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July 6, 1990

Mr. Jeff Peck
General Counsel, Committee on
the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Jeff:

Enclosed are the answers of Judges Peckham and McGovern to the questions you submitted to them last week. Please note that in the questions submitted by Senator Thurmond there did not appear to be a question 3 -- its seems that they numbered their questions 1, 2, 4, 5 & 6. Of course, if there is a question 3, we would be more than happy to respond promptly.

I have left a note for Art White to be in touch with you next Tuesday re any progress reports or other ways we can be of assistance. I want to reiterate my comments of this morning that we want to work closely with you toward achieving a meaningful Title III, IV, V or whatever.

Sincerely,

Robert E. Feidler
Legislative and Public
Affairs Officer

Enclosures

RESPONSES OF JUDGE WALTER T. MCGOVERN
TO QUESTIONS FROM THE SENATE JUDICIARY COMMITTEE
ON S. 2648

Question 1. Judge McGovern, in your prepared remarks you state that numerous pieces of legislation in recent years have had a strong impact on the Federal courts. With the implementation of sentencing guidelines and increased drug prosecutions in the Federal courts, what standards should we use to ensure that the level of manpower within the Federal judiciary is properly maintained?

Response: The Judicial Conference has adopted standards for use in evaluating judgeship needs in both the district courts and the courts of appeals. Over the years, these standards have provided the Conference with what we believe is an accurate assessment of the judgeship requirements of the courts. Accordingly, in our judgment, adoption of the same standards by the Congress would insure that a proper level of judicial resources is maintained. A detailed description of each standard is contained on pages 5 through 9 in the attached statement on the Judicial Conference procedures for developing judgeship needs.

Question 2. Judge McGovern, Title II of S. 2648 contains a provision to create additional Federal judgeships. This provision was based upon the official recommendation of the Judicial Conference at the time the bill was introduced, along with a consideration of districts particularly impacted by drug cases. Today, on behalf of the Judicial Conference, you present the latest 1990 "Official Recommendation" calling for the creation of 96 additional judgeships. In your opinion, can the greater efficiencies in the civil litigation process we are seeking in Title I of this bill be achieved with a lesser number of judgeships than currently recommended by the Judicial Conference? Why or why not?

Response: The greater efficiencies sought in Title I cannot be achieved with fewer additional judgeships than were recommended by the Judicial Conference. In formulating its most recent recommendations, the Conference relied on the workload burdens associated with the caseloads as of December 31, 1989. Title I of this bill would add to those burdens by requiring more attention to the civil docket without a corresponding reduction in the requirements associated with criminal cases. This would suggest that the efficiencies sought by Title I cannot be achieved without providing the resources to deal with the demands of the current caseloads. The 96 additional judgeships requested by the Judicial Conference represent the minimum requirements, given current workload levels.

Question 3. Judge McGovern, as Chairman of the Committee on Judicial Resources for the Judicial Conference, could you describe for this Committee the process by which your committee determines judgeship needs as reflected in the official Judicial Conference recommendation?

Response: The Committee process and standards used are described in detail on pages 2 through 9 in the attached statement on the Judicial Conference procedures for developing judgeship needs.

JUDICIAL CONFERENCE FORMULATION OF RECOMMENDATIONS FOR ADDITIONAL JUDICIAL POSITIONS FOR THE UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS

INTRODUCTION

Under section 331 of Title 28 of the United States Code, the Judicial Conference of the United States is statutorily required to "make a comprehensive survey of the condition of business in the courts of the United States" and to "submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business". The Conference today consists of the Chief Justice, who is the Presiding Officer, the Chief Judge of the Court of Appeals of the Federal Circuit, the chief judges of the twelve courts of appeals of the regional judicial circuits, the Chief Judge of the Court of International Trade, and twelve district court judges, each of whom is chosen, by the circuit and district judges within each regional judicial circuit, to serve a three--year term as a member of the Conference. That panel of twenty-seven judges is the highest administrative and policy formulating unit within the judicial branch.

