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SENATE

REPORT
104–366

FEDERAL COURTS IMPROVEMENT ACT OF 1996—S. 1887

SEPTEMBER 9, 1996.—Ordered to be printed

Mr. HATCH, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1887]

The Committee on the Judiciary, to which was referred the bill (S. 1887) to make improvements in the operation and administration of the Federal courts, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

CONTENTS

The bill, as amended follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Courts Improvement Act of 1996".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—CRIMINAL LAW AND CRIMINAL JUSTICE AMENDMENTS

SEC. 101. NEW AUTHORITY FOR PROBATION AND PRETRIAL SERVICES OFFICERS.

(a) PROBATION OFFICERS.—Section 3603 of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8)(B);

(2) by redesignating paragraph (9) as paragraph (10); and

(3) by inserting after paragraph (8) the following new paragraph:

"(9) if approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe; and".

(b) PRETRIAL SERVICES OFFICERS.—Section 3154 of title 18, United States Code, is amended—

(1) by redesignating paragraph (13) as paragraph (14); and

(2) by inserting after paragraph (12) the following new paragraph:

"(13) If approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe.".

SEC. 102. TORT CLAIMS ACT AMENDMENTS RELATING TO LIABILITY OF FEDERAL PUBLIC DEFENDERS.

Section 2680 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(o) Any claim for money damages for injury, loss of liberty, loss of property, or personal injury or death arising from malpractice or negligence of an officer or employee of a Federal Public Defender Organization in furnishing representational services under section 3006A of title 18.".

TITLE II—JUDICIAL PROCESS IMPROVEMENTS

SEC. 201. DUTIES OF MAGISTRATE JUDGE ON EMERGENCY ASSIGNMENT.

The first sentence of section 636(f) of title 28, United States Code, is amended by striking out "(a) or (b)" and inserting in lieu thereof "(a), (b), or (c)".

SEC. 202. CONSENT TO TRIAL IN CERTAIN CRIMINAL ACTIONS.

(a) AMENDMENTS TO TITLE 18.—(1) Section 3401(b) of title 18, United States Code, is amended—

(A) by inserting ", other than a petty offense," in the first sentence after "misdemeanor"; and

(B) by striking out the third sentence and inserting in lieu thereof the following: "The magistrate judge may not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the magistrate judge and expressly and specifically waives trial, judgment, and sentencing by a district judge. Any such consent and waiver shall be made in writing or orally on the record.".

(2) Section 3401(g) of title 18, United States Code, is amended by striking out the first sentence and inserting in lieu thereof the following: "The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title.".

(b) AMENDMENTS TO TITLE 28.—Section 636(a) of title 28, United States Code, is amended—

(1) by striking out ", and" at the end of paragraph (3) and inserting in lieu thereof a semicolon;

(2) by redesignating paragraph (4) as paragraph (5) and by striking out "or infraction" in such paragraph and inserting in lieu thereof ", other than a petty offense,"; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) the power to enter a sentence for a petty offense; and".

SEC. 203. VENUE IN CIVIL ACTIONS.

(a) IN GENERAL.—Section 1392 of title 28, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 1392. Property in different districts in same State";

(2) by striking out subsection (a); and

(3) in subsection (b) by striking out "(b)".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 87 of title 28, United States Code, is amended by amending the item relating to section 1392 to read as follows:

"1392. Property in different districts in same State.".

SEC. 204. REGISTRATION OF JUDGMENTS FOR ENFORCEMENT IN OTHER DISTRICTS.

(a) IN GENERAL.—Section 1963 of title 28, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 1963. Registration of judgments for enforcement in other districts";

(2) in the first sentence—

(A) by striking out "district court" and inserting in lieu thereof "court of appeals, district court, bankruptcy court,"; and

(B) by striking out "such judgment" and inserting in lieu thereof "the judgment"; and

(3) by adding at the end thereof the following new undesignated paragraph:

"The procedure prescribed under this section is in addition to other procedures provided by law for the enforcement of judgments.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 125 of title 28, United States Code, relating to section 1963 is amended to read as follows:

"1963. Registration of judgments for enforcement in other districts.".

SEC. 205. VACANCY IN CLERK POSITION; ABSENCE OF CLERK.

(a) IN GENERAL.—Section 954 of title 28, United States Code, is amended to read as follows:

"§ 954. Vacancy in clerk position; absence of clerk

"When the office of clerk is vacant, the deputy clerks shall perform the duties of the clerk in the name of the last person who held that office. When the clerk is incapacitated, absent, or otherwise unavailable to perform official duties, the deputy clerks shall perform the duties of the clerk in the name of the clerk. The court may designate a deputy clerk to act temporarily as clerk of the court in his or her own name.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 57 of title 28, United States Code, relating to section 954 is amended to read as follows:

"954. Vacancy in clerk position; absence of clerk.".

SEC. 206. DIVERSITY JURISDICTION.

(a) IN GENERAL.—Section 1332 of title 28, United States Code, is amended—

(1) in subsection (a) by striking out "$50,000" and inserting in lieu thereof "$75,000"; and

(2) in subsection (b) by striking out "$50,000" and inserting in lieu thereof "$75,000".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 90 days after the date of enactment of this Act.

SEC. 207. BANKRUPTCY ADMINISTRATOR PROGRAM.

(a) APPOINTMENT OF TRUSTEES.—Until the amendments made by subtitle A of title II of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note; Public Law 99–554; 100 Stat. 3097) become effective in a judicial district and apply to a case, a bankruptcy administrator appointed to serve

in the district pursuant to section 302(d)(3)(I) of such Act, as amended by section 317(a) of the Federal Courts Study Committee Implementation Act of 1990 (Public Law 101–650; 104 Stat. 5115), shall appoint the trustees, examiners, and standing trustees notwithstanding the references in those sections of title 11, United States Code, to appointments by the court.

(b) STANDING TRUSTEES.—A bankruptcy administrator who has appointed a standing trustee pursuant to subsection (a) of this section shall fix the standing trustee's maximum annual compensation and percentage fee, subject to the limitations set out in sections 1202 and 1302 of title 11, United States Code, as amended by section 110 of the Federal Employee Pay Comparability Act of 1990 (Public Law 101–509; 104 Stat. 1427, 1452). The bankruptcy administrator shall fix the maximum annual compensation and percentage fee notwithstanding the references in those sections of title 11, United States Code, to the court's fixing them.

(c) SERVICE AS TRUSTEE.—A bankruptcy administrator may serve as and perform the duties of a trustee in a case under chapter 7 of title 11, United States Code, if none of the members of the panel of private trustees is disinterested and willing to serve as trustee in the case. A bankruptcy administrator may serve as and perform the duties of a trustee or standing trustee in cases under chapter 12 or chapter 13 of title 11, United States Code, if necessary.

(d) APPOINTMENT OF COMMITTEES.—Until the amendments made by subtitle A of title II of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 become effective in a judicial district and apply to a case, the bankruptcy administrator appointed to serve in the district shall appoint the committees of creditors and equity security holders provided in section 1102 of title 11, United States Code. The bankruptcy administrator shall appoint the committees notwithstanding the references in those sections of title 11, United States Code, to appointments by the court.

SEC. 208. REMOVAL OF CASES AGAINST THE UNITED STATES AND FEDERAL OFFICERS OR AGENCIES.

(a) IN GENERAL.—Section 1442 of title 28, United States Code, is amended—

(1) in the section heading by inserting "**or agencies**" after "**officers**"; and

(2) in subsection (a)—

(A) in the matter preceding paragraph (1) by striking out "persons"; and

(B) in paragraph (1) by striking out "Any officer of the United States or any agency thereof, or person acting under him, for any act under color of such office" and inserting in lieu thereof "The United States or any agency thereof or any officer (or any person acting under that officer) of the

United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 28, United States Code, is amended by amending the item relating to section 1442 to read as follows:

"1442. Federal officers and agencies sued or prosecuted.".

SEC. 209. APPEAL ROUTE IN CIVIL CASES DECIDED BY MAGISTRATE JUDGES WITH CONSENT.

Section 636 of title 28, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (3) by striking out "In this circumstance, the" and inserting in lieu thereof "The";

(B) by striking out paragraphs (4) and (5); and

(C) by redesignating paragraphs (6) and (7) as paragraphs (4) and (5); and

(2) in subsection (d) by striking out ", and for the taking and hearing of appeals to the district courts,".

SEC. 210. REPORTS BY JUDICIAL COUNCILS RELATING TO MISCONDUCT AND DISABILITY ORDERS.

Section 332 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) No later than January 31 of each year, each judicial council shall submit a report to the Administrative Office of the United States Courts on the number and nature of orders entered under this section during the preceding calendar year that relate to judicial misconduct or disability.".

SEC. 211. PROTECTIVE ORDERS; SEALING OF CASES; DISCLOSURE OF INFORMATION.

(a) SHORT TITLE.—This section may be cited as the "Sunshine in Litigation Act of 1996".

(b) PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.—Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1659. Protective orders and sealing of cases and settlements relating to public health or safety

"(a)(1) A court shall enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making particularized findings of fact that—

"(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

"(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a

specific and substantial interest in maintaining the confidentiality of the information or records in question; and

"(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

"(2) No order entered in accordance with the provisions of paragraph (1) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

"(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

"(c)(1) No agreement between or among parties in a civil action filed in a court of the United States may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

"(2) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law.".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1658 the following:

"1659. Protective orders and sealing of cases and settlements relating to public health or safety.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of the enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

TITLE III—JUDICIARY PERSONNEL ADMINISTRATION, BENEFITS, AND PROTECTIONS

SEC. 301. SENIOR JUDGE CERTIFICATION.

(a) RETROACTIVE CREDIT FOR RESUMPTION OF SIGNIFICANT WORKLOAD.—Section 371(f)(3) of title 28, United States Code, is amended by striking out "is thereafter ineligible to receive such a certification." and inserting in lieu thereof "may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge

may not receive credit for the same work for purposes of certification for more than 1 year.".

(b) AGGREGATION OF CERTAIN WORK FOR PARTIAL YEARS.—Section 371(f)(1) of title 28, United States Code, is amended by adding at the end of subparagraph (D) the following: "In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.".

SEC. 302. REFUND OF CONTRIBUTION FOR DECEASED DEFERRED ANNUITANT UNDER THE JUDICIAL SURVIVORS' ANNUITIES SYSTEM.

Section 376(o)(1) of title 28, United States Code, is amended by striking out "or while receiving 'retirement salary'," and inserting in lieu thereof "while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section,".

SEC. 303. JUDICIAL ADMINISTRATIVE OFFICIALS RETIREMENT MATTERS.

(a) DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—(1) Section 611(b) of title 28, United States Code, is amended—

(A) in the first undesignated paragraph by striking out "who has served at least fifteen years and" and inserting in lieu thereof "who has at least 15 years of service and has"; and

(B) in the second undesignated paragraph by striking out "who has served at least ten years," and inserting in lieu thereof "who has at least 10 years of service,".

(2) Section 611(c) of title 28, United States Code, is amended—

(A) by striking out "served at least fifteen years," and inserting in lieu thereof "at least 15 years of service,"; and

(B) by striking out "served less than fifteen years," and inserting in lieu thereof "less than 15 years of service,".

(3) Section 611(d) of title 28, United States Code, is amended by inserting "a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff director or chief counsel for the majority or the minority of a committee or subcommittee of the Senate or House of Representatives," after "Congress,".

(b) EMPLOYEES OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—(1) Section 627(c) of title 28, United States Code, is amended—

(A) in the first undesignated paragraph by striking out "who has served at least fifteen years and" and in-

serting in lieu thereof "who has at least 15 years of service and has"; and

(B) in the second undesignated paragraph by striking out "who has served at least ten years," and inserting in lieu thereof "who has at least 10 years of service,".

(2) Section 627(d) of title 28, United States Code, is amended—

(A) by striking out "served at least fifteen years," and inserting in lieu thereof "at least 15 years of service,"; and

(B) by striking out "served less than fifteen years," and inserting in lieu thereof "less than 15 years of service,".

(3) Section 627(e) of title 28, United States Code, is amended by inserting "a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff director or chief counsel for the majority or the minority of a committee or subcommittee of the Senate or House of Representatives," after "Congress,".

SEC. 304. BANKRUPTCY JUDGES REAPPOINTMENT PROCEDURE.

Section 120 of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98–353; 98 Stat. 344), is amended—

(1) in subsection (a) by adding at the end thereof the following new paragraph:

"(3) When filling vacancies, the court of appeals may consider reappointing incumbent bankruptcy judges under procedures prescribed by regulations issued by the Judicial Conference of the United States."; and

(2) in subsection (b) by adding at the end thereof the following: "All incumbent nominees seeking reappointment thereafter may be considered for such a reappointment, pursuant to a majority vote of the judges of the appointing court of appeals, under procedures authorized under subsection (a)(3).".

SEC. 305. CARRYING OF FIREARMS.

(a) IN GENERAL.—Chapter 21 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 464. Carrying of firearms by judicial officers

"(a) A judicial officer of the United States is authorized to carry firearms, whether concealed or not, under regulations promulgated by the Judicial Conference of the United States.

"(b)(1) The regulations promulgated by the Judicial Conference under subsection (a) shall—

"(A) require a demonstration of a judicial officer's proficiency in the use and safety of firearms as a pre-

requisite to the carrying of firearms under the authority of this section; and

"(B) make appropriate provisions for the carrying of firearms by judicial officers who are under the protection of United States Marshals while away from United States courthouses.

"(2) On the request of the Judicial Conference, the Department of Justice (including each agency of the Department) shall cooperate with the Judicial Conference in providing firearms training and other services to assist judicial officers in securing such proficiency.

"(c) For purposes of this section, the term 'judicial officer of the United States' means—

"(1) a justice or judge of the United States as defined in section 451 of this title in regular active or retired from regular active service;

"(2) a justice or judge of the United States who has retired from the judicial office under section 371(a) of this title for—

"(A) a 1-year period following such justice's or judge's retirement; or

"(B) a longer period of time if approved by the Judicial Conference of the United States when exceptional circumstances warrant;

"(3) a United States bankruptcy judge;

"(4) a full-time or part-time United States magistrate judge;

"(5) a judge of the United States Court of Federal Claims;

"(6) a judge of the United States District Court of Guam;

"(7) a judge of the United States District Court for the Northern Mariana Islands;

"(8) a judge of the United States District Court of the Virgin Islands; or

"(9) an individual who is retired from one of the judicial positions described under paragraphs (3) through (8) to the extent provided for in regulations of the Judicial Conference of the United States.

"(d) Notwithstanding section 46303(c)(1) of title 49, nothing in this section authorizes a judicial officer of the United States to carry a dangerous weapon on an aircraft or other common carrier."

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 21 of title 28, United States Code, is amended by adding at the end thereof the following:

"464. Carrying of firearms by judicial officers.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act.

SEC. 306. TECHNICAL CORRECTION RELATED TO COMMENCEMENT DATE OF TEMPORARY JUDGESHIPS.

Section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 104 Stat. 5101; 28 U.S.C. 133 note) is amended by adding at the end thereof the following: "For districts named in this subsection for which multiple judgeships are created by this Act, the last of those judgeships filled shall be the judgeship created under this subsection.".

SEC. 307. FULL-TIME STATUS OF COURT REPORTERS.

Section 753(e) of title 28, United States Code, is amended by inserting after the first sentence the following: "For the purposes of subchapter III of chapter 83 of title 5 and chapter 84 of such title, a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter under the preceding sentence.".

SEC. 308. COURT INTERPRETERS.

Section 1827 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(l) Notwithstanding any other provision of this section or section 1828, the presiding judicial officer may appoint a certified or otherwise qualified sign language interpreter to provide services to a party, witness, or other participant in a judicial proceeding, whether or not the proceeding is instituted by the United States, if the presiding judicial officer determines, on such officer's own motion or on the motion of a party or other participant in the proceeding, that such individual suffers from a hearing impairment. The presiding judicial officer shall, subject to the availability of appropriated funds, approve the compensation and expenses payable to sign language interpreters appointed under this section in accordance with the schedule of fees prescribed by the Director under subsection (b)(3) of this section.".

SEC. 309. TECHNICAL AMENDMENT RELATED TO COMMENCEMENT DATE OF TEMPORARY BANKRUPTCY JUDGESHIPS.

Section 3(b) of the Bankruptcy Judgeship Act of 1992 (Public Law 102–361; 106 Stat. 965; 28 U.S.C. 152 note) is amended in the first sentence by striking out "date of the enactment of this Act" and inserting in lieu thereof "appointment date of the judge named to fill the temporary judgeship position".

SEC. 310. CONTRIBUTION RATE FOR SENIOR JUDGES UNDER THE JUDICIAL SURVIVORS' ANNUITIES SYSTEM.

Section 376(b)(1) of title 28, United States Code, is amended to read as follows:

"(b)(1) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her sal-

ary a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

"(A) of a justice or judge of the United States retired from regular active service under section 371(b) or section 372(a) of this title,

"(B) of a judge of the United States Court of Federal Claims retired under section 178 of this title, or

"(C) of a judicial official on recall under section 155(b), 373(c)(4), 375, or 636(h) of this title,

shall be an amount equal to 2.2 percent of retirement salary.".

SEC. 311. PROHIBITION AGAINST AWARDS OF COSTS, INCLUDING ATTORNEY'S FEES, AND INJUNCTIVE RELIEF AGAINST A JUDICIAL OFFICER.

(a) NONLIABILITY FOR COSTS.—Notwithstanding any other provision of law, no judicial officer shall be held liable for any costs, including attorney's fees, in any action brought against such officer for an act or omission taken in such officer's judicial capacity, unless such action was clearly in excess of such officer's jurisdiction.

(b) PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS.—Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended by inserting before the period at the end thereof ", except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction".

(c) CIVIL ACTION FOR DEPRIVATION OF RIGHTS.—Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended by inserting before the period at the end of the first sentence: ", except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable".

TITLE IV—JUDICIAL FINANCIAL ADMINISTRATION

SEC. 401. INCREASE IN CIVIL ACTION FILING FEE.

(a) FILING FEE INCREASE.—Section 1914(a) of title 28, United States Code, is amended by striking out "$120" and inserting in lieu thereof "$150".

(b) DISPOSITION OF INCREASE.—Section 1931 of title 28, United States Code, is amended—

(1) in subsection (a) by striking out "$60" and inserting in lieu thereof "$90"; and

(2) in subsection (b)—

(A) by striking out "$120" and inserting in lieu thereof "$150"; and

(B) by striking out "$60" and inserting in lieu thereof "$90".

(c) EFFECTIVE DATE.—This section shall take effect 60 days after the date of the enactment of this Act.

SEC. 402. INTERPRETER PERFORMANCE EXAMINATION FEES.

(a) IN GENERAL.—Section 1827(g) of title 28, United States Code, is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

"(5) If the Director of the Administrative Office of the United States Courts finds it necessary to develop and administer criterion-referenced performance examinations for purposes of certification, or other examinations for the selection of otherwise qualified interpreters, the Director may prescribe for each examination a uniform fee for applicants to take such examination. In determining the rate of the fee for each examination, the Director shall consider the fees charged by other organizations for examinations that are similar in scope or nature. Notwithstanding section 3302(b) of title 31, the Director is authorized to provide in any contract or agreement for the development or administration of examinations and the collection of fees that the contractor may retain all or a portion of the fees in payment for the services. Notwithstanding paragraph (6) of this subsection, all fees collected after the effective date of this paragraph and not retained by a contractor shall be deposited in the fund established under section 1931 of this title and shall remain available until expended.".

(b) PAYMENT FOR CONTRACTUAL SERVICES.—Notwithstanding sections 3302(b), 1341, and 1517 of title 31, United States Code, the Director of the Administrative Office of the United States Courts may include in any contract for the development or administration of examinations for interpreters (including such a contract entered into before the date of the enactment of this Act) a provision which permits the contractor to collect and retain fees in payment for contractual services in accordance with section 1827(g)(5) of title 28, United States Code.

