 1991, the Foundation received a generous gift from the Supreme Court Historical Society that will enable the Center's Federal Judicial History Office to conduct an oral history program of interviews with justices of the Supreme Court. The program is expected to continue for two years.

## 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 the period covered in this report.

<b>Committee on Appellate Educational Programs</b>	<b>Committee on District Judge Education</b>	<b>Committee on Bankruptcy Education</b>	<b>Committee on Magistrate Judge Education</b>
Judge James C. Hill (11th Cir.), <i>Chair</i>	Judge Roger G. Strand (D. Ariz.), <i>Chair</i>	Bankruptcy Judge Robert E. Ginsberg (N.D. Ill.), <i>Chair</i>	Magistrate Judge Aaron E. Goodstein (E.D. Wis.), <i>Chair</i>
Judge Richard D. Cudahy (7th Cir.)	Chief Judge Alexander Harvey II (D. Md.)	District Judge Alice M. Batchelder (N.D. Ohio)	Magistrate Judge Robert B. Collings (D. Mass.)
Judge David A. Nelson (6th Cir.)	Judge Maryanne Trump Barry (D.N.J.)	Chief Bankruptcy Judge Glen E. Clark (D. Utah)	Magistrate Judge Tommy G. Miller (E.D. Va.)
Judge Dorothy W. Nelson (9th Cir.)	Judge J. Owen Forrester (N.D. Ga.)	Chief Bankruptcy Judge Robert F. Hershner, Jr. (M.D. Ga.)	Magistrate Judge Richard W. Peterson (S.D. Iowa)
	Judge Frank J. Polozola (M.D. La.)	Chief Bankruptcy Judge Larry Kelly (W.D. Tex.)	Magistrate Judge Claudia Wilken (N.D. Cal.)
		Chief Bankruptcy Judge Lloyd King (N.D. Cal.)	Mr. John Thomas Jones (Administrative Office of the U.S. Courts), <i>ex officio</i> (deceased)
		Professor Elizabeth Warren (University of Pennsylvania Law School)	
		Mr. Francis F. Szczebak (Administrative Office of the U.S. Courts), <i>ex officio</i>	
<b>Committee on the Bench Book for U.S. District Court Judges</b>	<b>Advisory Committee for the FJC History Program</b>		
Judge Wm. Terrell Hodges (M.D. Fla.), <i>Chair</i>	Chief Judge William C. O'Kelley (N.D. Ga.)		
Judge William B. Enright (S.D. Cal.)	Judge Pierre N. Leval (S.D.N.Y.)		
Chief Judge John F. Grady (N.D. Ill.)	Dr. Richard A. Baker (Historian of the Senate)		
Judge A. David Mazzone (D. Mass.)	Professor Peter Fish (Duke University)		
Judge Aubrey E. Robinson, Jr. (D.D.C.)	Professor Kermit L. Hall (University of Florida)		
	Professor J. Woodford Howard (Johns Hopkins University)		
	Mr. Michael Kunz (Clerk of Court, E.D. Pa.)		
	Mr. R. Michael McReynolds (National Archives)		
	Mr. Chet Orloff (9th Circuit Judicial History Society)		
	Professor Mary K. Bonsteel Tachau (University of Louisville) (deceased)		