Under 28 U.S.C. Section 331, the Chief Justice, as Presiding Officer, is expressly required to "submit to Congress an annual report of the proceedings of the Judicial Conference" and is expressly authorized to file with Congress the Conference's "recommendations for legislation." Draft legislation is formally transmitted to Congress whenever appropriate.

Specific numbers of permanent judicial positions for the individual courts of appeals and district courts of the United States are statutorily authorized under section 44 and 133 of Title 28 of the United States Code. From 1948, when Title 28 was revised and re-codified, through 1984, when sections 44 and 133 were last amended, Congress generally responded to the need for additional judicial positions by processing "omnibus judgeship bills". During that thirty-six year period, seven omnibus bills were enacted. In all seven instances, recommendations for additional judicial positions, formulated by the Judicial Conference, were the basis for action by the Senate and House Judiciary Committees. Although modified to some extent in each instance, usually by the addition of positions proposed by individual Senators and Representatives, those recommendations were always extensively reflected in each judgeship Act.

The Judicial Conference of the United States has been evaluating the need for additional judgeships and making recommendations to the Congress for nearly 100 years. Until 1964, however, the Conference had no systematic approach for determining the need for additional judgeships. Requests from individual courts were received for Conference action from several sources

both within and outside the Judiciary on a sporadic basis and acted upon at each session of the Conference. The recommendations from the Conference would accumulate in Congress for several years before enactment of legislation to establish the necessary judgeships.

In 1964, in an effort to secure Congressional action on a more regular basis, the Conference adopted a policy of making a comprehensive report to the Congress every four years on the need for additional judgeships. This policy was in effect until 1977 when the Conference concluded that the report to Congress should be made more frequently to provide up-to-date information on the needs of the Judiciary. Since that time, judgeship surveys have been conducted at two-year intervals. The last survey, concluded with Judicial Conference action in June 1990, resulted in recommendations for 20 additional judgeships for the courts of appeals and 76 additional judgeships for the district courts. Until the reorganization of the Conference committee structure in September 1987, the Committee on Court Administration and its Subcommittee on Judicial Statistics were responsible for conducting judgeship surveys on behalf of the Conference. That responsibility now falls within the jurisdiction of the Committee on Judicial Resources and its Subcommittee on Judicial Statistics.

The following pages provide a brief summary of the procedures which have been established over the years by the Judicial Conference for determining the need for additional judgeships. This summary deals chiefly with the process used for conducting the 1990 survey of judgeship needs, although the issues and policies change to some degree with each new study.

Judgeship Survey Procedures

Schedule

Since 1980, the judgeship survey has involved a six-step process resulting in final recommendations at the meeting of the Judicial Conference in even-numbered years. This year, the Conference accelerated the normal process and completed the Survey in June. After Conference action, the recommendations are transmitted by the Administrative Office to the Congress in the form of draft legislation. The steps in the process and the schedule used in 1990 were as follows:

August 1989 - Each chief judge was asked to complete a questionnaire on the need for additional judgeships. A copy of the letter to chief judges was sent to every judge so that all members of the court would be aware of the request.

December 1989 - The Subcommittee on Judicial Statistics established the criteria for evaluating judgeship requests, reviewed the responses to the questionnaires, and developed preliminary recommendations on the request of each court. The recommendations were transmitted to each court and the respective judicial councils in January 1990 with a request that the councils provide a recommendation on the judgeship needs of each court within the circuit. The individual courts were also notified that additional information could be submitted if they disagreed with the Subcommittee's evaluation.

March 1990 - The judicial councils submitted their responses to the Subcommittee's preliminary recommendations with additional supporting material from the courts and/or council to justify requests.

April 1990 - The Subcommittee considered responses from the councils and developed final recommendations for consideration by the Committee on Judicial Resources. The final recommendations were sent to the courts, the councils, and the Committee.

May 1990 - The Committee reviewed the Subcommittee's recommendations, considered requests for reconsideration of the Subcommittee's action from the courts and developed final recommendations for consideration by the Judicial Conference.