SEC. 403. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.

(a) IN GENERAL.—(1) Chapter 123 of title 28, United States Code, is amended by adding after section 1931 the following new section:

"§ 1932. Judicial Panel on Multidistrict Litigation

"The Judicial Conference of the United States shall prescribe from time to time the fees and costs to be charged and collected by the Judicial Panel on Multidistrict Litigation.".

(2) The table of sections for chapter 123 of title 28, United States Code, is amended by adding after the item relating to section 1931 the following:

"1932. Judicial Panel on Multidistrict Litigation.".

(b) RELATED FEES FOR ACCESS TO INFORMATION.—Section 303(a) of the Judiciary Appropriations Act, 1992 (Public Law 102–140; 105 Stat. 810; 28 U.S.C. 1913 note) is amended in the first sentence by striking out "1926, and 1930" and inserting in lieu thereof "1926, 1930, and 1932".

SEC. 404. DISPOSITION OF FEES.

(a) DISPOSITION OF ATTORNEY ADMISSION FEES.—For each fee collected for admission of an attorney to practice, as prescribed by the Judicial Conference of the United States pursuant to section 1914 of title 28, United States Code, $30 of that portion of the fee exceeding $20 shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code. Any portion exceeding $5 of the fee for a duplicate certificate of admission or certificate of good standing, as prescribed by the Judicial Conference of the United States pursuant to section 1914 of title 28, United States Code, shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.

(b) DISPOSITION OF BANKRUPTCY COMPLAINT FILING FEES.—For each fee collected for filing an adversary complaint in a bankruptcy proceeding, as established in Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule prescribed by the Judicial Conference of the United States pursuant to section 1930(b) of title 28, United States Code, the portion of the fee exceeding $120 shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect 60 days after the date of the enactment of this Act.

TITLE V—FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

SEC. 501. PARTIES' CONSENT TO BANKRUPTCY JUDGE'S FINDINGS AND CONCLUSIONS OF LAW.

Section 157(c)(1) of title 28, United States Code, is amended to read as follows:

"(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected. A party shall be deemed to consent to the findings of fact and conclusions of law submitted by a bankruptcy judge unless the party files a timely objection. If a timely objection is not filed, the proposed findings of fact and conclu-

sions of law submitted by the bankruptcy judge shall become final and the bankruptcy judge shall enter an appropriate order thereon.".

SEC. 502. QUALIFICATION OF CHIEF JUDGE OF COURT OF INTERNATIONAL TRADE.

(a) IN GENERAL.—Chapter 11 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 258. Chief judges; precedence of judges

"(a)(1) The chief judge of the Court of International Trade shall be the judge of the court in regular active service who is senior in commission of those judges who—

"(A) are 64 years of age or under;

"(B) have served for 1 year or more as a judge of the court; and

"(C) have not served previously as chief judge.

"(2)(A) In any case in which no judge of the court meets the qualifications under paragraph (1), the youngest judge in regular active service who is 65 years of age or over and who has served as a judge of the court for 1 year or more shall act as the chief judge.

"(B) In any case under subparagraph (A) in which there is no judge of the court in regular active service who has served as a judge of the court for 1 year or more, the judge of the court in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

"(3)(A) Except as provided under subparagraph (C), the chief judge serving under paragraph (1) shall serve for a term of 7 years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge.

"(B) Except as provided under subparagraph (C), a judge of the court acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge meets the qualifications under paragraph (1).

"(C) No judge of the court may serve or act as chief judge of the court after attaining the age of 70 years unless no other judge is qualified to serve as chief judge under paragraph (1) or is qualified to act as chief judge under paragraph (2).

"(b) The chief judge shall have precedence and preside at any session of the court which such judge attends. Other judges of the court shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

"(c) If the chief judge desires to be relieved of the duties as chief judge while retaining active status as a judge of the court, the chief judge may so certify to the Chief Justice of the United States, and thereafter the chief judge of the court shall be such other judge of the court who is

qualified to serve or act as chief judge under subsection (a).

"(d) If a chief judge is temporarily unable to perform the duties as such, such duties shall be performed by the judge of the court in active service, able and qualified to act, who is next in precedence.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 11 of title 28, United States Code, is amended—

(1) in section 251 by striking out subsection (b) and redesignating subsection (c) as subsection (b);

(2) in section 253—

(A) by amending the section heading to read as follows:

"§ 253. Duties of chief judge.";

and

(B) by striking out subsections (d) and (e); and

(3) in the table of sections for chapter 11 of title 28, United States Code—

(A) by amending the item relating to section 253 to read as follows:

"253. Duties of chief judge.";

and

(B) by adding at the end thereof the following:

"258. Chief judges; precedence of judges.".

(c) APPLICATION.—(1) Notwithstanding the provisions of section 258(a) of title 28, United States Code (as added by subsection (a) of this section), the chief judge of the United States Court of International Trade who is in office on the day before the date of enactment of this Act shall continue to be such chief judge on or after such date until any one of the following events occurs:

(A) The chief judge is relieved of his duties under section 258(c) of title 28, United States Code.

(B) The regular active status of the chief judge is terminated.

(C) The chief judge attains the age of 70 years.

(D) The chief judge has served for a term of 7 years as chief judge.

(2) When the chief judge vacates the position of chief judge under paragraph (1), the position of chief judge of the Court of International Trade shall be filled in accordance with section 258(a) of title 28, United States Code.

SEC. 503. JUDICIAL COST-OF-LIVING ADJUSTMENTS.

Section 140 of the resolution entitled "A Joint Resolution making further continuing appropriations for the fiscal year 1982, and for other purposes.", approved December 15, 1981 (Public Law 97–92; 95 Stat. 1200; 28 U.S.C. 461 note) is repealed.

TITLE VI—MISCELLANEOUS

SEC. 601. PARTICIPATION IN JUDICIAL GOVERNANCE ACTIVITIES BY DISTRICT, SENIOR, AND MAGISTRATE JUDGES.

(a) JUDICIAL CONFERENCE OF THE UNITED STATES.—Section 331 of title 28, United States Code, is amended by striking out the second undesignated paragraph and inserting in lieu thereof the following:

"The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit and shall serve as a member of the Judicial Conference of the United States for a term of not less than 3 successive years nor more than 5 successive years, as established by majority vote of all circuit and district judges of the circuit. A district judge serving as a member of the Judicial Conference may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title.".

(b) BOARD OF THE FEDERAL JUDICIAL CENTER.—Section 621 of title 28, United States Code, is amended—

(1) in subsection (a) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) two circuit judges, three district judges, one bankruptcy judge, and one magistrate judge, elected by vote of the members of the Judicial Conference of the United States, except that any circuit or district judge so elected may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title but shall not be a member of the Judicial Conference of the United States; and"; and

(2) in subsection (b) by striking out "retirement," and inserting in lieu thereof "retirement pursuant to section 371(a) or section 372(a) of this title,".

SEC. 602. THE DIRECTOR AND DEPUTY DIRECTOR OF THE ADMINISTRATIVE OFFICE AS OFFICERS OF THE UNITED STATES.

Section 601 of title 28, United States Code, is amended by adding at the end thereof the following: "The Director and Deputy Director shall be deemed to be officers for purposes of title 5, United States Code.".

SEC. 603. REMOVAL OF ACTION FROM STATE COURT.

Section 1446(c)(1) of title 28, United States Code, is amended by striking out "petitioner" and inserting in lieu thereof "defendant or defendants".

SEC. 604. FEDERAL JUDICIAL CENTER EMPLOYEE RETIREMENT PROVISIONS.

Section 627(b) of title 28, United States Code, is amended—

(1) in the first sentence by inserting "Deputy Director," before "the professional staff"; and

(2) in the first sentence by inserting "chapter 84 (relating to the Federal Employees' Retirement System)," after "(relating to civil service retirement),".

SEC. 605. ABOLITION OF THE SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973.

(a) ABOLITION OF THE SPECIAL COURT.—Section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719) is amended in subsection (b)—

(1) by inserting "(1)" before "Within 30 days after"; and

(2) by adding at the end thereof the following new paragraph:

"(2) The special court referred to in paragraph (1) of this subsection is abolished effective 90 days after the date of enactment of the Federal Courts Improvement Act of 1996. On such effective date, all jurisdiction and other functions of the special court shall be assumed by the United States District Court for the District of Columbia. With respect to any proceedings that arise or continue after the date on which the special court is abolished, the references in the following provisions to the special court established under this subsection shall be deemed to refer to the United States District Court for the District of Columbia:

"(A) Subsections (c), (e)(1), (e)(2), (f) and (g) of this section.

"(B) Sections 202 (d)(3), (g), 207 (a)(1), (b)(1), (b)(2), 208(d)(2), 301 (e)(2), (g), (k)(3), (k)(15), 303 (a)(1), (a)(2), (b)(1), (b)(6)(A), (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), 304 (a)(1)(B), (i)(3), 305 (c), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(8), (e), (f)(1), (f)(2)(B), (f)(2)(D), (f)(2)(E), (f)(3), 306 (a), (b), (c)(4), and 601 (b)(3), (c) of this Act (45 U.S.C. 712 (d)(3), (g), 717 (a)(1), (b)(1), (b)(2), 718(d)(2), 741 (e)(2), (g), (k)(3), (k)(15), 743 (a)(1), (a)(2), (b)(1), (b)(6)(A), (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), 744 (a)(1)(B), (i)(3), 745 (c), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(8), (e), (f)(1), (f)(2)(B), (f)(2)(D), (f)(2)(E), (f)(3), 746 (a), (b), (c)(4), 791 (b)(3), (c)).

"(C) Sections 1152(a) and 1167(b) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105(a), 1115(a)).

"(D) Sections 4023 (2)(A)(iii), (2)(B), (2)(C), (3)(C), (3)(E), (4)(A) and 4025(b) of the Conrail Privatization Act (45 U.S.C. 1323 (2)(A)(iii), (2)(B), (2)(C), (3)(C), (3)(E), (4)(A), 1324(b)).

"(E) Section 24907(b) of title 49, United States Code.

"(F) Any other Federal law (other than this subsection and section 605 of the Federal Courts Improvement Act of 1996), Executive order, rule, regulation, delegation of authority, or document of or relating to the special court as previously established under paragraph (1) of this subsection.".

(b) APPELLATE REVIEW.—(1) Section 209(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719) is amended by striking out the paragraph following paragraph (2) and inserting in lieu thereof the following:

"(3) An order or judgment of the United States District Court for the District of Columbia in any action referred to in this section shall be reviewable in accordance with sections 1291, 1292, and 1294 of title 28, United States Code.".

(2) Section 303 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743) is amended by striking out subsection (d) and inserting in lieu thereof the following:

"(d) APPEAL.—An order or judgment entered by the United States District Court for the District of Columbia pursuant to subsection (c) of this section or section 306 shall be reviewable in accordance with sections 1291, 1292, and 1294 of title 28, United States Code.".

(3) Section 1152 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105) is amended by striking out subsection (b) and inserting in lieu thereof the following:

"(b) APPEAL.—An order or judgment of the United States District Court for the District of Columbia in any action referred to in this section shall be reviewable in accordance with sections 1291, 1292, and 1294 of title 28, United States Code.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719) is further amended—

(A) in subsection (g) by inserting "or Court of Appeals for the District of Columbia Circuit" after "Supreme Court"; and

(B) by striking out subsection (h).

(2) Section 305(d)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745(d)) is amended by striking out "a judge of the United States district court with respect to such proceedings and such powers shall include those of".

(3) Section 1135(a)(8) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1104(8)) is amended to read as follows:

"(8) 'Special court' means the judicial panel established under section 209(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719(b)(1)) or, with respect to any proceedings that arise or continue after the panel is abolished pursuant to section 209(b)(2) of such Act, the United States District Court for the District of Columbia.".

(4) Section 1152 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105) is further amended by striking out subsection (d).

(d) PENDING CASES.—Effective 90 days after the date of enactment of this Act, any case pending in the special court established under section 209(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719(b)) shall be assigned to the United States District Court for the District of Columbia as though the case had originally been filed in that court. The amendments made by subsection (b) of this section shall not apply to any final order or judgment entered by the special court for which—

(1) a petition for writ of certiorari has been filed before the date on which the special court is abolished; or

(2) the time for filing a petition for writ of certiorari has not expired before that date.

(e) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) of this section shall take effect 90 days after the date of enactment of this Act and, except as provided in subsection (d), shall apply with respect to proceedings that arise or continue after such effective date.

SEC. 606. PLACE OF HOLDING COURT IN THE DISTRICT COURT OF UTAH.

(a) NORTHERN DIVISION.—Section 125(1) of title 28, United States Code, is amended by inserting "Salt Lake City and" before "Ogden".

(b) CENTRAL DIVISION.—Section 125(2) of title 28, United States Code, is amended by inserting ", Provo, and St. George" after "Salt Lake City".

SEC. 607. EXCEPTION OF RESIDENCY REQUIREMENT FOR DISTRICT JUDGES APPOINTED TO THE SOUTHERN DISTRICT AND EASTERN DISTRICT OF NEW YORK.

Section 134(b) of title 28, United States Code, is amended—

(1) by inserting "the Southern District of New York, and the Eastern District of New York," after "the District of Columbia,"; and

(2) by inserting at the end the following: "Each district judge of the Southern District of New York and the Eastern District of New York may reside within 20 miles of the district to which he or she is appointed.".

SEC. 608. EXTENSION OF CIVIL JUSTICE EXPENSE AND DELAY REDUCTION REPORTS ON DEMONSTRATION AND PILOT PROGRAMS.

(a) DEMONSTRATION PROGRAM.—Section 104(d) of the Civil Justice Reform Act of 1990 (28 U.S.C. 471 note) is amended by striking out "December 31, 1996," and inserting in lieu thereof "June 30, 1997,".

(b) PILOT PROGRAM.—Section 105(c)(1) of the Civil Justice Reform Act of 1990 (28 U.S.C. 471 note) is amended by striking out "December 31, 1996," and inserting in lieu thereof "June 30, 1997,".

SEC. 609. EXTENSION OF ARBITRATION.

Section 905 of the Judicial Improvements and Access to Justice Act (28 U.S.C. 651 note) is amended in the first sentence by striking out "1997" and inserting in lieu thereof "1998".

SEC. 610. STATE JUSTICE INSTITUTE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 215 of the State Justice Institute Act of 1984 (42 U.S.C. 10713) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 215. There are authorized to be appropriated to carry out the purposes of this title $12,500,000 for each of fiscal years 1997, 1998, 1999, and 2000, to remain available until expended.".

(b) EXECUTIVE COMMITTEE.—Section 204(j) of the State Justice Institute Act of 1984 (42 U.S.C. 10703(j)) is amended by inserting "(on such occasions as it has been delegated the authority to act for the Board)" after "executive committee".

(c) HOWELL HEFLIN AWARD.—Section 204(k) of the State Justice Act of 1984 (42 U.S.C. 10703(k)) is amended—

(1) in paragraph (5) by striking out "and" after the semicolon;

(2) in paragraph (6) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new paragraph:

"(7) present an annual Howell Heflin Award in recognition of an innovative Institute-supported project that has a high likelihood of significantly improving the quality of justice in State courts across the Nation.".

(d) PRIORITY IN MAKING AWARDS.—Section 206(b) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(b)) is amended—

(1) by redesignating paragraphs (1) through (5) as paragraphs (2) through (6), respectively;

(2) by inserting before paragraph (2) (as redesignated under paragraph (1) of this subsection) the following new paragraph:

"(1) The Institute shall give highest priority to awarding grants to and entering into cooperative agreements or contracts with State and local courts."; and

(3) in paragraph (2) (as redesignated by paragraph (1) of this subsection)—

(A) by striking out subparagraph (A); and

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(e) GEOGRAPHIC DISTRIBUTION OF GRANTS.—Section 206(b) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(b)) (as amended by subsection (d) of this section) is further amended by adding at the end thereof the following new paragraph:

"(7) In making grants under this title, the Institute shall undertake outreach efforts to assure the widest feasible geographical distribution of grant funds and benefits resulting from grants, consistent with its mission to award grants having the greatest likelihood of improving the quality of justice nationwide.".

(f) NONSUPPLANTATION.—Section 207(d) of the State Justice Institute Act of 1984 (42 U.S.C. 10706(d)) is amended—

(1) in the matter preceding paragraph (1) by inserting "or noncourt related activities of private organizations" after "basic court services";

(2) in paragraph (1)—

(A) by striking out "State or local" and inserting in lieu thereof "State, local, or private organizational"; and

(B) by striking out "or" after the semicolon;

(3) in paragraph (2) by striking out the period and inserting in lieu thereof a semicolon and "or"; and

(4) by adding at the end thereof the following new paragraph:

"(3) to support the activities of any national, State, or local bar association, except for—

"(A) the training of State court judges or court personnel, if such training is not provided by any person or entity other than a bar association; or

"(B) projects conducted in State courts or directly in conjunction with State courts to improve the efficiency of such courts.".

(g) REPORTS TO CONGRESS.—Section 213 of the State Justice Institute Act of 1984 (42 U.S.C. 10712) is amended to read as follows:

"REPORTS TO CONGRESS

"SEC. 213. Effective January 1, 1997, the Institute shall provide semiannual reports to the Committees on the Judiciary of the Senate and the House of Representatives identifying all grants made by the Institute during the preceding six months. The report shall include the name and address of the grantee, the purpose of the project, the amount of funding provided, and the duration of the project.".

I. PURPOSE

The committee believes that S. 1887 will substantially improve the efficiency and fairness of Federal court operations. In large part, the bill is based on recommendations received from the Judicial Conference of the United States which is the governing body of the Federal judiciary. The Judicial Conference, through a variety of committees established by the Conference, continually monitors and evaluates court operations. In addition, several provisions of the bill incorporate recommendations of the Federal Courts Study Committee which Congress created to analyze the courts of the United States and develop a long-term plan for the judicial system.

A primary purpose of S. 1887 is to remedy inefficiencies and, thereby, to reduce judiciary operating costs. The bill makes a variety of improvements in procedures and administration with an emphasis on court operations, the magistrate judges system, the bankruptcy system, and judiciary personnel administration. In addition,

the bill will achieve immediate cost savings that will benefit both the Federal judiciary and the Federal treasury.

II. LEGISLATIVE HISTORY

Contained in S. 1887 are several proposals carried over from previous Congresses, as well as a number of new proposals supported by the Judicial Conference. This bill was originally introduced by Senators Hatch and Heflin on August 1, 1995, as S. 1101 at the request of the Judicial Conference.

The Senate Judiciary Subcommittee on Administrative Oversight and the Courts held a hearing on S. 1101 on October 24, 1995. Testifying before the subcommittee were the Honorable Barefoot Sanders, chairman of the Committee on the Judicial Branch; the Honorable Gustave Diamond, U.S. District Court; the Honorable Stephen H. Anderson, Committee on Federal-State Jurisdiction; the Honorable W. Earl Britt, president, Federal Judges Association; John J. Curtin, Jr., American Bar Association; Robert L. Fanter, vice president, Defense Research Institute; and Loren E. Weiss, National Association of Criminal Defense Lawyers.

Following the hearing, the subcommittee conducted a lengthy process to improve the bill and to reach a consensus that was agreeable to subcommittee and committee members. Consequently, most of the contentious provisions of the bill were eliminated through this process of creating a bipartisan modification of the bill.

This modification to S. 1101 was reintroduced by Senators Grassley, Hatch, and Heflin as S. 1887, the Federal Court Improvements Act of 1996. The bill was amended in subcommittee to include reauthorization of the State Justice Institute. On July 19, 1996, S. 1887 was polled out of the subcommittee to the full committee by a vote of 6 to 0, with one abstention. On July 25, 1996, the Judiciary Committee considered S. 1887 and reported the bill to the Senate by unanimous consent after adopting three amendments.

III. VOTES OF THE COMMITTEE

The Senate Judiciary Committee, with a quorum present, met on Thursday, July 25, 1996, at 10 a.m. to mark up S. 1887. The following rollcall votes occurred on the bill and amendments proposed thereto:

(1) The Thurmond amendment prohibits an award of costs and attorney's fees against a judge for actions taken in a judicial capacity, unless an action is clearly in excess of the judge's jurisdiction.

The amendment was approved by a roll call vote of 14 yeas and 4 nays.

YEAS	NAYS
Thurmond	Biden
Simpson	Kennedy
Grassley	Simon
Specter	Feingold
Brown	
Thompson	
Kyl	
DeWine	

Abraham
Hatch
Leahy
Heflin
Kohl
Feinstein

(2) The Heflin amendment modifies section 305 of the bill which allows judicial officers authority to carry firearms for self-defense in all 50 States and the District of Columbia under regulations promulgated by the Judicial Conference.

The amendment was approved by unanimous consent.

(3) The Kohl amendment allows the disclosure of information obtained through discovery or an order restricting access to court records in a civil case unless a court makes particularized findings of fact to the contrary.

The amendment was approved by a rollcall vote of 11 yeas and 7 nays.

YEAS	NAYS
Biden	Thurmond
Kennedy	Grassley
Leahy	Brown
Heflin	Thompson
Simon	Kyl
Kohl	Abraham
Feinstein	Hatch
Feingold	
Simpson	
Specter	
DeWine	

IV. Section-by-Section Analysis

TITLE I—CRIMINAL LAW AND CRIMINAL JUSTICE AMENDMENTS

Sec. 101.—New Authority for probation and pretrial services officers

This section provides Federal authority for probation and pretrial services officers to carry firearms under rules prescribed by the Director of the Administrative Office of the United States Courts, if approved by the appropriate district court.

Probation and pretrial services officers may presently carry weapons under circumstances specified by the Judicial Conference only if State law permits. In some jurisdictions, State law prohibits or limits these officers from carrying weapons, even where the officer has Federal court approval to do so. In those States, the personal security of these officers is being compromised. Without a Federal statute authorizing officers to carry firearms, these officers can encounter legal problems in crossing state lines while performing their duties. For example, when an officer is working in the community supervising offenders near a State border, the officer's State authorization to carry firearms may not be legal if the officer should cross a state border while conducting normal supervision activities. An offender may have a nearby job in an adjacent State and the officer must travel to the job site to verify the employment.

Congress has addressed and remedied this problem for the employees of other Federal Government agencies involved in the criminal justice system, e.g., Bureau of Prisons, 18 U.S.C. 3050; Drug Enforcement Administration, 21 U.S.C. 878; Environmental Protection Agency, 18 U.S.C. 3063; Federal Bureau of Investigation, 18 U.S.C. 3052; Postal Service, 18 U.S.C. 3061; Secret Service, 18 U.S.C. 3056; U.S. Marshals Service, 18 U.S.C. 3053. This section provides identical legal treatment for Federal probation and pretrial officers.

Sec. 102.—Tort Claims Act amendments relating to liability of Federal public defenders

In *Ferri* v. *Ackerman,* 444 U.S. 193 (1979), the Supreme Court held that public defenders were not immune from malpractice actions. After considering whether to ask Congress to amend the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671 et seq., to bring Federal public defenders within its coverage, the Judicial Conference instead proposed amending the Criminal Justice Act to provide malpractice coverage. Such authority was added by the Criminal Justice Act Revision of 1986 and is currently set forth in 18 U.S.C. 3006A(g)(3). That provision authorizes the Director of the Administrative Office of the United States Courts to "provide representation for and hold harmless, or provide liability insurance for" Federal defenders "for money damages for injury, loss of liberty, loss of property, or personal injury or death arising from malpractice or negligence * * * in furnishing representational services * * * while acting within the scope of that person's office or employment."

In 1991, the Supreme Court in *United States* v. *Smith,* 499 U.S. 160 (1991), held that the FTCA is the sole vehicle for pursuing common law torts against Federal Government employees. Following that decision, the seventh circuit held that a Federal public defender is an "employee of the government" for purposes of the FTCA, and the exclusive remedy for alleged malpractice would be an action against the United States under the FTCA. *Sullivan* v. *U.S.,* 21 F.3d 198 (7th Cir. 1994).

The amendment made by this section exempts Federal public defender organization officers and employees from the FTCA for claims related to representational services and relies instead on the malpractice provision of 18 U.S.C. 3006A(g)(3) specifically enacted in 1986 to deal with such claims. This simplifies the provision of representation to Federal public defender employees and avoids creating unnecessary conflicts of interest for the United States attorney and the Federal public defender.

TITLE II—JUDICIAL PROCESS IMPROVEMENTS

Sec. 201.—Duties of magistrate judge on emergency assignment

This section authorizes magistrate judges temporarily assigned to another judicial district because of an emergency to dispose of civil cases with the consent of the parties. Magistrate judges sitting in their own districts already possess this authority. Magistrate judges serving on emergency assignment, therefore, would have the same authority as those serving in regular status.

Section 636(f) of title 28 permits the temporary assignment of a magistrate judge from one judicial district to another in emergency situations upon the concurrence of the chief judges of the districts involved. The magistrate judge may perform duties specified in section 636 (a) and (b). Subsection (f) was added to the Federal Magistrates Act in 1972. The civil consent provisions in section 636(c) were enacted in 1979, subsequent to the enactment of the emergency provisions. It would appear that through oversight no corresponding subsection (f) amendment was made in 1979 to permit magistrate judges on emergency assignment in another district to enter judgment in civil cases upon the consent of the parties. Accordingly, this section corrects that oversight.

Sec. 202.—Consent to trial in certain criminal actions

Under 18 U.S.C. 3401(b), U.S. magistrate judges may not try a misdemeanor or petty offense case unless the defendant files a written consent to be tried before a magistrate judge and specifically waives in writing the right to be tried by an article III judge. Before the defendant files such consent, the magistrate judge must "carefully explain" to the defendant that he or she has a right to trial before an article III judge. This section removes this restriction in petty offense cases, thereby authorizing magistrate judges to try petty offense cases without the consent of the defendants. The section also authorizes magistrate judges to try class A misdemeanor cases upon either written consent or oral consent of the defendant on the record.

Elimination of consent in petty offense cases

Section 19 of title 18, United States Code, defines a petty offense as a class B misdemeanor, a class C misdemeanor, or an infraction for which the maximum term of incarceration is 6 months and the maximum fine is $5,000 for an individual. In large part, petty offense cases heard in Federal courts involve traffic violations or other violations of regulations governing Federal enclaves, including national parks and military bases.

This section eliminates the option a defendant currently has in a proceeding before a magistrate judge to insist on article III court disposition of a petty offense. This amendment provides an efficient, professional forum for dealing with misconduct of a minor nature, most often occurring on Federal enclaves and typically remote from article III facilities. Most defendants routinely consent to proceeding before a magistrate judge.

However, some defendants purposely decline to consent to a trial before a magistrate judge, expecting the prosecution to drop the charges rather than incur the expense and inconvenience of trial before an article III judge when compared to the seriousness of the misconduct. Other defendants decline to consent for a variety of different reasons, often with a similar result.

An additional benefit of this section is the elimination of the necessity of a complicated procedure on the record for obtaining an "informed consent to proceed" from each defendant. This section, therefore, enhances the efficiency of the courts and eliminates abusive manipulation of the system by some defendants.

The committee believes the Federal magistrate judge system is mature and well equipped to provide a fair and effective means for processing petty offense cases without resort to an article III judge. The Judicial Conference has repeatedly recognized this capability by endorsing the elimination of consent in petty offense cases. In 1979, the Conference favored the elimination of consent in petty offense cases during the congressional debate over the 1979 amendments to the Federal Magistrates Act. In 1981, the Judicial Conference restated its support for eliminating consent in "The Federal Magistrates System, Report to the Congress by the Judicial Conference of the United States." In September 1991, the Judicial Conference again endorsed the provision in proposed housekeeping legislation that would eliminate a defendant's consent to trial by a magistrate judge in petty offense cases.

Some have argued that a constitutional issue may arise because petty offenses require adjudication by an article III judge. However, there is no constitutional right to adjudication of a petty offense case before an article III judge. *Palmore* v. *United States,* 411 U.S. 389, 400–403 (1973). In addition, there is a longstanding tradition of such matters being tried by judicial officers other than article III judges. (Committee on the Administration of the Magistrate Judges System of the Judicial Conference of the United States, December 1, 1995). Moreover, at the time the Constitution was ratified, petty offense cases were handled routinely by justices of the peace and other lower level judicial officers in Britain and in the newly formed States of the United States. Doub & Kestenbaum, "Federal Magistrates for the Trial of Petty Offenses: Need and Constitutionality," 107 U. Pa. Law Rev. 443 (1959).

Oral consent in class A misdemeanor cases

There is no legal significance between written consent and consent made orally on the record, provided that the defendant's consent is made with full knowledge of the consequences of such consent, is intelligently given, and is voluntary. This section preserves such knowing and voluntary consent. However, the execution of written consent by each class A misdemeanor defendant often unnecessarily prolongs the time needed to hear each case. The elimination of the written consent requirement saves time and eases burdensome paperwork for the magistrate judges and other district court personnel.

Many of the concerns that led Congress to enact the written consent provisions of 18 U.S.C. 3401 in 1979 have receded. Congress demonstrated that it is comfortable with the quality and competence of magistrate judges and less concerned about coerced consent when it relaxed the provisions of 28 U.S.C. 636(c) governing litigant consent to civil trials by magistrate judges in 1990. Similar reasoning is also applicable to misdemeanor consent provisions. The new section thus preserves the misdemeanor defendant's right to choose adjudication of a case by an article III judge while also improving judicial efficiency.

The other changes made by this section bring other statutes into conformity with the effects of section 202(a) discussed above.

Sec. 203.—Venue in civil actions

The Judicial Conference considered a recommendation to repeal 28 U.S.C. 1392(a), providing that "Any civil action, not of a local nature, against defendants residing in different districts in the same State, may be brought in any of such districts." Based on recent amendments to subsections 1391 (a)(1) and (b)(1), the Judicial Conference concluded that subsection 1392(a) is redundant and should be repealed. This section eliminates subsection 1392(a) of title 28, United States Code.

Sec. 204.—Registration of judgments for enforcement in other districts

This section clarifies that in 28 U.S.C. 1963, a judgment in an action for recovery of money or property that was entered in a court of appeals or a bankruptcy court may also be registered for enforcement purposes in any district. Such judgments of a district court are currently covered by this statute. As a practical matter, bankruptcy courts, as adjuncts to the district courts, have been relatively unaffected by the present law specifying the district court. However, this change is necessary to clarify the statute as to bankruptcy courts and to enable courts of appeal judgments to be registered for enforcement in other districts. This need arises at the appellate level especially in the enforcement of administrative law orders which have been appealed to the courts of appeal, but are to be enforced at the district level.

Sec. 205.—Vacancy in clerk position; absence of clerk

While it might be thought self-evident that deputy clerks may act for the clerk of court whenever the clerk is unable to perform official duties for any reason, the current language of 28 U.S.C. 954 speaks only to deputy clerks acting in lieu of a deceased clerk. This section amends section 954 to clarify that deputy clerks may act whenever the clerk cannot perform his or her official duties. It also permits the court to designate an acting clerk of court, when it is expected that the clerk will be unavailable or the office of clerk will be vacant for a prolonged period. This section also deletes an obsolete provision in section 954 relating to the compensation of a deceased clerk of the Supreme Court. A conforming amendment changes the chapter's table of contents.

Sec. 206.—Diversity jurisdiction

This section amends 28 U.S.C. 1332, relating to diversity jurisdiction to raise the jurisdictional amount from $50,000 to $75,000. The Judicial Conference requested that Congress not only increase the threshold amount, but also index it to inflation and eliminate the in-state plaintiff in diversity jurisdiction cases.

The committee recognizes the importance of balancing the need to assist the Federal judiciary in reducing its increasing caseload with the needs of those making use of our Federal courts. The committee determined the most reasonable modification, at this time, is to raise the jurisdictional amount, but not index it, and to leave the in-state plaintiff as it is.

The adjustment of the jurisdictional amount provides claims with substantial amounts at issue access to a Federal forum, if diversity

of citizenship among the parties exists. The most recent change in the jurisdictional amount became effective in May 1989 pursuant to the Judicial Improvements and Access to Justice Act (Public Law No. 100–702), which increased the amount from $10,000 to $50,000.

Sec. 207.—Bankruptcy administrator program

This section provides statutory authority for bankruptcy administrators in Alabama and North Carolina to appoint bankruptcy case trustees, standing trustees, examiners, and committees of creditors and equity security holders, as is done in the rest of the country by U.S. trustees. Bankruptcy administrators also are given authority to fix standing trustee's maximum annual compensation and percentage fee. Because subtitle A of title II of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99–554; 28 U.S.C. 581 note) is not effective in the judicial districts in Alabama and North Carolina, this section amends the former provisions of the Bankruptcy Code which are in effect in those States.

Experience with the bankruptcy administrator program has shown that it is desirable to have bankruptcy administrators make these appointments and fix standing trustees' compensation and percentage fee. Acting pursuant to regulations adopted by the Judicial Conference of the United States and guidelines promulgated by the Director of the Administrative Office of the United States Courts, bankruptcy administrators currently make recommendations to the court on these matters.

Authorizing bankruptcy administrators to make these appointments and fix standing trustees' compensation and percentage fee directly also furthers one of the central goals of the Bankruptcy Reform Act of 1978, Public Law 95–598, freeing bankruptcy judges from an administrative role in their cases. Although the 1986 act authorized U.S. trustees to perform these functions, it did not specifically authorize bankruptcy administrators to do so, even though the two officials have similar roles in overseeing the administration of estates and supervising trustees and other fiduciaries in bankruptcy cases.

This section also authorizes bankruptcy administrators to serve as trustees in bankruptcy cases, when necessary. Bankruptcy administrators would be granted the same authority to serve as trustees in chapter 7 cases as U.S. trustees, that is, when none of the members of the panel of private trustees is disinterested and willing to serve in the case. Like U.S. trustees, bankruptcy administrators could serve as case trustees in chapter 12 and chapter 13 cases and, like assistant U.S. trustees, as standing trustees. Assistant U.S. trustees are authorized to serve as standing trustees because of differences in the way the program is structured.

Sec. 208.—Removal of cases against the United States and Federal officers or agencies

This section allows civil actions and criminal prosecutions against Federal agencies as well as those against Federal officers sued in either an individual or official capacity to be removed to Federal district court. A Federal forum in such cases is important

since state court actions against Federal agencies and officers often involve complex Federal issues and Federal-State conflicts. This bill legislatively reverses the Supreme Court's decision in *International Primate Protection League, et al.* v. *Administrators of Tulane Educational Fund, et al.,* 111 S.Ct. 1700 (1991), which held that only Federal officers, not Federal agencies, may remove State court actions to Federal court pursuant to 28 U.S.C. 1442(a)(1).

This section fulfills Congress' intent that questions concerning the exercise of Federal authority, the scope of Federal immunity and Federal-State conflicts be adjudicated in Federal court. It also clarifies that suits against Federal agencies, as well as those against Federal officers sued in either an individual or official capacity, may be removed to Federal district court. This section does not alter the requirement that a Federal law defense be alleged for a suit to be removable pursuant to 28 U.S.C. 1442(a)(1).

Sec. 209.—Appeal route in civil cases decided by magistrate judges with consent

In cases where parties to a civil action have consented to case-dispositive authority of a magistrate judge, current law permits an appeal of the judgment directly to the court of appeals or, as an alternative and if the parties agree, to a district judge followed by discretionary review in the court of appeals.

This section eliminates the alternative route of appeal to the district judge, as recommended in the Judicial Conference's Long Range Plan for the Federal Courts. Although intended as a less expensive means of obtaining appellate review, this alternative appeal route is inconsistent with the principle underlying the "consent" authority of magistrate judges—that the parties agree to disposition of their case without involving a district judge. A single forum of appeal in civil consent cases simplifies court procedures and recognizes the existing practice in most districts.

Sec. 210.—Reports by judicial councils relating to misconduct and disability orders

This section requires each Judicial Council to submit an annual report to the Administrative Office of the United States Courts on the number and nature of orders relating to judicial misconduct or disability under 28 U.S.C. 332. This reporting requirement was recommended by the Report of the National Commission on Judicial Discipline and Removal (August 1993), which found that reliable information concerning Council orders was difficult to obtain.

Sec. 211.—Protective orders; sealing of cases; disclosure of information

This section requires that before a judge can enter an order restricting the disclosure of information under rule 26 of the Federal Rules of Civil Procedure the judge must consider the impact of the order on public health and safety. In cases where the information is relevant to the protection of public health and safety, the judge must determine that the need for confidentiality clearly outweighs the public interest in disclosure. The judge must also determine that the protective order is no broader than necessary to protect the asserted privacy interest.

In addition, this provision invalidates, as contrary to public policy, all agreements that prohibit a party from disclosing information to a Federal or State agency with authority to regulate activity related to the information.

TITLE III—JUDICIARY PERSONNEL ADMINISTRATION, BENEFITS AND PROTECTIONS

Sec. 301.—Senior judge certification

This section revises the senior judge work certification procedures set forth in 28 U.S.C. 371(f). Currently, retired justices and senior judges are required to be certified every year in order to receive subsequent salary increases (other than cost-of-living increases). If a justice or judge is not certified in any year, 28 U.S.C. 371(f)(3) provides that he or she is thereafter ineligible to be certified and to receive a subsequent salary increase.

Subsection 301(a) allows for retroactive certification if a judge resumes a significant workload. This subsection revises 28 U.S.C. 371(f)(3) by providing that judges who are not certified in one year may perform work in a subsequent year and then attribute the subsequent work to the earlier year in order to satisfy the certification requirement for the earlier year. It further provides that senior judges may not receive credit for the same work for more than 1 year.

Sec. 302.—Refund of contribution for deceased deferred annuitant under the judicial survivors' annuities system

This section is a technical amendment to 28 U.S.C. 376(o)(1) addressing a contingency not addressed under the current statute relating to officials who retire on deferred annuities. The question arises, for example, if a judicial official retires on a deferred annuity and agrees to continue Judicial Survivors' Annuities System (JSAS) contribution during the period between leaving office and commencement of the annuity, but either dies before making the requisite 18 months of contributions for vesting purposes (a possibility for individuals who join JSAS during an "open season" and retire shortly thereafter) or dies without eligible survivors. Under the current statute, in cases where a judicial official dies without eligible survivors or before his or her JSAS benefits have vested, a lump-sum payment of contributions, with interest, is made to designated beneficiaries if the judicial official "dies while in office, or while receiving 'retirement pay'." This amendment applies the same policy to a judicial official who dies between the time of retirement and commencement of annuity payments.

Sec. 303.—Judicial administrative officials retirement matters

This section provides a greater degree of equity and parity in crediting prior Federal service for purposes of retirement by the Director of the Administrative Office of the United States Courts, the Director of the Federal Judicial Center, and the Administrative Assistant to the Chief Justice of the United States. These officials currently may receive a maximum of 5 years of retirement credit for prior service in any civilian Presidential appointment in the executive branch requiring Senate confirmation, but they may receive

credit for prior service in the legislative branch only as a Member of Congress.

This section allows credit for prior legislative branch service of a comparable rank and responsibility to the executive branch service that is currently creditable. Credit would be allowed to a primary administrative assistant to a Member of Congress or as staff director or chief counsel for a committee or subcommittee. Although this section limits congressional service credit to high-level positions, it further requires that the person serving in the position have served in that capacity for at least 5 years or at a salary that is within the top 10 percent of salaries for congressional staff at the time of the service. The other changes to 28 U.S.C. 611 and 627 are clarifying and conforming amendments.

Sec. 304.—Bankruptcy judges reappointment procedure

This section amends the Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law No. 98–353, 120, as amended by Public Law No. 99–554, 102, 100 Stat. 3089, to authorize the Judicial Conference to prescribe regulations which provide for the reappointment of incumbent bankruptcy judges that differ from the initial appointment of bankruptcy judges.