June 1990 - The Judicial Conference reviewed and approved recommendations for transmittal to the Congress.

The schedule was developed to provide for maximum input from the individual courts. During the 11-month life of the survey, the courts had three separate opportunities to present their case for additional judgeships prior to consideration by the Judicial Conference. The schedule also provided the Subcommittee a chance to review its preliminary recommendations for consistent application of adopted guidelines, obtain recommendations from the judicial councils, and consider any objections to its policies and procedures.

Policy Considerations

Over the last 18 years, the Judicial Conference and its committees have made several general policy decisions related to the survey of judgeship needs. The major issues which have been addressed are as follows:

1. Conducting surveys despite no Congressional action on previous ones. Historically, the Congress has not acted on the Conference's recommendations immediately. The last legislation creating additional judgeships was passed in July 1984 after recommendations from the Judicial Conference

in 1980 and 1982. At the beginning of the 1990 Judgeship Survey, the Congress had not taken action on the 1984, 1986 or the 1988 Conference recommendations. The Subcommittee concluded that the 1990 Survey should proceed on schedule so that the Congress could be provided with the most current requirements for additional judgeships.

2. Reviewing judgeship recommendations previously approved by the Conference. With many of the surveys beginning prior to congressional action on previous recommendations, the question has been raised as to whether prior Conference recommendations are subject to change. In an effort to insure that only positions which are required by current caseloads are recommended for congressional action, the Subcommittee and Committee have adopted a policy for reviewing and requiring justification for all additional judgeships requested by the courts, even those approved in a prior survey. The adoption of this policy has provided greater assurance that all positions recommended to Congress can be justified on the basis of the current workload situation.

3. Recommendations are based on current caseload requirements rather than projections. In 1972, the Judicial Conference based many of its judgeship recommendations for district courts on projections of filings for 1976 (the date of the next scheduled survey). In reviewing the Conference recommendations, the Congress rejected the use of projections as a basis for creating life-time judgeship positions, citing the potential error factor in estimating future workload for individual courts. Because of the concerns expressed by Congress, the Judicial Conference agreed to base its recommendations for additional district judgeship positions only on absolute present needs. In making this decision, however, the Conference also concluded that the overall judgeship needs of the courts should be presented to Congress on a more frequent basis than every four years. This decision led to the 1977 Conference policy of conducting judgeship surveys at two-year intervals.

4. All courts are evaluated against an established standard. With the variety of judgeship requests and justifications, the Subcommittee concluded that an equitable and consistent evaluation of needs could only be made by adopting a standard against which all courts could be compared. In establishing its standards, the Subcommittee did not make the process of evaluating judgeships a mathematical one based on statistics alone, but instead developed a basis for comparing the needs of courts with widely divergent caseloads and requests. Standards adopted by the Subcommittee have never

been applied inflexibly; they are used as a point of departure for evaluating other factors addressed by the courts in their justification. A more detailed explanation of the standards and their application is provided below.

Procedures and Standards for District Courts

In conducting the Quadrennial Survey in 1972, the Subcommittee on Judicial Statistics reviewed a compilation of six years of statistical data for each district court along with the justifications submitted by the courts. Some of the factors focused on by the Subcommittee in evaluating judgeship requests were the nature and volume of case filings, weighted filings, terminations, backlog, and the number of trials and trial days per judgeship. The Subcommittee also reviewed projected filings for 1976. In general, the Subcommittee considered that an additional judgeship should be recommended when the 1976 projected filings per judgeship reached 400 or more.

This survey was the first in which a specific statistical standard was employed in developing judgeship recommendations. A level of 400 filings per judgeship was established on the basis of the personal experience of the members of the Subcommittee and their evaluation of the statistics from districts which were in obvious need of additional judgeships. The members concluded that their own caseloads were manageable as long as the number of cases on their dockets did not exceed 380-390. They were able to maintain a relatively current docket until the number of cases exceeded 400. The members also observed that the other judges of their respective courts had similar experiences in dealing with their dockets.