The Bankruptcy Amendments and Federal Judgeship Act of 1984 articulated strict, specifically detailed ethical and scholastic standards for the selection of U.S. bankruptcy judges to ensure that such selections are governed by merit, character, and scholastic ability. This act also requires the judicial council for each circuit, or a merit selection panel, if so convened by the council, to screen and review the qualifications of applicants, using strict criteria specific both by the act and by accompanying regulations issued by the Judicial Conference of the United States. These procedures are thorough and time-consuming, both for the applicants and the reviewers. These procedures are unnecessary, however, in the case of applicants who are incumbent bankruptcy judges. The information regarding an incumbent's merit, scholarship, judicial temperament, etc., is no longer a matter which a judicial council or a merit selection screening panel need attempt to ascertain; they are facts, amply supported by a 14-year-old record. Thus, this section simply eliminates unnecessary expenditures of time and money.

Sec. 305.—Carrying of firearms

This section authorizes Federal judges, including magistrate judges and bankruptcy judges, to carry firearms for purposes of personal security under regulations prescribed by the Judicial Conference. Although the United States Marshals Service already provides protection for judges upon specific threats, judges need authority to protect themselves against unidentified dangers.

The need for preemptive Federal legislation is pointed out by the fact that judges carrying firearms when crossing municipal or state boundaries on a daily or frequent basis may be violating local laws. A Federal Statute preempting State law as to Federal judges is needed in that eight States and the District of Columbia currently prohibit non-exempt citizens from carrying firearms.

The Department of Justice, which supports the goals of this section, raised a number of concerns with the original language as re-

ported out of subcommittee. At full committee, Senator Heflin offered an amendment, which addressed most of those concerns, and the committee adopted the amendment unanimously.

The amendment deleted language from the bill that granted judges immunity from suit with regard to the use of such firearms; the amendment added language to strengthen the bill's requirement that judges demonstrate proficiency in the use, safety and maintenance of firearms; language was added directing the Department of Justice to cooperate with the Judicial Conference, upon request, with respect to such training; and the amendment made it clear that judges are not authorized to carry firearms aboard aircraft or other common carriers.

The section also allows for a delay in the effective date of the provision in order to allow the Judicial Conference to establish and promulgate regulations on the carrying of firearms by Federal judicial officers. These regulations will address training and weapons qualifications requirements.

Sec. 306.—Technical correction related to commencement date of temporary judgeships

When the Federal Judgeship Act was passed in 1990, it created, among other things, both permanent judgeships and a temporary judgeship in two district courts, the Eastern District of Missouri and the Eastern District of Pennsylvania. This section eliminates potential confusion about the date on which the temporary judgeship will lapse. When these judgeship positions have been filled, the source of the position has been identified as the Federal Judgeship Act of 1990 without specifying whether the position being filled is the permanent or the temporary position.

The amended language of the 1990 act creating temporary judgeships specifies that the first vacancy occurring 5 years after the confirmation of the judge appointed to fill the position shall not be filled. Without more specificity on which of the judgeships is the temporary position, uncertainty exists as to the date on when the position will lapse.

This section eliminates that confusion by specifying that the last of the judgeships (created by this act in these two districts) filled shall be the temporary position. In this manner, the legislation will more fully comport with the intent of the temporary judgeship positions by assuring that the courts have the benefit of those temporary judgeships for at least the 5-year period specified in the act.

Sec. 307.—Full-time status of court reporters

This section corrects an inequity caused by the unique nature of court reporter work that unjustly penalizes court reporters at retirement. Sections 8339(o) and 8415(e) of title 5 were added in 1986 by the Omnibus Budget Reconciliation Act of 1985 to eliminate the availability of windfall retirement annuities for part-time employees. The Office of Personnel Management has issued a formal opinion which could deprive court reporters who are not on a regularly scheduled 40 hour weekly tour of duty in the courthouse of a full retirement annuity, irrespective of receipt of a full-time salary and concomitant full retirement contributions. Under this opinion, court reporters who wish to receive a retirement annuity based upon

"full-time" service (as opposed to part-time service and a resulting reduction in annuity) must either (a) work a scheduled tour of duty in the courthouse of 80 hours per pay period; or (b) maintain records of the actual hours worked on Federal business and work a minimum of 2080 hours per year on that business. However, court reporters work irregular hours and may not work the entire 40 hours in the courthouse. This section remedies this by providing that court reporters who are paid a full-time salary will be treated like full-time employees for retirement purposes.

In order that annuities not be reduced solely due to the lack of a regularly scheduled tour of duty if the reporter is paid a full salary as fixed by the Judicial Conference, the Conference in September 1988 recommended the proposed legislative change to define court reporters as "full-time" employees for annuity purposes if they are paid full-time salaries.

Sec. 308.—Court interpreters

This section cures what was an unanticipated statutory restriction on the Federal courts' ability to respond to the needs of hearing-impaired persons participating in court proceedings. The Court Interpreters Act at 28 U.S.C. 1827 (d)(1) and (e)(2) authorizes the provision of paid interpreting services to the hearing-impaired (as well as to non-English speakers), but only to parties and witnesses and only in criminal cases or civil actions instituted by the United States. At 28 U.S.C. 1827(g)(4) and 1828(b) (with regard to special interpretation services), the act provides that such services may be provided in other proceedings with the approval of the presiding judicial officer, but only on a cost-reimbursable basis.

Especially in recent years, since the enactment of the Americans with Disabilities Act, hearing-impaired persons in a variety of circumstances, such as debtors in bankruptcy cases, parties in private civil cases, attorneys representing private clients, and others, have requested Federal courts to provide them with sign language interpreters so that they may meaningfully participate in court proceedings. No matter how sympathetic a presiding judge may be to such requests, however, because of the restriction in the Court Interpreters Act, the courts have been limited to providing this service on a reimbursable basis.

This section promotes accommodation to this class of disabled persons by vesting judicial officers with the discretion to provide sign language interpreters at court expense, subject to the availability of funds, to any participant in any type of judicial proceeding. Other provisions of the Court Interpreters Act remain unchanged, however, so that the provision of interpretation services for Government witnesses, for example, remains the financial responsibility of the Department of Justice under 28 U.S.C. 1827(g)(3).

Sec. 309.—Technical amendment related to commencement date of temporary bankruptcy judgeships

Temporary judgeships were first established for bankruptcy judges in the Bankruptcy Judgeship Act of 1992 (the 1992 act), which authorized 10 temporary judgeship positions. Temporary judgeship positions are intended to provide a court with a needed

judgeship for a minimum of 5 years. However, the language of section 3(b) of the 1992 act followed language used for article III judges, which provided that a vacancy occurring 5 years or more after the date of the enactment of the act shall not be filled.

By linking the temporary judgeship terms (5 years) to the enactment date of a particular judgeship act, a district could lose most or all of the benefit of an authorized temporary judgeship position. The period between the effective date of a particular judgeship act and the time new judges actually take office to fill newly created positions is often years, due to delays in funding and selection processes.

The article III judiciary has had temporary judgeships for years and has struggled with the harsh effects of linking the 5-year period to the date of enactment of the particular judgeship act. Congress recognized this problem and passed legislation to amend the commencement date of certain temporary article III judgeships in Public Law 104–60.

Sec. 310.—Contribution rate for senior judges under the Judicial Survivors' Annuities System

This section corrects an anomaly between categories of disabled judges and their rate of contribution to the Judicial Survivors' Annuities System (JSAS) and provides equal treatment for all disabled judges. Currently, a senior judge who is disabled and retires under 28 U.S.C. 371(b) (senior status) contributes to the JSAS at a rate of 2.2 percent. However, a disabled judge who retires under 28 U.S.C. 372(a) (permanent disability) contributes to JSAS at a rate of 3.5 percent unless he or she is "willing and able" to work. This section applies a 2.2-percent contribution rate to all senior article III judges and all retired judges of the U.S. Court of Federal Claims.

Sec. 311.—Prohibition of awards of costs, including attorney's fees, and injunctive relief against judicial officers

This section restores the doctrine of judicial immunity to the status it occupied prior to the Supreme Court's decision in *Pulliam* v. *Allen*, 466 U.S. 522 (1984), and has the support of the American Judges Association, the Conference of Chief Judges of the National Center for State Courts, and the American Bar Association. Legislation identical to section 311 was introduced as S. 1115 by Senator Thurmond in this Congress on August 3, 1995. Nearly identical bills were also introduced, and the subject of hearings in previous years, including the 100th, the 101st and the 102d Congresses. While the Committee favorably reported these bills in each of three Congresses, the full Senate never considered them. See S. Rept. 556, 100th Cong., 2d sess. (1988); S. Rept. 465, 101st Cong., 2d sess. (1990); S. Rept. 224, 102d Cong., 1st sess. (1991).

In *Pulliam,* the Supreme Court broke with 400 years of common-law tradition and weakened judicial immunity protections. The case concerned a State magistrate who jailed an individual for failing to post bond for an offense which could be punished only by a fine and not incarceration. The defendant filed an action under 42 U.S.C. 1983, obtaining both an injunction against the magistrate's practice of requiring bonds for nonincarcerable offenses, and an

award of costs, including attorney's fees. The Supreme Court affirmed, expressly holding that judicial immunity is not a bar to injunctive relief in section 1983 actions against a State judge acting in a judicial capacity, or to the award of attorney's fees under the Civil Rights Attorney Fees Award Act, 42 U.S.C. 1988. Those statutes are now amended to preclude awards of costs and attorney's fees against judges for acts taken in their judicial capacity, and to bar injunctive relief unless declaratory relief is inadequate.

In the 12 years since *Pulliam*, thousands of Federal cases have been filed against judges and magistrates. The overwhelming majority of these cases lack merit and are ultimately dismissed. The record from the Committee's previous hearings on this issue is replete with examples of judges having to defend themselves against frivolous cases. Even when cases are routinely dismissed, the very process of defending against those actions is vexatious and subjects judges to undue expense. More importantly, the risk to judges of burdensome litigation creates a chilling effect that threatens judicial independence and may impair the day-to-day decisions of the judiciary in close or controversial cases.

Subsection 311(a) codifies the general prohibition against holding judicial officers (justices, judges and magistrates) liable for costs, including attorney's fees, for acts or omissions taken in their judicial capacity. Subsection 311(b) amends 42 U.S.C. 1988 to prohibit holding judicial officers liable for costs or fees. Subsection 311(c) amends 42 U.S.C. 1983 to bar a Federal judge from granting injunctive relief against a State judge, unless declaratory relief is unavailable or the State judge violated a declaratory decree. In short, subsection (a) states the general rule, while subsections (b) and (c) specifically address the statutes at issue in *Pulliam*. The legislation extends protection to Federal as well as State judicial officers out of concern that Federal judges otherwise might be subject to cost and fee awards in cases alleging Federal constitutional torts. See, e.g., *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1977); *Butz* v. *Economu*, 438 U.S. 478 (1978).

This section does not provide absolute immunity for judicial officers. Immunity is not granted for any conduct "clearly in excess" of a judge's jurisdiction, even if the act is taken in a judicial capacity. Moreover, litigants may still seek declaratory relief, and may obtain injunctive relief if a declaratory decree is violated or is otherwise unavailable. Section 311 restores the full scope of judicial immunity lost in *Pulliam* and will go far in eliminating frivolous and harassing lawsuits which threaten the independence and objective decision-making essential to the judicial process.

TITLE IV—JUDICIAL FINANCIAL ADMINISTRATION

Sec. 401.—Increase in civil action filing fee

In September 1992, the Judicial Conference, noting that civil filing fees had been increased from $15 to $60 in 1978 and from $60 to $120 in 1986, recommended that 28 U.S.C. 1914(a) be amended to increase the civil filing fee from $120 to $150.

This section increases the filing fee for civil actions in the district courts under 28 U.S.C. 1914 from $120 to $150. This modest ad-

justment affects only the initial "user fee" for all litigants not proceeding in forma pauperis under 28 U.S.C. 1915. Although the initial filing fee of some State courts of General jurisdiction may be less, many States have add-on fees. For example, in 26 States courts charge a jury demand fee which can be as high as $300, according to the National Center for State Courts. Also, actual reimbursement fees for jury trials ordered in certain judgments run much higher, depending upon the length of trial. Other States impose a fee for filing an answer, requesting a trial, or filing a motion.

Additionally, this section amends 28 U.S.C. 1931 to have the first $90 (rather than $60) of each fee deposited into the special judiciary fund in the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts. As a result, the judiciary would receive about $6.6 million annually, according to the Judicial Conference, thereby reducing the need for direct appropriations.

The section provides for a 60-day delay in the effective date in the proposed increase to the civil filing fee. This delay would allow clerks of court to implement the filing fee increase.

Sec. 402. Interpreter performance examination fees

Since the enactment in 1978 of the Court Interpreters Act, 28 U.S.C. 1827, the Administrative Office has been responsible for the development and administration of interpreter certification examinations. From 1985 to the present, the Administrative Office has contracted with the University of Arizona to perform this function. Under this contract, the contractor may charge a fee to offset costs of developing and administering the exam. For the Spanish certification exam, the fees collected by the University defray a significant portion of the cost.

While this contracting approach has been followed for almost a decade, a review of the program has raised some concerns about the validity of contract language permitting the contractor to collect fees and budget funds without clear statutory authorization. Accordingly, this section amends 28 U.S.C. 1827 to expressly authorize the Director of the Administrative Office to prescribe fees for examinations given for the purpose of certifying qualified interpreters, and to permit the contractor to collect and retain some or all of the fees as direct payment for contract services. The section also validates such provisions in current and past contracts. Any funds collected after this section takes effect that are not retained by a contractor are to be deposited into the offsetting fund established under 28 U.S.C. 1931.

Sec. 403.—Judicial panel on multidistrict litigation

Several provisions of title 28, United States Code, authorize the Judicial Conference to establish miscellaneous fee schedules for the Federal, appellate, district, claims and bankruptcy courts. The Judiciary's 1991 Appropriations Act provided permanent authority for fees charged for electronic public access to these courts' databases to be deposited into the Judiciary Automation Fund, which pays the costs of providing those services. Currently, the Judicial Panel on Multidistrict Litigation is included in these statutes. The pur-

pose of this section is to establish conformity in the Federal judiciary by authorizing the Judicial Conference to establish a miscellaneous fee schedule for the panel and by authorizing the deposit of electronic public access fees collected by the panel into the Judiciary Automation Fund.

Sec. 404.—Disposition of Fees

This section allows the judiciary to retain the revenue from increases above current levels in (1) attorney admission fees, (2) duplicate admission certificates, and (3) certificates of good standing. It is anticipated that if such legislation were enacted, the Judicial Conference would raise the attorney admission fee from $20 to $50, and raise fees for duplicate judiciary certificates and certificates of good standing from $5 to $15. This would provide about $2 million annually for the judiciary.

This section also allows the judiciary to retain additional revenues derived from increases in fees for filing an adversary complaint in bankruptcy cases. Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule, which was adopted by the Judicial Conference pursuant to 28 U.S.C. 1930, provides that the fee charged for filing a complaint be the same amount as the filing fee prescribed in 28 U.S.C. 1914(a) for instituting any civil action other than a writ of habeas corpus.

Additionally, this section provides that the additional $30 from each bankruptcy complaint filing is to be deposited into the special judiciary fund in the Treasury. These revenues would be available to offset funds appropriated for the operation and maintenance of the courts.

TITLE V—FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

Sec. 501.—Parties' consent to bankruptcy judge's findings and conclusions of law

Section 157(c)(1) of title 28, United States Code, provides that a bankruptcy judge may hear a noncore proceeding that is otherwise related to a case under title 11 and, in such proceeding, shall submit to the district court proposed findings of fact and conclusions of law. Any final order or judgment must be entered by the district judge after considering the findings of fact and conclusions of law and reviewing any matters to which any party has "timely and specifically objected." Even when no party objects to what the bankruptcy judge has proposed, the bankruptcy judge may not proceed to enter appropriate orders and judgments without "express" consent of all of the parties as provided in the Federal Rules of Bankruptcy Procedure.

Subsection (c)(1) proceedings are to be distinguished from subsection (c)(2) proceedings in which all parties have agreed at the outset that the bankruptcy judge may hear, determine, and enter appropriate orders and judgments, subject only to regular appeal procedures.

The result is that subsection (c)(1) proceedings impose a time-consuming procedure on the system that is extremely and unnecessarily wasteful of article III judicial resources by requiring article III judge consideration of findings of fact and conclusions of law

proposed by the bankruptcy judge to which there is no objection by any of the parties and article III judge entry of appropriate orders and judgments. Moreover, in default cases, implied consent is particularly important to prevent unnecessary delays.

This section deals with the problem by amending subsection (c)(1) to provide that a party will be deemed to have consented to the findings of fact and conclusions of law proposed by the bankruptcy judge unless the party files a timely objection—within 10 days under rule 9033 of the Federal Rules of Bankruptcy Procedure—after which time the findings and conclusions become final and the bankruptcy judge may enter an appropriate order in the case. By making provision for implied consent in the absence of timely objection, this section resolves the problem of totally unnecessary delay in default cases where persons cannot be located, promotes the economic use of both judicial and party resources where no party in fact objects, and does so without denying an objecting party the opportunity to seek article III de novo consideration of noncore proceedings.

Sec. 502.—Qualification of chief judge of Court of International Trade

Under existing 28 U.S.C. 251(b), the President designates one of the nine judges of the court, who is less than 70 years old, to serve as chief judge. The designated chief judge continues to serve as chief judge until the judge reaches the age of 70 and the President designates another judge chief judge.

The method for selecting the chief judges of the other article III courts provides that the chief judge of the court shall be the judge in regular service who is senior in commission of those judges who (a) is 64 years of age or under; (b) has served as a judge of the court for at least 1 year; and (c) has not previously served as chief judge.

This method of selection was reviewed by the Federal Courts Study Committee, which recommended that this method not be changed. In particular, the committee report stated:

> The modified seniority method of chief judge selection established in 1982 (see 28 U.S.C. 45 & 136) is not faultless, but it operates well in practice and is preferable to any other method. The statutorily specified term for chief judges is a definite improvement over the previous pattern of very short or very long periods of service.

This section changes the system for selecting the chief judge of the Court of International Trade to conform with the modified seniority system applicable to every other article III court. This significantly improves the political selection of a chief judge by the President and has the support of the Judicial Conference of the United States.

Sec 503.—Judicial cost-of-living adjustments

This section repeals a provision enacted in a continuing appropriation resolution in 1981 that bars annual cost-of-living adjustments in pay for Federal judges except as specifically authorized by Congress. While the sponsors of the provision applied it only to a

single year, the Comptroller General ruled that it was permanent law. However, the Comptroller General recommended repeal of section 140 of Public Law 97–92 to the 99th Congress. Instead, Congress adopted the practice of suspending application of section 140 to discrete cost-of-living raises. Repeal of section 140 restores the operation of 28 U.S.C. 461 as to article III judges and parity with the other two branches of Government, as enacted by the Federal Salary Cost-of-Living Adjustment Act of 1975 and amended by the Ethics Reform Act of 1989.

TITLE VI—MISCELLANEOUS

Sec. 601.—Participation in judicial governance activities by district, senior, and magistrate judges

Currently, 28 U.S.C. 331 provides, in relevant part, that "[t]he district judge to be summoned [to the Judicial Conference] from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title * * * ." In 1990, 28 U.S.C. 333 was amended to permit the circuit judicial conferences to be held biennially instead of annually. This raised the question of whether the circuit and district judges could elect their district court representative to the Judicial Conference without holding an annual meeting. The General Counsel's office of the Administrative Office of the United States Courts concluded that it was reasonable to assume the judges could make this decision without a formal meeting, but recommended a technical amendment. Accordingly, this section amends 28 U.S.C. 331 to authorize each judicial conference to choose a representative in accordance with rules adopted by the judicial conference of the circuit.

Sec. 602.—The Director and Deputy Director of the Administrative Office as officers of the United States

The Judicial Improvements Act of 1990 (Public Law 101–650) changed the authority for appointment of the Director and Deputy Director of the Administrative Office from the Supreme Court to the Chief Justice (after consulting with the Judicial Conference). In so doing, it appears Congress inadvertently eliminated these two positions from the definition of "officer" of the United States under 5 U.S.C. 2104, which defines an "officer of the United States" for purposes of title 5, United States Code. While qualification of these positions under the definition of "employee" of the United States prevents inadvertent disqualification for certain benefits, the positions should be clearly included under the term "officer."

Sec. 603.—Removal of action from State court

This section conforms 28 U.S.C. 1446(c)(1) to the language in the rest of the section by substituting "defendant or defendants" for "petitioner."

Sec. 604.—Federal Judicial Center employee retirement provisions

This section clarifies 28 U.S.C. 627(b) to remove any doubt that eligible Federal Judicial Center staff, including the Deputy Direc-

tor, are covered by the Federal Employees Retirement System (FERS) under 5 U.S.C. 8401 et seq.

Sec. 605.—Abolition of the Special Court, Regional Rail Reauthorization Act of 1973

This section abolishes the Special Court that was established in the early 1970's to oversee the reorganization of insolvent railroads. That court's caseload has declined to less than 10 cases, none of which involve significant activity. The section transfers the Special Court's jurisdiction over those cases and any future rail reorganization proceedings to the U.S. District Court for the District of Columbia, where the court's records and a majority of its judges are currently located, and makes other changes incidental to the court's abolition. As there is already an established, uniform body of law regarding these matters, it is easier to maintain that unified body of law within one court. Further, the precedential value of the Special Court will be retained and the jurisprudence of the Special Court will be adopted by the District Court for the District of Columbia for the purpose of deciding these cases.

More specifically, subsection (a) amends 45 U.S.C. 719 to provide that the Special Court is abolished after a 90-day transition period. At the end of the transition period, the District Court for the District of Columbia assumes responsibility for the Special Court's remaining docket and acquires the latter's exclusive, nationwide jurisdiction under the Regional Rail Reorganization Act of 1973, the Northeast Rail Service Act of 1981, the Conrail Privatization Act, and related statutes. Subsection (a) also deems all statutory or regulatory references to the Special Court to refer to the District Court for the District of Columbia for purposes of any proceedings after the Special Court is abolished.

Subsection (b) provides that appeals in rail reorganization cases decided by the District Court for the District of Columbia shall lie in the Court of Appeals for the District of Columbia Circuit.

Subsection (c) makes necessary conforming amendments. Subsection (d) provides that cases pending at the time of the Special Court's abolition will be assigned to the District Court for the District of Columbia as if they had been filed originally in that court. Subsection (e) provides that the amendments concerning appellate review and the conforming amendments become effective 90 days after enactment. The appellate review amendments, however, do not apply to any final order or judgment entered by the Special Court, which is a three-judge court, for which a petition for writ of certiorari has already been filed or the time for filing such petition has not expired.

Sec. 606.—Place of holding court in the District Court of Utah

This section implements the endorsement of the Judicial Conference Committee on Court Administration and Case Management to add Provo and St. George as a place of holding court in the District of Utah. The committee's endorsement was influenced by the fact that the District Court for the District of Utah made a budget-neutral proposal.

In a letter to Robert Hoecker, circuit executive for the Tenth Judicial Circuit, dated May 10, 1996, the Honorable David Winder,

chief judge for the District Court for the District of Utah, stated that the court did not intend to request or pursue funding for the acquisition of a building site or the construction of court facilities in either location. In addition, Chief Judge Winder indicated that the court did not intend, in the near future, to seek rental space in either location for the purpose of conducting court.

Sec. 607.—Exception of residency requirement for district judges appointed to the Southern District and Eastern District of New York

This section amends 28 U.S.C. 134(b) to allow judges from the Southern and Eastern Districts of New York to reside within 20 miles of the district to which they were appointed.

Title 28 U.S.C. 134(b) requires district court judges to reside in the district to which they were appointed. The underlying policy for this statute is that judges should reside in the community in which they administer the law. Because of its unique geographic status, judges appointed to the District of Columbia District are already exempt from this requirement.

As with judges, and for similar policy reasons, U.S. attorneys are required to reside in the district to which they are appointed. However, there are three exceptions to this requirement: the District of Columbia; the Eastern District of New York; and the Southern District of New York. In these three exceptions, the U.S. attorneys may reside within 20 miles of the district. This section applies the same residency requirements presently in effect for U.S. attorneys in the Southern and Eastern Districts of New York to Federal district judges in those districts.

Sec. 608.—Extension of civil justice expense and delay reduction reports on pilot and demonstration programs.

Section 608 amends sections 104(d) and 105(c) of the Civil Justice Reform Act (CJRA) of 1990 to extend to June 30, 1997, the date by which the Judicial Conference is required to submit reports on the CJRA demonstration program and the CJRA pilot program.

Section 105 of the CJRA requires the Judicial Conference to transmit to Congress a final report containing recommendations on the implementation of cost and delay reduction programs in the Federal district courts. These recommendations are to be based on the results of the independent assessment of the CJRA pilot and comparison courts presently being conducted by the RAND Corporation.

Section 104 of the CJRA imposes the additional requirement that the Judicial Conference submit a separate report on the district courts that participated in the act's demonstration program. For the sake of consistency, section 104 of the CJRA is amended to state that this report is also due on June 30, 1997.

Sec. 609.—Extension of arbitration

This section extends the authorization of appropriations of the use of arbitration by certain district courts under 28 U.S.C. 651 by 1 year.

Sec. 610.—State Justice Institute

Subsection (a)—Authorization of appropriations

Subsection (a) amends section 215 of the State Justice Insititute Act of 1984 ("Act"), 42 U.S.C. 10713, by authorizing annual appropriations of $12,500,000 for fiscal year 1997, fiscal year 1998, fiscal year 1999, and fiscal year 2000. The amendment also provides that amounts appropriated for the Institute are to remain available until expended, and new restrictions are placed on the disbursement of funds.

The Institute is unique in statutory duty to "further the development and adoption of improved judicial administration in State courts in the United States." [42 U.S.C. 10702(a)]. The Institute has the only authority to assist all State courts and the only mandate to share the success of one State's innovations with every State and the Federal court system. Its duties include fostering coordination and cooperation with the Federal judiciary in areas of mutual concern, and it is authorized to participate in joint projects with other agencies, including the Federal Judicial Center.

The Institute plays an important role in the Nation's response to crime by providing necessary funding to support projects that evaluate the effectiveness of new trial and sentencing approaches, and improve judges' performance in cases involving violent crimes and drug abuse. The Institute also has been a leader in fostering improvements in the civil justice system by supporting efforts to evaluate new procedures to reduce litigation delay, demonstrate innovative alternative dispute resolution programs and increase the public's access to the legal system.

The Institute has several national roles that are not filled by other entities. They include for example:

Supporting national evaluations of promising State and local improvements to the criminal and civil justice systems;

Serving as an information clearinghouse to share information quickly on a nationwide basis; and

Establishing national resource centers where judges and court officials can test new technologies, observe new approaches to administering court systems and sit in classroom settings to learn from each other.

Subsection (b)—Executive committee

Subsection (b) amends section 204(j) of the act, 42 U.S.C. 10703(j), by inserting the phrase "(on such occasions as it has been delegated the authority to act for the Board)" after "executive committee of the Board." This amendment would require meetings of a committee of the board of directors to be open to the public only when the board had delegated the committee the authority to conduct or dispose of Institute business on its behalf.

Subsection (c)—Howell Heflin Award

Subsection (c) adds a new subsection (7) to section 204(k) of the act, 42 U.S.C. 10703(k), directing the Institute's board of directors to present an annual Howell Heflin Award in recognition of an innovative SJI-funded project that has a high likelihood of signifi-

cantly improving the quality of justice in State courts across the Nation.

Subsection (d)—Priority in making awards

Subsection (d) amends section 206(b) of the act, 42 U.S.C. 10705(b), by inserting a new paragraph (1) according State and local courts, and their agencies, the highest funding priority under the Act.

Subsection (e)—Geographical distribution of grants

Subsection (e) adds a new paragraph (7) to section 206(b) of the act, 42 U.S.C. 10705(b), directing the Institute to undertake outreach efforts to assure the widest feasible geographical distribution of grant funds and benefits, consistent with its mission to award grants having the greatest likelihood of improving the quality of justice nationwide.

Subsection (f)—Nonsupplantation

Subsection (f) of the bill extends the nonsupplantation provision of section 207(d) of the act, 42 U.S.C. 10706(d), to private organizations, and restricts the use of Institute grant funds awarded to bar associations.

Subsection (g)—Reports to Congress

Subsection (g) requires that, beginning January 1, 1997, the Institute provide semi-annual reports to the Senate and House Judiciary Committees identifying all grants made by the Institute during the preceding 6 months, including the name and address of the grantee, the purpose of the project, the amount of funding provided, and the duration of the project.

V. Regulatory Impact Statement

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that Senate bill 1887 will not have significant regulatory impact.

VI. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 6, 1996.

Hon. Orrin G. Hatch,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S.1887, the Federal Courts Improvement Act of 1996.

Enacting S. 1887 would affect direct spending. Therefore, pay-as-you-go procedures would apply to this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum
(For June E. O'Neill, *Director*).

Enclosure.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 1887.

2. Bill title: Federal Courts Improvement Act of 1996.

3. Bill status: As reported by the Senate Committee on the Judiciary on July 30, 1996.

4. Bill purpose: S. 1887 would make numerous operational and administrative changes to the federal court system. Provisions that would have significant budgetary effects include section 309, which would allow the terms of certain bankruptcy judgeships to be extended; sections 401 and 404, which would increase offsetting receipts and the spending of such receipts by increasing civil filing fees and other miscellaneous fees; and section 610, which would authorize appropriations for the State Justice Institute.

5. Estimated cost to the Federal Government: As shown in the following table, enacting S. 1887 would increase discretionary spending by $52 million over the 1997–2002 period, subject to the availability of appropriated funds, and would increase mandatory spending by $1 million over the same period.

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated authorization level	13	14	13	13	(1)	(1)
Estimated outlays	3	9	12	13	10	5
CHANGES IN DIRECT SPENDING						
Estimated budget authority	(1)	(1)	(1)	(1)	(1)	(1)
Estimated outlays	(1)	(1)	(1)	(1)	(1)	(1)

[1] Less than $500,000.

The costs of this bill fall within budget function 750.

6. Basis of estimate: The only substantial budgetary impact from enacting S. 1887 would result from the authorization of appropriations for the State Justice Institute. The bill would authorize $12.5 million a year for the fiscal years 1997 through 2000. If these amounts are appropriated, additional outlays would total $50 million over the 1997–2002 period. This organization received an appropriation of $5 million for fiscal year 1996. Other provisions of the bill are discussed below.

Title I

Section 101 of this title would allow probation officers and pretrial officers to carry firearms with the approval of Federal district courts and according to the rules and regulations prescribed by the Administrative Office of the United States Courts (AOUSC). Currently, the Judicial Conference of the United States maintains an informal policy that enables these officers to carry firearms if allowed under existing state and local law. As a result of this policy, a firearms training program is in operation and surplus firearms from other agencies are provided to the officers in the program. Thus far, overall expenses for this program have been minimal. According to the AOUSC, about 60 percent of the probation officers and pretrial services officers currently carry firearms, and enacting this bill would probably not increase participation in the firearms

program significantly. Thus, CBO estimates that enacting this provision would not have a significant budgetary impact.

Section 102 would eliminate malpractice coverage for federal public defenders under the Federal Tort Claims Act (Public Law 89–506). Because public defenders would still be eligible for malpractice coverage under the Criminal Justice Act Revision of 1986 (Public Law 99–651), CBO estimates that enacting this provision would have no impact on the Federal budget.

Title II

This title contains two provisions that could affect the number of cases that are tried in Federal courts. First, section 206 would increase the threshold for diversity cases, which are cases between citizens of different States, that can be heard in Federal court, from $50,000 to $75,000. According to the AOUSC, increasing this threshold would exclude about 3,000 to 6,000 civil cases each year from access to Federal courts. Because the courts' backlog for civil cases is so large, CBO estimates that any reduction in caseload would have a negligible impact on the budget for the Federal court system.

Second, section 208 would allow civil actions and criminal actions against Federal agencies and federal officers to be removed from state court to a federal district court. According to the National Center for State Courts, very few of these cases are currently tried in State court. Hence, CBO estimates that enacting this provision would not significantly increase the Federal caseload and thus would not have any significant impact on the federal budget.

Section 211 would require judges, before sealing the files on certain civil cases, to determine if restricting access to court documents would affect public health or safety. The impact of this provision on caseload is highly uncertain. Based on information from the AOUSC, CBO expects that enacting this provision could increase the number of cases that are settled prior to filing in court. Such settlements would prevent the possibility that the details of an adverse finding on behalf of a defendant would become available to the public. On the other hand, CBO anticipates that under certain circumstances the number of appeals could increase as defendants attempt to restore their reputations after receiving adverse rulings that are made public. On balance, CBO concludes that the net impact of enacting this provision is likely to be small.

CBO estimates that the other changes that would affect judicial process contained in this title would have no significant budgetary impact.

Title III

Section 305 would give certain Federal judges the authority to carry firearms. Based on information from the AOUSC, CBO does not expect that a significant number of judges would opt to carry firearms. Furthermore, a firearms training program is in operation and surplus firearms from other agencies would be available for use by the judges. Thus, CBO estimates that enacting this provision would not have a significant budgetary effect.

Section 308 would require the courts, subject to the availability of appropriated funds, to provide sign-language interpreters as nec-

essary during any type of judicial proceeding. Under current law, such services are provided in some cases. Based on information from the AOUSC, CBO estimates that it would cost the courts about $40,000 annually to provide court interpreters in additional cases.

Section 309 would amend the Bankruptcy Judgeship Act of 1992 (Public Law 102–361), which created 10 temporary judgeship positions and required that the next vacancy in each of the 10 affected district courts occurring five years after the effective date of the act (August 26, 1992) not be filled. Enacting section 309 would change the controlling date for leaving vacancies unfilled to five years after the confirmation date of the temporary judge, rather than five years after the effective date of the Bankruptcy Judgeship Act of 1992. Based on information from the AOUSC, CBO estimates that over the next five years about two more workyears for judges would be incurred under the bill than under current law. We estimate that enacting section 309 would result in about $1 million in new mandatory spending from fiscal year 1999 through fiscal year 2002 for salaries and benefits of judges. Salaries and benefits for support personnel and other expenditures related to the judgeships, which would require an appropriation, are estimated to cost about $2 million over the same period.

The other sections under this title would make various changes that would affect the salaries and benefits for judiciary personnel. However, based on information from the AOUSC, CBO does not estimate that any of those changes would affect a significant number of judicial personnel. Thus, CBO estimates that neither discretionary nor mandatory spending would significantly increase by enacting these sections.

Title IV

Two of the four sections under this title would increase offsetting collections and the spending of such receipts. First, section 401 would increase the filing fee for filing a civil action in district court from $120 to $150. Also, this section would increase the portion of this fee that would be deposited into the special judiciary fund in the Treasury to be used to finance activities of the AOUSC. Currently, this fund retains $60 of the $120 fee and enacting this section would require that an additional $30 (that is, $90 of the $150 fee) be deposited into this fund. According to the AOUSC, filing fees are eventually paid either at time of filing or at conclusion of a case in about 220,000 civil actions each year. Thus, CBO estimates that enacting this section would increase offsetting collections by about $7 million each year, beginning in 1997.

Next, section 404 would allow the judiciary to retain revenue from future increases in fees paid for attorneys' admission to the Federal district bar, duplicate admission certificates, certificates of good standing, and filing an adversary complaint in bankruptcy cases. CBO expects that the Judicial Conference of the United States would increase such fees following enactment of this bill. We estimate the increase would generate about $3 million in offsetting collections each year. Because these collections as well as the amounts collected under section 401 would be spent without appro-

priations action, CBO estimates that enacting these provisions would have no net impact on the federal budget.

Title V

Section 503 under this title would repeal a provision that bars annual cost-of-living adjustments in pay for judges except as specifically authorized by the Congress. CBO estimates that enacting this section would have no impact on the federal budget (relative to the budget resolution baseline) because the baseline already assumes cost-of-living pay raises for judges.

The other provisions under this title would make minor changes to court procedures and we estimate that enacting them would not result in any cost to the government.

Title VI

Section 605 under this title would abolish the Special Court that was established under the Regional Rail Reorganization Act of 1973 to oversee the reorganization of insolvent railroads. The court's current proceedings, which consist of less than 10 cases, and any future cases would be transferred to the district court for the District of Columbia. Based on information from the AOUSC, CBO estimates that eliminating this court would result in annual cost savings of about $200,000, assuming that appropriations were reduced accordingly.

Section 609 would extend the authorization for appropriations from fiscal year 1997 to 1998 for the use of arbitration by certain district courts. Based on historical expenditures for the arbitration program, CBO estimates that the district courts would require an appropriation of this purpose of about $500,000 in fiscal year 1998.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. The various fee increases under Title IV would affect direct spending. However, because these fees, which are recorded as offsetting collections, would be mostly spend in the same year in which they are collected, CBO estimates that enacting the fee provisions would have no significant net impact on direct spending in each year. Because additional mandatory spending for the salaries and benefits for bankruptcy judges would not begin until fiscal year 1999, these amounts would not affect pay-as-you-go scoring.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts	(1)	(1)	(1)

[1] Not applicable.

8. Estimated impact on State, local, and tribal governments: *Intergovernmental Mandates.* S. 1887 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). CBO estimates that the aggregate net cost of these mandates for state, local and tribal governments would total, at most, $1 million annually—well below the $50 million threshold established in Public Law 104–4.

Preemption of certain state and local gun laws. The bill would preempt some state and local laws by authorizing federal pretrial and probation officers and certain federal judges to carry guns. According to information from the AOUSC, nine states prohibit judges and other non-exempt citizens from carrying concealed weapons and at least one state prohibits the same for pretrial officers. In addition, many of these officials who must travel across state and municipal borders find that their existing state authorization is not always legal in bordering areas. (Generally there is a residency requirement to obtain a permit to carry a gun in an area). The regulations implementing these provisions would also preclude the need for these federal officials to obtain permits or licenses from state and local governments.

Currently, federal pretrial and probation officers pay less than $2,000 a year in gun permit fees to three states. Based on information from the AOUSC and firearm associations, CBO estimates that less than half of the approximately 2,000 federal judges affected by the provision have gun permits, for which they pay less than $25,000 annually to state and local governments in permit fees. Reductions in fee revenues would be slightly offset by savings in administrative costs. CBO concludes that providing these officials federal authorization to carry guns would result in a net loss of revenues for state and local governments totaling less than $25,000 per year.

Increase in civil action filing fees. The bill would increase the fee that parties, including state, local, and tribal governments, must pay to file civil actions in U.S. district courts. S. 1887 would raise the fee to $150 per filing (an increase of $30). According to the AOUSC, only a fraction of the 220,000 such cases filed annually are filed by state, local, or tribal governments. CBO estimates the costs to these governments of paying the increased fees would be less than $1 million per year.

Elimination of ability to collect attorney fees and injunctive relief in certain cases. The bill would prohibit prevailing parties, including state, local, and tribal governments, from collecting attorney fees and other costs and from obtaining injunctive relief in certain cases brought against judicial officers. However, very few of these types of cases are decided in favor of the plaintiff each year. Therefore, CBO estimates that any losses for state, local, and tribal governments in the form of forgone compensation would be negligible.

Other Impacts on State, Local and Tribal Governments. A number of other provisions in S. 1887 would result in some costs to state, local, and tribal governments. These costs, however, would not result from mandates as defined in Public Law 104–4.