In 1980, the Subcommittee changed the statistical measure used as a general standard from filings per judgeship to weighted filings per judgeship. Weighted filings, unlike filings, account for the varying judge time required by differing case types. Each case type has been assigned a weight based on a time study conducted by the Federal Judicial Center. The weights were developed on the basis of the average judge time devoted to each case class during the study. For example, the class of cases involving student loans or the recovery of VA overpayments required little, if any, judge time, so this class was assigned a weight of .03 rather than a weight of 1.0 which is assigned to the average case. Similarly, social security cases are given a weight of 0.26 in the weighted caseload scheme. On the other hand, airline personal injury cases on the average consumed a great deal of judge time during the survey, so this class was assigned a weight of 3.03. The latest weights for each class (there are over 300 classes of civil and criminal cases) were established on the basis of a time study conducted in 1979.

During the years from 1972 through 1980, filings in the district courts grew dramatically. The nature of the cases, however, also began to change. There were much larger volumes of lower weighted cases than ever before. As a result of this changing nature, the Subcommittee concluded that filings per judgeship was no longer an appropriate measure of the need for additional judgeships. Weighted filings, with the built-in adjustment for the nature of the caseload, was then adopted in 1980 as the primary standard for evaluating judgeship needs.

It was also in 1980 that the Subcommittee began using a standard questionnaire to solicit the judgeship needs of each court. Prior to that time, the responses from the courts and the justifications varied from one paragraph to several pages and, in many instances, did not provide answers to the issues raised during the survey.

In formulating its recommendations for additional district court judgeships during the 1982, 1984, and 1986 Surveys, the Subcommittee reviewed the questionnaires and supporting material submitted by the courts and judicial councils, and six years of historical caseload information prepared by the Administrative Office. The Subcommittee considered the level of new filings, the level of weighted filings, the mix of cases, the number of pending cases, and the length of trials. Generally, the Subcommittee concluded that weighted filings in excess of 400 per authorized judgeship indicated a need for additional judgeships. Where the weighted caseload for a court had consistently exceeded 400 per judgeship for the last several years, or where the weighted caseload had increased steadily and exceeded 400 per judgeship in the last year or two, the Subcommittee recommended additional permanent judgeships. In the absence of a sustained level of weighted filings of 400 per judgeship, the Subcommittee recommended additional permanent judgeships only if factors such as lengthy trials, unusual geographical problems, or particularly difficult travel requirements were present.

The Subcommittee recommended additional temporary judgeships in districts where the weighted filings had reached 400 per judgeship but had not been sustained for a period of years or where the court's backlog had grown to such a level which could not be absorbed by the existing complement of judges. The Subcommittee also recommended temporary judgeships in situations where the court's justification for additional judgeships was based on case types which were not expected to continue at current levels, such as asbestos cases.

During the 1988 and 1990 Surveys, the Subcommittee again considered a level of weighted filings in excess of 400 weighted filings per judgeship as a threshold indicator of the need for additional judgeships; however, the following policy decisions were adopted while evaluating the courts' requests:

1. The Subcommittee generally decided to recommend permanent judgeships in only those districts where an additional judgeship resulted in weighted filings that were still above 400 per judgeship. In courts where an additional judgeship resulted in weighted filings slightly below 400 per judgeship, the Subcommittee recommended a temporary judgeship. In courts where an additional judgeship resulted in weighted filings substantially below 400 per judgeship, the Subcommittee recommended no additional judgeships.

2. Many requests for additional judgeships were based, in substantial part, on a large number of asbestos cases. Since the future of asbestos litigation remained uncertain, the Subcommittee recommended only temporary judgeships in those districts.

3. No temporary positions were recommended solely on the basis of a court's backlog.

4. During the 1990 Survey, the Subcommittee reevaluated all the judgeship positions previously recommended by the Judicial Conference in 1988. If the court's workload remained high and the court's response to the judgeship questionnaire continued to justify the previously recommended position, the Subcommittee again recommended the position. If, however, circumstances had changed and the current workload had declined to the point where the additional position would result in weighted filings substantially below 400 per judgeship, the Subcommittee felt that the position was no longer justified and, consequently, did not recommend it in the 1990 survey. In some cases, a temporary position was recommended in place of a permanent position that had been recommended in 1988.