First, the bill would require parties, including state, local, and tribal governments, who seek to restrict access to records in a civil case to provide additional information to the court. Second, by raising the threshold value that establishes the access of certain cases to U.S. district courts, the bill would add 3,000–6,000 civil cases a year to the dockets of state courts. CBO estimates that these provision would have an insignificant impact on the budgets of state, local and tribal governments.

S. 1887 would also authorize the appropriation of $12.5 million to the State Justice Institute (SJI) for each of fiscal years 1997–

2000—exactly half the amount authorized under current law in each of the previous two fiscal years. SJI's fiscal year 1996 appropriation, however, was only $5 million. A quasi-governmental entity established by federal law, SJI's mission is to improve judicial administration in state courts through, among other activities, grants to state and local governments. The bill would amend the prioritization in making awards, giving state and local courts priority over other organizations in receiving grants and other assistance from SJI.

9. Estimated impact on the private sector: S. 1887 would impose new private-sector mandates as defined in Public Law 104–4. First, section 311 would prohibit prevailing parties in certain cases brought against judicial officers from collecting attorney's fees and other costs, and from obtaining injunctive relief. Second, section 401 would increase the filing fee that parties who institute civil actions in federal district courts are required to pay. That fee would be increased to $150 from its current law amount of $120. Third, section 402 would authorize the Director of the AOUSC to develop a performance-based system of certification for court interpreters, and to charge fees to interpreters for purposes of obtaining certification.

CBO estimates that the direct costs associated with new private-sector mandates in the bill would fall well-below the $100 million threshold specified in Public Law 104–4. Increasing the civil action filing fee would result in additional payments by the private sector of about $7 million per year. While the prohibition on cost recovery and injunctive relief in certain cases brought against judicial officers could impose substantial costs on private-sector parties in specific cases, the aggregate costs imposed on the private sector by this prohibition would be insignificant because very few cases of this type are decided in favor of the plaintiff each year. Lastly, authorizing the AOUSC Director to develop a certification system for court interpreters and to charge testing fees would essentially codifying existing practices. Thus, the direct cost of section 402 would be zero.

10. Previous CBO estimate: On May 13, 1996, CBO transmitted a cost estimate for S. 1474, a bill to provide new authority for probation and pretrial services officers and for other purposes, as ordered reported by the Senate Committee on the Judiciary on May 2, 1996. Section 101 of this bill is identical to S. 1474. The other provisions of S. 1887, as approved by the Senate Committee on the Judiciary, were not included in S. 1474.

11. Estimate prepared by: Federal Cost Estimate: Susanne S. Mehlman; State and Local Government Impact: Karen McVey; and Private Sector Impact: Matthew Eyles.

12. Estimate approved by: Robert A. Sunshine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

VII. ADDITIONAL VIEWS OF MR. GRASSLEY

The so-called Sunshine in Litigation Act, offered by Senator Kohl and narrowly adopted by the Committee, rests on the flawed premise that protective orders issued under rule 26 of the Federal Rules of Civil Procedure restrict consumer access to information about dangerous and defective products. This contention presumes that information about defective products obtained through discovery cannot be obtained by consumers from other sources. However, the proponents of this legislation cannot point to any reliable study indicating that protective orders are the only source of information regarding defective products. In this information-saturated era, with the Internet accessible to consumers and networks of plaintiff attorneys trading information, it is not reasonable to believe that consumers are making ill-informed choices because of protective orders. When similar legislation was considered in the 103d Congress, the Committee received testimony from Prof Arthur Miller of the Harvard Law School, as well as from representatives from industry and well-respected Federal judges that information regarding defective products is available from a variety of sources. As there is no evidence suggesting that information about defective products contained in protective orders is not available from other sources, protective orders cannot be described as causing harm to consumers.

The amendment requires Federal judges to make specific determinations that an order issued under rule 26 will not restrict the disclosure of information "which is relevant to public health or safety" prior to issuing such an order. This will obviously require judges to hold more hearings and will require litigants to spend more money attempting to comply with the amendment. Importantly, the phrase "public health or safety" is never defined. This will open the door to senseless, and potentially vexatious, litigation as judges and litigants attempt to discover the parameters of this vague requirement. If interpreted liberally, "relevant to public health and safety" could encompass virtually anything related to public health or safety no matter how attenuated or weak the relationship between the information and some potential harm. This makes for poor public policy, and the Congress ought not to open such a Pandora's box.

Significantly, the balancing of interests which the Sunshine in Litigation Act seeks to create already exists in large measure. To prevent harm to the public, Federal courts routinely refuse to issue protective orders, or set protective orders aside., See., e.g., *Pansy* v. *Borough of Stroudsburg,* 23 F.3d 772 (3d Cir. 1994); *Leucadia, Inc.* v. *Applied Extrusion Technologies,* 998 F.2d 157 (3d Cir. 1993); *S.E.C.* v. *Van Waeyenberghe,* 990 F.2d 845 (5th Cir. 1993); *Pocono Artesian Waters* v. *Leffler Systems,* 1194 U.S. Dist. Lexis 138 (E.D. Pa. 1994). To the extent that protective orders can pose a risk to

consumers, this concern can be, and is being, addressed appropriately under existing law. In short, the Sunshine in Litigation Act purports to cure a problem with Federal law which does not exist.

Finally, Senator Kohl's amendment may have a deleterious effect on civil litigation. Under the liberal discovery rules in Federal court, parties to litigation can obtain highly sensitive information such as trade secrets or medical and psychiatric records. Since the phrase "public health or safety" used in the Sunshine in Litigation Act is vague on its face and is undefined in the amendment, litigants may face the unfair prospect of turning over sensitive, secret information with no assurance that such information will be held in confidence. This, in turn, creates a disincentive for litigants to cooperate in discovery and would give one side in litigation an opportunity to use confidential information as leverage to coerce the other side into a settlement. And lack of cooperation means that the workload of the Federal judiciary will increase as judges become involved in more discovery disputes which will slow the process of resolving lawsuits.

In conclusion, the Sunshine in Litigation Act is unnecessary, expensive and will negatively affect the ability of Federal courts to dispense justice expeditiously. There is no evidence, other than flawed anecdotes, that protective orders issued under rule 26 have caused harm to consumers. Judge Patrick E. Higginbotham, the Chairman of the Judicial Conference's Advisory Committee on Civil Rules, testified on April 20, 1994, that, while there is no evidence that protective orders have caused harm to consumers, there is every reason to believe that requiring particularized factual determinations of the sort contained in Senator Kohl's amendment will make discovery in civil trials more difficult and time-consuming. Thus, the benefits of Senator Kohl's amendment are highly speculative at best while the negative consequences (slower and more expensive discovery, new litigation to define vague terms, the threat of the damaging disclosure of private information) would be substantial. Rather than imposing costly new burdens on Federal courts in an effort to protect consumers, it would be better to ensure that consumers have better access to product information so that they can make informed choices.

CHUCK GRASSLEY.

VIII. ADDITIONAL VIEWS OF MR. KOHL

At the markup, we added a new section to the Federal Courts Improvements Act that addresses the growing abuse of secrecy orders issued by courts. All too often, our courts have allowed vital information that is discovered in litigation—and which directly bears on public health and safety—to be covered up: to be shielded from families whose lives are potentially at stake, and from the public officials we have appointed to protect our health and safety.

All this happens because of the use of so-called protective orders—really "gag" orders issued by courts—that are designed to keep information discovered in the course of litigation secret and undisclosed. Typically, injured victims agree to a defendant's request to keep lawsuit information secret. They agree because defendants threaten that, without secrecy, they will refuse to pay a settlement. Victims cannot afford to take such chances. And while courts in these situations actually have the legal authority to deny requests for secrecy, typically they do not—because both sides have agreed, and judges have other matters they prefer to attend to.

This provision will bring crucial information out of the darkness and into the light. It requires that judges weigh the impact on public health and safety before approving these secrecy orders. It is simple, effective, and straightforward. The provisions codifies what is already the practice of the best judges. In cases that do not affect public health safety, existing practice would continue, and courts could still issue protective orders as they do today. But in cases affecting public health and safety courts would apply a balancing test: they could permit secrecy only if the need for privacy outweighs the pubic's need to know about potential health or safety hazards. Moreover, courts could not, under this amendment, issue protective orders that would prevent disclosures to regulatory agencies.

The problem of excessive secrecy orders in cases involving public health and safety has been apparent to the Committee for many years. The Committee first held hearings on this issue in 1990. "Court Secrecy," Hearings before the Subcommittee on Courts and Administrative Practice, Committee on the Judiciary (May 17, 1990), 101st Cong., 2d sess. We held hearings again in 1994. "The Sunshine in Litigation Act," hearings before the Subcommittee, on Courts and Administrative Practice, Committee on the Judiciary (Apr. 20, 1994), 103d Cong., 2d sess.

In 1990, Arthur Bryant, the executive director of Trial Lawyers for Public Justice, told us: "The one thing we learned * * * is that this problem is far more egregious than we ever imagined. It goes the length and depth of this country, and the frank truth is that much of civil litigation in this country is taking place in secret." 1990 hearings at 55. Four years later, attorney Gerry Spence told us about 19 cases he had been involved in which his clients had

to sign secrecy agreements. They included cases involving defects in a hormonal pregnancy test that caused severe birth defects, a defective braking system of a steam roller, and an improperly manufactured tire rim. 1994 hearings at 43.

Individual examples of this problem abound. For over a decade, Miracle Recreation, a U.S. playground equipment company, marketed a merry-go-round that caused serious injuries to scores of small children—including severed fingers and feet. Lawsuits brought against the manufacturer were confidentially settled, preventing the public and the Consumer Products Safety Commission from learning about the hazard. It took more than a decade for regulators to discover the hazard and for the company to recall the merry-go-round.

There are yet more cases like these. In 1973, GM began marketing vehicles with dangerously placed fuel tanks that tended to rupture, burn, and explode on impact more frequently than regular tanks. Soon after these vehicles hit the American road, tragic accidents began occurring, and lawsuits were filed. More than 150 lawsuits were settled confidentially by GM. For years, this secrecy prevented the public from learning of the alleged dangers of these vehicles (6 million of which are still on the road). It wasn't until a trial in 1993 that the public began learning of the alleged dangers of GM sidesaddle gas tanks and the GM crash test data which appeared to demonstrate these dangers.

Another case involves Fred Barbee, a Wisconsin resident whose wife, Carol, died because of a defective heart valve. We learned in the 1990 Judiciary Committee hearing from Mr. Barbee that in the months and years before his wife died, the valve manufacturer had quietly, without public knowledge, settled dozens of lawsuits in which the valve's defects were demonstrated. So when Mrs. Barbee's valve malfunctioned, she rushed to a health clinic in Spooner, WI, thinking, as did her doctors, that she was suffering from a heart attack. Ignorant of the evidence that her valve was defective, Mrs. Barbee was misdiagnosed. Mrs. Barbee was treated incorrectly and died. To this day, Mr. Barbee believes that but for the secret settlement of heart valve lawsuits, the medical community would have been aware of the valve defect, and his wife would be alive today. (1990 hearings at 5–8.)

At the 1994 hearing, we heard from a family which we must call the "Does" because they are under a secrecy order and were afraid to use their own names when talking to us and to our committee. The Does were the victims of tragic medical malpractice that resulted in serious brain damage to their child. A friend of the Does is using the same doctor, but Mrs. Doe is terrified of saying anything to her friend for fear of violating the secrecy order that governed her lawsuit settlement. Mrs. Doe is afraid that if she talks, the defendant in her case will suspend the ongoing settlement payments that allow her to care for her injured child. (1994 hearings at 6–7.)

What sort of court system prohibits a woman from telling her friend that her child might be in danger? And the more disturbing question is this: what other secrets are currently held under lock and key which could be saving lives if they were made public?

Having said all this, we must in fairness recognize that there is another side to this problem. Privacy is a cherished possession, and business information is an important commodity. For this reason, the courts must, in some cases, keep trade secrets and other business information confidential. The goal of this provision is to ensure that courts do not carelessly and automatically sanction secrecy when the health and safety of the American public is at stake. At the same time, it will still allow defendants to obtain secrecy orders when the need for privacy is significant and substantial.

To attack the problem of excessive court secrecy is not to attack the business community. Most of the time, businesses seek protective orders for legitimate reasons. And although a few opponents of product liability reform may dispute that businesses care about public health and safety, we know that they do. Business people want to know about dangerous and defective products, and they want regulatory agencies to have the information necessary to protect the public.

Those opposed to this provision argue that it make discovery more difficult, will decrease settlements and impose excessive burdens on judges. These problems are greatly exaggerated and do not take several points into account.

First, this provision does not have any effect on most court cases, which have nothing to do with public health and safety. This amendment only applies to Federal courts and, within the Federal courts, to a small category of cases affecting public health and safety. In most cases, these issues will not be raised, and courts will not be burdened at all. A Judicial Conference study on the matter noted that only 5 to 10 percent of all cases filed in Federal court involve protective orders. Of those, only about 10 to 20 percent involved personal injury. Based on these numbers, it is fair to say that only a small portion of all cases in Federal courts will require close scrutiny from judges.

Second, this amendment does not prohibit confidentiality: it allows for secrecy in cases affecting public health and safety where the need for it is substantial. Moreover, it does not require that every document produced as a result of the litigation be made public. Not all of the litigation documents directly involve health and safety—and those documents can still be sealed.

Third, a little extra work from judges seems a tiny price to pay for protecting blameless people from dangers. Every day, in the course of litigation, judges make tough calls about how to construe the public interest and other laws that Congress passes. We are confident that the courts will administer this law fairly and sensibly. After all, under the current version of rule 26(c) courts are required to determine whether there is "good cause" to enter a protective order. If judges can determine what is good cause, they can determine what constitutes "public health and safety." If this requires extra work, then the work is well worth it. After all, no one argues that spoiled meat should be let out on the market because stricter regulations mean more work for FDA meat inspectors.

Finally, some may argue civil disputes are fundamentally private. The civil judicial system, according to this view, is an exclusive, private system—devoid of public interest considerations. But

this view ignores the fact that the courts are fundamentally public institutions, funded by hundreds of millions of tax dollars. A protective order issued by a Federal judge is an exertion of governmental power. That power should not be at the disposal of private parties at their whim. Public institutions cannot afford cannot afford to ignore the public interest in dispensing justice.

Abner Mikva, then chief judge of the Federal Circuit Court of Appeals for the District of Columbia, testified in our 1994 hearing that "I side with Chairman Kohl in believing that there is an excess of court secrecy in civil litigation, and that it presents a serious problem for the health and safety of our population. That problem is to important to leave to the rule changers."

The Committee would be satisfied to see this issue addressed by judges themselves. But since we first held hearing on court secrecy in 1990, the judges have remained essentially inert.[1] Indeed, before the Committee voted on this provision, we received a letter from the Judicial Conference telling us that it was continuing its study of this issue. The letter ironically noted ironically noted that "the task will be a long one."

Unfortunately, we need to deal with this problem sooner rather than later. That is why I am pleased that a substantial majority of the Committee supported my amendment.

HERB KOHL.

[1] In fact, last year we worked with a number of Federal judges to prevent rule 26 of the Federal Rules of Civil Procedure, dealing with protective orders, from becoming even worse.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1887, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * * * *

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * * * *

CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

* * * * * * *

§ 3154. Functions and powers relating to pretrial services

Pretrial services functions shall include the following:

(1) Collect, verify, and * * *

* * * * * * *

(12)(A) As directed by the court and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 or 4246 of this title, and report such person's conduct and condition to the court ordering release and the Attorney General or his designee.

(B) Any violation of the conditions of release shall immediately be reported to the court and the Attorney General or his designee.

(13) If approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe.

[(13)**]** Perform such other functions as specified under this chapter.

(14)

* * * * * * *

CHAPTER 219—TRIAL BY UNITED STATES MAGISTRATES

* * * * * * *

§ 3401. Misdemeanors; application of probation laws

(a) When specially designated to exercise such jurisdiction by the district court or courts he serves, any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district.

(b) Any person charged with a misdemeanor*, other than a petty offense,* may elect, however, to be tried before a judge of the district court for the district in which the offense was committed. The magistrate shall carefully explain to the defendant that he has a right to trial, judgment, and sentencing by a judge of the district court and that he may have a right to trial by jury before a district judge or magistrate. ⌊The magistrate shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the magistrate that specifically waives trial, judgment, and sentencing by a judge of the district court.⌋ *The magistrate judge may not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the magistrate judge and expressly and specifically waives trial, judgment, and sentencing by a district judge. Any such consent and waiver shall be made in writing or orally on the record.*

* * * * * * *

(g) ⌊The magistrate may, in a Class B or C misdemeanor case, or infraction case involving a juvenile in which consent to trail before a magistrate has been filed under subsection (b) of this section, exercise all powers granted to the district court under chapter 403 of this title.⌋ *The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title*. For purposes of this subsection, proceedings under chapter 403 of this title may be instituted against a juvenile by a violation notice or complaint, except that no such case may proceed unless the certification referred to in section 5032 of this title has been filed in open court at the arraignment. No term of imprisonment shall be imposed by the magistrate in any such case.

* * * * * * *

CHAPTER 229—POSTSENTENCE ADMINISTRATION

Subchapter A—Probation

* * * * * * *

§ 3603. Duties of probation officers

A probation officer shall—

(1) instruct a probationer or a person on supervised release, who is under his supervision, as to the conditions specified by the sentencing court, and provide him with a written statement clearly setting forth all such conditions;

* * * * * * *

(8)(A) when directed by the court, and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 or 4246 of this title, and report such person's conduct and condition to the court ordering release and to the Attorney General or his designee; and

(B) immediately report any violation of the conditions of release to the court and the Attorney General or his designee; [and]

(9) if approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe; and[9]*(10)* perform any other duty that the court may designate.

* * * * * * *

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

PART I—ORGANIZATION OF COURTS

* * * * * * *

CHAPTER 5—DISTRICT COURTS

* * * * * * *

§ 125. Utah

Utah constitutes one judicial district comprising two divisions.

(1) The Northern Division comprises the counties of Box Elder, Cache, Davis, Morgan, Rich, and Weber.

Court for the Northern Division shall be held at *Salt Lake City and* Ogden.

(2) The Central Division comprises the counties of Beaver, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, and Wayne.

Court for the Central Division shall be held at Salt Lake City*, Provo, and St. George.*

* * * * * * *

§ 134. Tenure and residence of district judges

(a) The district judges shall hold office during good behavior.

(b) Each district judge, except in the District of Columbia, *the Southern District of New York, and the Eastern District of New York,* shall reside in the district or one of the districts for which he is appointed. *Each district judge of the Southern District of New York and the Eastern district of New York may reside within 20 miles of the district to which he or she is appointed.*

* * * * * * *

CHAPTER 6—BANKRUPTCY JUDGES

* * * * * * *

§ 157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

* * * * * * *

[(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.]

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected. A party shall be deemed to consent to the findings of fact and conclusions of law submitted by a bankruptcy judge unless the party files a timely objection. If a timely objection is not filed, the proposed findings of fact and conclusions of law submitted by the bankruptcy judge shall become final and the bankruptcy judge shall enter an appropriate order thereon.

* * * * * * *

CHAPTER 11—COURT OF INTERNATIONAL TRADE

Sec.
251. Appointment and number of judges; offices.
252. Tenure and salaries of judges.
[253. Duties of chief judge; precedence of judges.]
253. Duties of chief judge.
254. Single-judge trial.
255. Three-judge trials.
256. Trials at ports other than New York.
257. Publication of decisions.
258. Chief judges; precedence of judges.

§ 251. Appointment and number of judges; offices

(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. Not more than five of such judges shall be from the same political party. The court is a court established under article III of the Constitution of the United States.

[(b) The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as chief judge. The chief judge shall continue to serve as chief

judge until he reaches the age of seventy years and another judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.**]**

[(c)**]** *(b)* The offices of the Court of International Trade shall be located in New York, New York.

* * * * * * *

[§ 253. Duties of chief judge; precedence of judges]

§ 253. Duties of chief judge

(a) The chief judge of the Court of International Trade, with the approval of the court, shall supervise the fiscal affairs and clerical force of the court;

(b) The chief judge shall promulgate dockets.

(c) The chief judge, under rules of the court, may designate any judge or judges of the court to try any case and, when the circumstances so warrant, reassign the case to another judge or judges.

[(d) Whenever the chief judge is unable to perform the duties of his office or the office is vacant, his powers and duties shall devolve upon the judge next in precedence who is able to act, until such disability is removed or another chief judge is appointed and duly qualified.

[(e) The chief judge shall have precedence and shall preside at any session which he attends. Other judges shall have precedence and shall preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.**]**

* * * * * * *

§ 257. Publication of decisions

All decisions of the Court of International Trade shall be preserved and open to inspection.

* * * * * * *

§ 258. Chief judges; precedence of judges

(a)(1) The chief judge of the Court of International Trade shall be the judge of the court in regular active service who is senior in commission of those judges who—

(A) are 64 years of age or under;

(B) have served for 1 year or more as a judge of the court; and

(C) have not served previously as chief judge.

(2)(A) In any case in which no judge of the court meets the qualifications under paragraph (1), the youngest judge in regular active service who is 65 years of age or over and who has served as a judge of the court for 1 year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no judge of the court in regular active service who has served as a judge of the court for 1 year or more, the judge of the court in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

(3)(A) Except as provided under subparagraph (C), the chief judge serving under paragraph (1) shall serve for a term of 7 years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge.

(B) Except as provided under subparagraph (C), a judge of the court acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge meets the qualifications under paragraph (1).

(C) No judge of the court may serve or act as chief judge of the court after attaining the age of 70 years unless no other judge is qualified to serve as chief judge under paragraph (1) or is qualified to act as chief judge under paragraph (2).

(b) The chief judge shall have precedence and preside at any session of the court which such judge attends. Other judges of the court shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) If the chief judge desires to be relieved of the duties as chief judge while retaining active status as a judge of the court, the chief judge may so certify to the Chief Justice of the United States, and thereafter the chief judge of the court shall be such other judge of the court who is qualified to serve or act as chief judge under subsection (a).

(d) If a chief judge is temporarily unable to perform the duties as such, such duties shall be performed by the judge of the court in active service, able and qualified to act, who is next in precedence.

* * * * * * *

CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

* * * * * * *

§ 331. Judicial Conference of the United States

The Chief Justice of the United States * * *

[The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as member of the conference for three successive years, except that in the year following the enactment of this amended section the judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years.**]**

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit and shall serve as a member of the Judicial Conference of the United States for a term of not less than 3 successive years nor more than 5 successive years, as established by majority vote of all circuit and district judges of the circuit. A district judge serving as a member of the Judicial Conference may be either a judge in regular active serv-

ice or a judge retired from regular active service under section 371(b) of this title.

* * * * * * *

§ 332. Judicial councils of circuits

(a)(1) The * * *

* * * * * * *

(f)(1) Each circuit executive shall be paid at a salary to be established by the Judicial Conference of the United States not to exceed the annual rate of level IV of the Executive Schedule pay rates under section 5315 of title 5.

* * * * * * *

(4) The circuit executive and his staff shall be deemed to be officers and employees of the judicial branch of the United States Government within the meaning of subchapter III of chapter 83 (relating to civil service retirement), chapter 87 (relating to Federal employees' life insurance program), and chapter 89 (relating to Federal employees' health benefits program) of title 5, United States Code.

(g) No later than January 31 of each year, each judicial council shall submit a report to the Administrative Office of the United States Courts on the number and nature of orders entered under this section during the preceding calendar year that relate to judicial misconduct or disability.

* * * * * * *

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

* * * * * * *

§ 371. Retirement on salary; retirement in senior status

(a) The * * *

* * * * * * *

(f)(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

* * * * * * *

(D) The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch. *In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the*

purpose of the justice or judge satisfying the requirements of such subparagraph.

* * * * * * *

(3) If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she [is thereafter ineligible to receive such a certification.] *may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.*

* * * * * * *

§ 376. Annuities for survivors of certain judicial officials of the United States

(a) * * *

[(b)(1) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary, a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

[(A) of a justice or judge of the United States retired from regular active service who is described in section 371(b)(1) of this title,

[(B) of a justice or judge of the United States retired under section 372(a) of this title who is willing and able to perform judicial duties in accordance with section 294 of this title,

[(C) of a judge of the United States Court of Federal Claims retired under section 178(a) or (b) of this title who meets the requirements of section 178(d) of this title, or

[(D) of a judicial official on recall under section 155(b), 797, 373(c)(4), 375, or 636(h) of this title,

shall be an amount equal to 2.2 percent of retirement salary.]

(b)(1) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

(A) of a justice or judge of the United States retired from regular active service under section 371(b) or section 372(a) of this title,

(B) of a judge of the United States Court of Federal Claims retired under section 178 of this title, or

(C) of a judicial official on recall under section 155(b), 373(c)(4), 375, or 636(h) of this title,

shall be an amount equal to 2.2 percent of retirement salary.

* * * * * * *

(*o*)(1) In any case in which a judicial official dies while in office, [or while receiving "retirement salary",] *while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section,* and;

(A) subject to paragraph (2) of this subsection, before having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which the salary deductions provided by subsection (b) of this section or the deposit required by subsection (d) of this section have actually been made; or

* * * * * * *

CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

§ 463. Expenses of litigation

Whenever a Chief Justice, justice, judge, officer, or employee of any United States court is sued in his official capacity, or is otherwise required to defend acts taken or omissions made in his official capacity, and the services of an attorney for the Government are not reasonably available pursuant to chapter 31 of this title, the Director of the Administrative Office of the United States Courts may pay the costs of his defense. The Director shall prescribe regulations for such payments subject to the approval of the Judicial Conference of the United States.

§ 464. Carrying of firearms by judicial officers

(a) A judicial officer of the United States is authorized to carry firearms, whether concealed or not, under regulations promulgated by the Judicial Conference of the United States.

(b)(1) The regulations promulgated by the Judicial Conference under subsection (a) shall—

(A) require a demonstration of a judicial officer's proficiency in the use and safety of firearms as a prerequisite to the carrying of firearms under the authority of this section; and

(B) make appropriate provisions for the carrying of firearms by judicial officers who are under the protection of United States Marshals while away from United States courthouses.

(2) On the request of the Judicial Conference, the Department of Justice (including each agency of the Department) shall cooperate with the Judicial Conference in providing firearms training and other services to assist judicial officers in securing such proficiency.

(c) For purposes of this section, the term "judicial officer of the United States" means—

(1) a justice or judge of the United States as defined in section 451 of this title in regular active or retired from regular active service;

(2) a justice or judge of the United States who has retired from the judicial office under section 371(a) of this title for—

(A) a 1-year period following such justice's or judge's retirement; or

(B) a longer period of time if approved by the Judicial Conference of the United States when exceptional circumstances warrant;

(3) a United States bankruptcy judge;

(4) a full-time or part-time United States magistrate judge;

(5) a judge of the United States Court of Federal Claims;

(6) a judge of the United States District Court of Guam;

(7) a judge of the United States District Court for the Northern Mariana Islands;

(8) a judge of the United States District Court of the Virgin Islands; or

(9) an individual who is retired from one of the judicial positions described under paragraphs (3) through (8) to the extent provided for in regulations of the Judicial Conference of the United States.

(d) Notwithstanding section 46303(c)(1) of title 49, nothing in this section authorizes a judicial officer of the United States to carry a dangerous weapon on an aircraft or other common carrier.

PART III—COURT OFFICERS AND EMPLOYEES

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CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

§ 601. Creation; Director and Deputy Director

The Administrative Office of the United States Courts shall be maintained at the seat of government. It shall be supervised by a Director and a Deputy Director appointed and subject to removal by the Chief Justice of the United States, after consulting with the Judicial Conference. *The Director and Deputy Director shall be deemed to be officers for purposes of title 5, United States Code.*

* * * * * * *

§ 611. Retirement of Director

(a) * * *

(b) Upon the retirement of a Director who has elected coverage under this section and [who has served at least fifteen years and] *who has at least 15 years of service and has* attained the age of sixty-five years the Administrative Office of the United States

Courts shall pay him an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement.

Upon the retirement of a Director who has elected coverage under this section and [who has served at least ten years] *who has at least 10 years of service,* but who is not eligible to receive an annuity under the first paragraph of this subsection, the Administrative Office of the United States Courts shall pay him an annuity for life equal to that proportion of 80 per centum of the salary of the office at the time of his retirement that the number of years of his service bears to fifteen, reduced by one-quarter of 1 per centum for each full month, if any, he is under the age of sixty-five at the time of separation from service.

(c) A Director who has elected coverage under this section and who becomes permanently disabled to perform the duties of his office shall be retired and shall receive an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement if he has [served at least fifteen years,] *at least 15 years of service,* or equal to that proportion of 80 per centum of such salary that the aggregate number of years of his service bears to fifteen if he has [served less than fifteen years,] *less than 15 years of service,* but in no event less than 50 per centum of such salary.

(d) For the purpose of this section, "service" means service, whether or not continuous, as Director of the Administrative Office of the United States Courts, and any service, not to exceed five years, as a judge of the United States, a Senator or Representative in Congress, *a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff director or chief counsel for the majority or the minority of a committee or subcommittee of the Senate or House of Representatives,* or a civilian official appointed by the President, by and with the advice and consent of the Senate.

(e) Each annuity payable under this section shall be increased by the same percentage amount and effective on the same date as annuities payable under chapter 83 of title 5, are increased as provided by section 8340 of title 5.

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CHAPTER 42—FEDERAL JUDICIAL CENTER

* * * * * * *

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

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

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

[(2) two active judges of the courts of appeals of the United States, three active judges of the district courts of the United States, one active judge of the bankruptcy courts of the United States elected by vote of the members of the Judicial Conference of the United States: *Provided, however,* That the judges so elected shall not be members of the Judicial Conference of the United States; and]

(2) two circuit judges, three district judges, one bankruptcy judge, and one magistrate judge, elected by vote of the members of the Judicial Conference of the United States, except that any circuit or district judge so elected may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title but shall not be a member of the Judicial Conference of the United States; and

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

(b) The term of office of each elected member of the Board shall be four years. A member elected to serve for an unexpired term arising by virtue of the death, disability, [retirement,] *retirement pursuant to section 371(a) or section 372(a) of this title,* or resignation of a member shall be elected only for such unexpired term.

* * * * * * *

§ 627. Retirement; employee benefits

(a) A Director of the Federal Judicial Center who attains the age of seventy years shall be retired from that office.

(b) The Director, *Deputy Director,* the professional staff, and the clerical and secretarial employees of the Federal Judicial Center shall be deemed to be officers and employees of the judicial branch of the United States Government within the meaning of subchapter III of chapter 83 (relating to civil service retirement), *chapter 84 (relating to the Federal Employees' Retirement System),* chapter 87 (relating to Federal employees' life insurance program), and chapter 89 (relating to Federal employees' health benefits program) of title 5, United States Code: *Provided, however,* That the Director, upon written notice filed with the Director of the Administrative Office of the United States Courts within 6 months after the date on which he takes office, may waive coverage under chapter 83 of title 5, subchapter III (the Civil Service Retirement System) or chapter 84 of title 5 (the Federal Employees' Retirement System), whichever is applicable, and elect coverage under the retirement and disability provisions of this section. A Director who elects coverage under this section shall be deemed an "employee" for purposes of chapter 84 of title 5, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84: *And provided further,* That upon his nonretirement separation from the Federal Judicial center, waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Director such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Director by depositing with interest the amount required by section 8334 of title 5. A Director who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Director by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5.

(c) Upon the retirement of a Director who has elected coverage under this section and [who has served at least fifteen years and]

who has at least 15 years of service and has attained the age of sixty-five years the Director of the Administrative Office of the United States Courts shall pay him an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement.

Upon the retirement of a Director who has elected coverage under this section and [who has served at least ten years,] *who has at least 10 years of service,* but who is not eligible to receive an annuity under the first paragraph of this subsection, the Administrative Office of the United States Courts shall pay him an annuity for life equal to that proportion of 80 per centum of the salary of the office at the time of his retirement that the number of years of his service bears to fifteen, reduced by one-quarter of 1 per centum for each full month, if any, he is under the age of sixty-five at the time of separation from service.

(d) A Director who has elected coverage under this section and who becomes permanently disabled to perform the duties of his office shall be retired and shall receive an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement if he has [served at least fifteen years,] *at least 15 years of service,* or equal to that proportion of 80 per centum of such salary that the aggregate number of years of his service bears to fifteen if he has [served less than fifteen years,] *less than 15 years of service,* but in no event less than 50 per centum of such salary.

(e) For the purpose of this section, "service" means service, whether or not continuous, as Director of the Federal Judicial Center, and any service, not to exceed five years, as a judge of the United States, a Senator or Representative in Congress, *a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff director or chief counsel for the majority or the minority of a committee or subcommittee of the Senate or House of Representatives,* or a civilian official appointed by the President, by and with the advice and consent of the Senate.

(f) Each annuity payable under this section shall be increased by the same percentage amount and effective on the same date as annuities payable under chapter 83 of title 5, are increased as provided by section 8340 of title 5.

CHAPTER 43—UNITED STATES MAGISTRATES

* * * * * * *

§ 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by his appointment—

(1) * * *

* * * * * * *

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section[, and]*;*

(4) the power to enter a sentence for a petty offense; and

[(4)] *(5)* the power to enter a sentence for a misdemeanor [or infraction], *other than a petty offense,* with the consent of the parties.

* * * * * * *

(c) Notwithstanding any provision of law to the contrary—

(1) Upon * * *

* * * * * * *

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court. [In this circumstance, the] *The* consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

[(4) Notwithstanding the provisions of paragraph (3) of this subsection, at the time of reference to a magistrate, the parties may further consent to appeal on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules promulgated by the conference shall endeavor to make such appeal inexpensive. The district court may affirm, reverse, modify, or remand the magistrate's's judgment.

[(5) Cases in the district courts under paragraph (4a) of this subsection may be reviewed by the appropriate United States court of appeals upon petition for leave to appeal by a party stating specific objections to the judgment. Nothing in this paragraph shall be construed to be a limitation on any party's right to seek review by the Supreme Court of the United States.]

[(6)] *(4)* The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.

[(7)] *(5)* The magistrate shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

(d) The practice and procedure for the trial of cases before officers serving under this chapter[, and for the taking and hearing of appeals to the district courts,] shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

* * * * * * *

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, and United States magistrate may be temporarily assigned to perform any of the duties specified in subsection [(a) or (b)] *(a), (b), or (c)* of this section in a judicial district

other than the judicial district for which he has been appointed. No magistrate shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

* * * * * * *

CHAPTER 49—DISTRICT COURTS

* * * * * * *

§ 753. Reporters

(a) * * *

* * * * * * *

(e) Each reporter shall receive an annual salary to be fixed from time to time by the Judicial Conference of the United States. *For the purpose of subchapter III of chapter 83 of title 5 and chapter 84 of such title, a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter under the preceding sentence.* All supplies shall be furnished by the reporter at his own expense.

* * * * * * *

CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES

Sec.
951. Oath of office of clerks and deputies.
[952. Repealed.]
953. Administration of oaths and acknowledgments.
[954. Death of clerk; duties of deputies.**]**
954. Vacancy in clerk position; absence of clerk.

* * * * * * *

963. Courts defined.

* * * * * * *

[§ 954. Death of clerk; duties of deputies

[Upon the death of any clerk of court, his deputy or deputies shall execute the duties of the deceased clerk in his name until his successor is appointed and qualifies.

[The compensation of a deceased clerk of the Supreme Court may be paid to his personal representatives until his successor is appointed and qualifies.]

§ 954. Vacancy in clerk position; absence of clerk

When the office of clerk is vacant, the deputy clerks shall perform the duties of the clerk in the name of the last person who held that office. When the clerk is incapacitated, absent, or otherwise unavail-

able to perform official duties, the deputy clerks shall perform the duties of the clerk in the name of the clerk. The court may designate a deputy clerk to act temporarily as clerk of the court in his or her own name.

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PART IV—JURISDICTION AND VENUE

* * * * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

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§ 1332. Diversity of citizenship; amount in controversy; costs.

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of **[**$50,000**]** *$75,000*, exclusive of interest and costs, and is between—

(1) citizens of different States;

* * * * * * *

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of **[**$50,000**]** *$75,000*, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

* * * * * * *

CHAPTER 87—DISTRICT COURTS; VENUE

Sec.
1391. Venue generally.
[1392. Defendants or property in different districts in same State.**]**
1392. Property in different districts in same State.
[1393. Repealed.]

* * * * * * *

1412. Change of venue.

* * * * * * *

[§ 1392. Defendants or property in different districts in same State**]**

§ 1392. Property in different districts in same State

[(a) Any civil action, not of a local nature, against defendants residing in different districts in the same State, may be brought in any of such districts.**]**

[(b)**]** Any civil action, of a local nature, involving property located in different districts in the same State, may be brought in any of such districts.

* * * * * * *

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

§ 1442. Federal officers *or agencies* sued or prosecuted

(a) A civil action or criminal prosecution commenced in a State court against any of the following [persons] may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) [Any officer of the United States or any agency thereof, a person acting under them, for any act under color of such office] *The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such officer* or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

* * * * * * *

§ 1446. Procedure for removal

(a) * * *

* * * * * * *

(c)(1) A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at anytime before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the [petitioner] *defendant or defendats* leave to file the notice at a later time.

* * * * * * *

PART V—PROCEDURE

CHAPTER III—GENERAL PROVISIONS

§ 1659. Protective orders and sealing of cases and settlements relating to public health or safety

(a)(1) A court shall enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making particularized findings of fact that—

(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

(2) No order entered in accordance with the provisions of paragraph (1) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

(c)(1) No agreement between or among parties in a civil action filed in a court of the United States may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

(2) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law.

* * * * * * *

CHAPTER 119—EVIDENCE; WITNESSES

* * * * * * *

§ 1827. Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

* * * * * * *

(g)(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this section and the Judicial Improvements and Access to Justice Act except as provided in paragraph (3).

* * * * * * *

(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the court, or other court employee designated by the chief judge, upon the request of the president judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may be also require the prepayment of the estimated expenses of providing such services.

(5) If the Director of the Administrative Office of the United States Courts finds it necessary to develop and administer criterion-referenced performance examinations for purposes of certification or other examinations for the selection of otherwise qualified interpreters, the Director may prescribe for each examination a uniform fee for applicants to take such examination. In determining the rate of the fee for each examination, the Director shall consider the fees charged by other organizations for examinations that are similar in scope or nature. Notwithstanding section 3302(b) of title 31, the Director is authorized to provide in any contract or agreement for the development or administration of examinations and the collection of fees that the contractor may retain all or a portion of the fees in payment for the services. Notwithstanding paragraph (6) of this subsection, all fees collected after the effective date of this paragraph and not retained by a contractor shall be deposited in the fund established under section 1931 of this title and shall remain available until expended.

[(5)**]***(6)* Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

* * * * * * *

(k) * * *

(1) Notwithstanding any other provision of this section or section 1828, the presiding judicial officer may appoint a certified or otherwise qualified sign language interpreter to provide services to a party, witness, or other participant in a judicial proceeding, whether or not the proceeding is instituted by the Untied States, if the presiding judicial officer determines, on such officer's own motion or on the motion of a party or other participant in the proceeding, that such individual suffers from a hearing impairment. The presiding judicial officer shall, subject to the availability of appropriated funds, approve the compensation and expenses payable to sign language interpreters appointed under this section in accordance with the schedule of fees prescribed by the Director under subsection (b)(3) of this section.

* * * * * * *

CHAPTER 123—FEES AND COSTS

§ 1914. District court; filing and miscellaneous fees; rules of court

(a) The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of [$120] *$150*, except that on application for a writ of habeas corpus the filing fee shall be $5.

* * * * * * *

§ 1931. Disposition of filing fees

(a) Of the amounts paid to the clerk of court as a fee under section 1914(a) or as part of a judgment for costs under section 2412(a)(2) of this title, [$60] *$90* shall be deposited into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts of the United States.

(b) If the court authorizes a fee under section 1914(a) or an amount included in a judgment for costs under section 2412(a)(2) of this title of less than [$120] *$150*, the entire fee or amount, up to [$60] *$90*, shall be deposited into the special fund provided in this section.

§ 1932. Judicial Panel on Multidistrict Litigation

The Judicial Conference of the United States shall prescribe from time to time the fees and costs to be charged and collected by the Judicial Panel to Multidistrict Litigation.

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CHAPTER 125—PENDING ACTIONS AND JUDGMENTS

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[§ 1963. Registration of judgments of the district courts and the Court of International Trade]

§ 1963. Registration of judgments for enforcement in other districts

A judgment in an action for the recovery of money or property entered in any [district court] *court of appeals, district court, bankruptcy court,* or in the Court of International Trade may be registered by filing a certified copy of [such judgment] *the judgment* in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States may be so registered any time after judgment is entered. A judgment so

registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

The procedure prescribed under this section is in addition to other procedures provided by law for the enforcement of judgments.

* * * * * * *

CHAPTER 171—TORT CLAIMS PROCEDURE

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§ 2680. Exceptions

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

* * * * * * *

(n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

(o) Any claim for money damages for injury, loss of liberty, loss of property, or personal injury or death arising from malpractice or negligence of an office or employee of a Federal Public Defender Organization in furnishing representational services under section 3006A of title 18.

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TITLE 42—THE PUBLIC HEALTH AND WELFARE

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CHAPTER 21—CIVIL RIGHTS

Subchapter I—Generally

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§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress*, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated*

or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

* * * * * * *

§ 1988. Proceedings in vindication of civil rights

(a) APPLICABILITY OF STATUTORY AND COMMON LAW.—
The * * *

* * * * * * *

(b) ATTORNEY'S FEES.—
In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985 and 1986 of this title, title IX of Public Law 92–318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title,, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs*, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction*.

* * * * * * *

CHAPTER 113—STATE JUSTICE INSTITUTE

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§ 10703. Board of Directors

(a) APPOINTMENT AND MEMBERSHIP

* * * * * * *

(j) OPEN MEETINGS
All meetings of the Board, any executive committee (on such occasions as it has been delegated the authority to act for the Board) of the Board, and any council established in connection with this, shall be open and subject to the requirements and provisions of section 552b of Title 5 relating to open meetings.

(k) DUTIES AND FUNCTIONS OF BOARD
In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish polices and develop such programs for the Institute that will further the achievement of its purpose and performance of its functions;

* * * * * * *

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; **[**and**]**

(6) award grants and enter into cooperative agreements or contracts pursuant to section 10705(a) of the title**[**.**]** *;and*

(7) present an annual Howell Heflin Award in recognition of an innovative Institute-supported project that has a high likeli-

hood of significantly improving the quality of justice in State courts across the Nation.

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§ 10705. Grants and contracts

(a) AUTHORITY OF INSTITUTE; PURPOSES OF GRANTS.—

* * * * * * *

(b) PRIORTY IN MAKING AWARDS; ALTERNATIVE RECIPIENTS; APPROVAL OF APPLICATIONS; RECEIPT AND ADMINISTRATION OF FUNDS; ACCOUNTABILITY.

The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

(1) The Institute shall give highest priority to awarding grants to and entering into cooperative agreements or contracts with State and local courts.

[(1)**]***(2)* The Institute may award grants to or enter into cooperative agreements or contracts with—

[(A) State and local courts and their agencies;**]**

[(B)**]**(*A*) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and

[C**]**(*B*) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

[(2)**]**(*3*) The Institute may, if the objective can better be served thereby, award grants to or enter into cooperative agreements or contracts with—

(A) other nonprofit organizations with expertise in judicial administration;

(B) institutions of higher education;

(C) individuals, partnerships, firms, or corporations; and

(D) private agencies with expertise in judicial administration

[(3)**]**(*4*) Upon application by an appropriate State or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements the Institute may award a grant or enter into a cooperative agreement or contract with a unit of State or local government other than a court.

[(4)**]**(*5*) The Institute may enter into contracts with Federal agencies to carry out the purposes of this chapter.

[(5)**]**(*6*) Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(7) In making grants under this title, the Institute shall undertake outreach efforts to assure the widest feasible geographical distribution of grant funds and benefits resulting from grants, consistent with its mission to award grants hav-

ing the greatest likelihood of improving the quality of justice nationwide.

* * * * * * *

§ 10706. Limitations on grants and contracts

(a) DUTIES OF INSTITUTE.—

* * * * * * *

(d) PROHIBITED USES OF FUNDS.—

To ensure that funds made available under this chapter are used to supplement and improve the operation of State courts, rather than to support basic court services *or noncourt related activities of private organizations*, funds shall not be used—

(1) to supplant [State or local] State, local, or private organizational funds currently supporting a program or activity; [or]

(2) to construct court facilities or structures, except to remodel existing facilities to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program [.] *; or*

(3) to support the activities of any national, State, or local bar association, except for—

(A) the training of State court judges or court personnel, if such training is not provided by any person or entity other than a bar association; or

(B) projects conducted in State courts or directly in conjunction with State courts to improve the efficiency of such courts.

* * * * * * *

§ 10712. [Report by Attorney General] *REPORTS TO CONGRESS*

[On October 1, 1987, the Attorney General, in consultation with the Federal Judicial Center, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the effectiveness of the Institute in carrying out the duties specified in section 10702(b) of this title. Such report shall include an assessment of the cost effectiveness of the program as a whole and, to the extent practicable, of individual grants, an assessment of whether the restrictions and limitations specified in sections 10706 and 10707 of this title have been respected, and such recommendations as the Attorney General, in consultation with the Federal Judicial Center, deems appropriate.]

Effective January 1, 1997, the Institute shall provide semiannual reports to the Committees on the Judiciary of the Senate and the House of Representatives identifying all grants made by the Institute during the preceding six months. The report shall include the name and address of the grantee, the purpose of the project, the amount of funding provided, and the duration of the project.

§ 10713. Authorization of appropriations

[There are authorized to be appropriated to carry out the purposes of this chapter $20,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, $25,000,000 for fiscal year 1995, and $25,000,000 for fiscal year 1996. Amounts appropriated for each such year are to remain available until expended.]

There are authorized to be appropriated to carry out the purposes of this title $12,500,000 for each of fiscal years 1997, 1998, 1999, and 2000, to remain available until expended.

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TITLE 45—RAILROADS

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CHAPTER 16—REGIONAL RAIL REORGANIZATION

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Subchapter II—United States Railway Association

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§ 719. Judicial review

(a) GENERAL.—
Notwithstanding * * *

* * * * * * *

(b) SPECIAL COURT.—

(1) Within 30 days after January 2, 1974, the Association shall make application to the judicial panel on multi-district litigation authorized by section 1407 of title 28 for the consolidation in a single, three-judge district court of the United States of all judicial proceedings with respect to the final system plan. Within 30 days after such application is received, the panel shall make the consolidation in a district court (cited herein as the "special court") which the panel determines to be convenient to the parties and the one most likely to be able to conduct any proceedings under this section with the least delay and the greatest possible fairness and ability. Such proceedings shall be conducted by the special court which shall be composed of three Federal judges who shall be selected by the panel, except that none of the judges selected may be a judge assigned to a proceeding involving any railroad in reorganization in the region under section 77 of the Bankruptcy Act. The special court is authorized to exercise the powers of a district judge in any judicial district with respect to such proceedings and such powers shall include those of a reorganization court. The special court shall have the power to order the conveyance of rail properties of railroads leased, operated, or controlled by a railroad in reorganization in the region. The special court may issue rules for the conduct of any proceedings under this section and under section 745 of this title, including rules with respect to the time within which motions may be filed, and

with respect to appropriate representation of interests not otherwise represented (including the Secretary with respect to a petition by the Association in the case of a proposal developed by the Secretary, under such section 745 of this title). No determination by the panel under this subsection may be reviewed in any court.

(2) The special court referred to in paragraph (1) of this subsection is abolished effective 90 days after the date of enactment of the Federal Courts Improvement Act of 1996. On such effective date, all jurisdiction and other functions of the special court shall be assumed by the United States District Court for the District of Columbia. With respect to any proceedings that arise or continue after the date on which the especial court is abolished, the references in the following provisions to the special court established under this subsection shall be deemed to refer to the United States District Court for the District of Columbia:

(A) Subsections (c), (e)(1), (e)(2), (f) and (g) of this section.

(B) Sections 202 (d)(3), (g), 207 (a)(1), (b)(1), (b)(2), 208(d)(2), 301 (e)(2), (g), (k)(3), (k)(15), 303 (a)(1), (a)(2), (b)(1), (b)(6)(A), (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), 304 (a)(1)(B), (i)(3), 305 (c), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(8), (e), (f)(1), (f)(2)(B), (f)(2)(D), (f)(2)(E), (f)(3), 306 (a), (b), (c)(4) and 601 (b)(3), (c) of this Act (45 U.S.C. 712 (d)(3), (g), 717 (a)(1), (b)(1), (b)(2), 718(d)(2), 741 (e)(2), (g), (k)(3), (k)(15), 743 (a)(1), (a)(2), (b)(1), (b)(6)(A), (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), 744 (a)(1)(B), (i)(3), 745 (c), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(8), (e), (f)(1), (f)(2)(B), (f)(2)(D), (f)(2)(E), (f)(3), 746 (a), (b), (c)(4), 791(b)(3), (c).

(C) Sections 1152(a) and 1167(b) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105(a), 1115(a)).

(D) Sections 4023 (2)(A)(iii), (2)(B), (2)(C), (3)(C), (3)(E), (4)(A) and 4025(b) of the Conrail Privatization Act (45 U.S.C. 1323 (2)(A)(iii), (2)(B), (2)(C), (3)(C), (3)(E), (4)(A), 1324(b)).

(E) Section 24907(b) of title 49, United States Code.

(F) Any other Federal law (other than this subsection and section 605 of the Federal Courts Improvement Act of 1996), Executive order, rule, regulation, delegation of authority, or document of or relating to the special court as previously established under paragraph (1) of this subsection.

* * * * * * *

(e) ORIGINAL AND EXCLUSIVE JURISDICTION.—

* * * * * * *

[(3) A final order or judgment of the special court in any action referred to in this section shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States. Such review is exclusive and any such petition shall be filed in the Supreme Court not more than 20 days after entry of such order or judgment.]

(3) An order or judgment of the United States District Court for the District of Columbia in any action referred to in this sec-

tion shall be reviewable in accordance with sections 1291, 1292, and 1294 of title 28, United States Code.

* * * * * * *

(g) STAY OF COURT PROCEEDINGS.—

The special court may stay or enjoin any action or proceeding in any State court or in any court of the United States other than the Supreme Court *or Court of Appeals for the District of Columbia Circuit* if such action or proceeding is contrary to any provision of this chapter, impairs the effective implementation of this chapter, or interferes with the execution of any order of the special court pursuant to this chapter.

[(h) SPECIAL MASTERS.—

[(1) The special court may appoint and fix the compensation and assign the duties of such special masters as it considers necessary or appropriate to conduct hearings, receive evidence and report thereon to the special court, and perform such other acts as the special court may require. The special court may employ such special masters by contract or otherwise, without regard to section 5 of title 41 or part III of title 5, on such terms and conditions as it may determine. Such special masters shall not be deemed to be employees of the Federal Government or any department, agency, or instrumentality thereof. The special court may also appoint employees in such number as may be approved by the Director of the Administrative Office of the United States Courts, and may procure such administrative services as may be necessary for it or the special masters to complete their assignments expeditiously.

[(2) There are authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection. Sums appropriated under this subsection are authorized to remain available until expended.]

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Subchapter III—Consolidated Rail Corporation

* * * * * * *

§ 743. Valuation and conveyance of rail properties

* * * * * * *

[(d) REVIEW—

[A finding or determination entered by the special court pursuant to subsection (c) of this section or section 746 of this title shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States. Such review is exclusive and any such petition shall be filed in the Supreme Court not more than 20 days after entry of such finding or determination.]

(d) APPEAL.—

An order or judgment entered by the United States District Court for the District of Columbia pursuant to subsection (c) of this section or section 746 of this title shall be reviewable in accordance with sections 1291, 1292, and 1294 of title 28, Untied States Code.

* * * * * * *

§ 745. Continuing reorganization; supplemental transactions

* * * * * * *

(d) SPECIAL COURT PROCEEDINGS.—

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(4) In proceedings under this subsection, the special court is authorized to exercise the powers of [a judge of a United States district court with respect to such proceedings and such powers shall include those of] a reorganization court.

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CHAPTER 20—NORTHEAST RAIL SERVICE

* * * * * * *

§ 1104. Definitions

As used in this subtitle, unless the context otherwise requires, the term:

(1) "Amtrak" means the National Railroad Passenger Corporation created under title III of the Rail Passenger Service Act.

* * * * * * *

[(8) "Special court" means the judicial panel established under section 209 of the Regional Rail Reorganization Act of 1973.]

(8) "Special court" means the judicial pane established under section 209(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719(b)(1)) or, with respect to any proceedings that arise or continue after the panel is abolished pursuant to section 209(b)(2) of such Act, the United States District Court for the District of Columbia.

§ 1105. Judicial review

* * * * * * *

[(b) EXCLUSIVE REVIEW BY WRIT OF CERTIORARI TO SUPREME COURT.—

[A judgment of the special court in any action referred to in this section shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States. Such review is exclusive and any such petition shall be filed in the Supreme Court not more than 20 days after entry of such order or judgment.]

(b) APPEAL.—

An order or judgment of the United States District Court for the District of Columbia in any action referred to in this section shall be reviewable in accordance with sections 1291,1292, and 1294 of title 28, Untied States Code.

* * * * * * *

[(d) ASSIGNMENT OF ADDITIONAL JUDGES.—

[If the volume of civil actions under subsection (a) of this section so requires, the United States Railway Association shall apply to the judicial panel on multi-district litigation authorized by section 1407 of title 28 for the assignment of additional judges to the special court. Within 30 days after the date of such application, the

panel shall assign to the special court such additional judges as may be necessary to exercise the jurisdiction described in subsection (a) of this section.]

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SECTION 140 OF THE JOINT RESOLUTION MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 1982, AND FOR OTHER PURPOSES

(Public Law 97–92)

* * * * * * *

TITLE IV—THE JUDICIARY

* * * * * * *

[SEC. 140. Notwithstanding any other provision of law or of this joint resolution, none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase, after the date of enactment of this joint resolution, any salary of any Federal judge or Justice of the Supreme Court, except as may be specifically authorized by Act of Congress hereafter enacted: *Provided,* That nothing in this limitation shall be construed to reduce any salary which may be in effect at the time of enactment of this joint resolution nor shall this limitation be construed in any manner to reduce the salary of any Federal judge or of any Justice of the Supreme Court.]

SECTION 120 OF THE BANKRUPTCY AMENDMENTS AND FEDERAL JUDGESHIP ACT OF 1984

(Public Law 98–353)

TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE

* * * * * * *

SEC. 120.(a)(1) Whenever a court of appeals is authorized to fill a vacancy that occurs on a bankruptcy court of the United States, such court of appeals shall appoint to fill that vacancy a person whose character, experience, ability, and impartiality qualify such person to serve in the Federal judiciary.

(2) It is the sense of the Congress that the courts of appeals should consider for appointment under section 152 of title 28, United States Code, to the first vacancy which arises after the date of the enactment of this Act in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

(3) When filing vacancies, the court of appeals may consider reappointing incumbent bankruptcy judges under procedures prescribed by regulations issued by the Judicial Conference of the United States.

(b) The judicial council of the circuit involved shall assist the court of appeals by evaluating potential nominees and by recommending to such court for consideration for appointment to each vacancy on the bankruptcy court persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference of the United States. In the case of the firsts vacancy which arises after the date of the enactment of this Act in the office of each bankruptcy judge, such potential nominees shall include the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment and the judicial council determines that such judge is qualified under subsection (c) of this section to continue to serve. Such potential nominees shall receive consideration equal to that given all other potential nominees for such position. *All incumbent nominees seeking reappointment thereafter may be considered for such a reappointment, pursuant to a majority vote of the judges of the appointing court of appeals, under procedures authorized under subsection (a)(3).*

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SECTION 203 OF THE JUDICIAL IMPROVEMENTS ACT OF 1990

(Public Law 101–650)

* * * * * * *

TITLE II—FEDERAL JUDGESHIPS

* * * * * * *

SEC. 203. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

* * * * * * *

(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the northern district of Alabama;

* * * * * * *

(13) 1 additional district judge for the eastern district of Virginia.

The first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 5 years or more after the effective date of this title, shall not be filled. *For districts named in this subsection for which multiple judgeships are created by this Act, the last of those judgeships filled shall be the judgeship created under this subsection.*

* * * * * * *

SECTION 303 OF THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1992

(Public Law 102–140)

* * * * * * *

TITLE III—THE JUDICIARY

* * * * * * *

GENERAL PROVISIONS—THE JUDICIARY

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SEC. 303. (a) The Judicial Conference shall hereafter prescribe reasonable fees, pursuant to sections 1913, 1914, **[**1926, and 1930**]** *1926, 1930, and 1932* of title 28, United States Code, for collection by the courts under those sections for access to information available through automatic data processing equipment. These fees may distinguish between classes of persons, and shall provide for exempting persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. The Director of the Administrative Office of the United States Courts, under the direction of the Judicial Conference of the United States, shall prescribe a schedule of reasonable fees for electronic access to information which the Director is required to maintain and make available to the public.

* * * * * * *

SECTION 3 OF THE BANKRUPTCY JUDGESHIP ACT OF 1992

(Public Law 102–361)

* * * * * * *

Sec. 3. TEMPORARY JUDGESHIPS.

(a) APPOINTMENTS.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code:

(1) 1 additional bankruptcy judge for the northern district of Alabama.

* * * * * * *

(10) 1 additional bankruptcy judge for the western district of Texas.

(b) VACANCIES.—The first vacancy in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, and occurring 5 years or more after the **[**date of the enactment of this Act**]** *appointment date of the judge named to fill the temporary judgeship position*, shall not be filled. In the case of a vacancy resulting from the expiration of the term of a bankruptcy judge not described in the preceding sentence, that judge

shall be eligible for reappointment as a bankruptcy judge in that district.

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SECTION 104 OF THE CIVIL JUSTICE REFORM ACT OF 1990

(28 U.S.C. 471 note)

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TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

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SEC. 104. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the 5-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

* * * * * * *

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than [December 31, 1996,] *June 30, 1997,* the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC 105. PILOT PROGRAM.

(a) IN GENERAL.—(1) During the 5-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

* * * * * * *

(c) PROGRAM STUDY REPORT.—(1) Not later than [December 31, 1995,] *June 30, 1997,* the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent

organization with expertise in the area of the Federal court management.

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SECTION 905 OF THE JUDICIAL IMPROVEMENTS AND ACCESS TO JUSTICE ACT

(28 U.S.C. 651 note)

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TITLE IX—ARBITRATION

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SEC. 905 AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of the fiscal years 1994 through [1997] *1998* for the fiscal year ending September 30, 1989, and for each of the succeeding 4 fiscal years, to the judicial branch such sums as may be necessary to carry out the purposes of chapter 44, as added by section 901 of this Act. Funds appropriated under this section shall be allocated by the Administrative Office of the United States Courts to Federal judicial districts and the Federal Judicial Center. The funds so appropriated are authorized to remain available until expended.

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