5. The Subcommittee recognized that the temporary judgeships created by the 1984 Judgeship Act could expire any time after July 1989. Therefore, if the court's workload remained high, the Subcommittee recommended that the temporary position be converted to a permanent position.

Based on these policy decisions, the Judicial Conference recommended 76 additional judgeships: 47 permanent judgeships and 29 temporary judgeships.

Procedures and Standards for Courts of Appeals

Until 1986, the Subcommittee on Judicial Statistics had not developed a standard for evaluating the judgeship requirements of the courts of appeals. In conducting the judgeship surveys, the Subcommittee relied on the justification from the individual courts to provide support for their requests. The courts of appeals traditionally had requested fewer judgeships than were actually required because of substantial assistance from senior judges, changes in procedures which had resulted in a sizable increase in terminations, and the reluctance on the part of many courts to increase in size. Many of the judges of the courts of appeals felt that a continuing increase in judgeships would lead to inconsistency in court decisions and detract from the collegiality of its members. As a result, while the courts' caseloads increased significantly, there were few, or no requests for additional judgeships.

Despite the ease in justifying requests for additional appeals judgeships, the Subcommittee had for several years attempted to develop a bench mark, similar to that used in district courts, for evaluation of judgeship needs in the courts of appeals. The Subcommittee tentatively decided that during the 1986 Biennial Survey it would base its evaluation of judgeship needs in the courts of appeals on the number of cases which predictably would require disposition on the merits. A standard bench mark of terminations per judge could then be applied to determine the number of judgeships required in each court. The Subcommittee had available a Federal Judicial Center study suggesting 255 merits dispositions per judge as such a bench mark, and the Subcommittee solicited comments from the various courts for its use.

After reviewing the responses and considering several alternatives, the Subcommittee decided that the general approach of using predictable dispositions on the merits to determine the judgeship needs of the courts of appeals was still appropriate. Because of the substantial variations among the courts in the number of dispositions each court had currently been able to achieve, the Subcommittee concluded that a uniform application of the 255 bench mark without adjustments was not appropriate. It appeared to the Subcommittee that the most influential factor in determining a court's quantitative level of dispositions was the volume of prisoner cases. Courts with a high volume of prisoner appeals were much more likely to have a high level of dispositions per judge. With prisoner cases excluded, the dispositions per judge were much more consistent among the circuits. The Subcommittee, therefore, concluded that prisoner cases should be given a weight of 0.5 and that the standard originally proposed, 255 merits dispositions per judge, was an appropriate bench mark (after discounting prisoner cases). As with its consideration of the judgeship needs of district courts, the bench mark was not

applied inflexibly during the Subcommittee's survey but was used as a starting point for consideration of any other factors noted in the statistics or in the courts' and councils' responses to the Subcommittee's preliminary recommendations.

The procedures and standard adopted during the 1986 Survey were also used by the Subcommittee in conducting the 1988 and 1990 Surveys. Based on this standard, the Judicial Conference recommended 20 additional judgeships for the U.S. courts of appeals during the 1990 Survey.

Only Positions Which Are Needed Are Recommended

Although individual courts often perceive a need for an additional judgeship which is not reflected in final Conference recommendations, that is not a condemnation of individual court requests; it is a reflection of the Conference's efforts to respond to repeated Congressional admonitions urging restraint in the growth of the number of authorized judgeships. The 1990 Judicial Conference recommendations were deliberately held to the "bare bones minimum" necessary to avoid identifiable serious case processing congestion in individual courts. While minimum recommendations may require individual judges to continue to carry unreasonably heavy caseload burdens, and may also severely restrict a court's management flexibility, the Conference has nevertheless tried to avoid recommending additional positions unless a court's ability to serve the public adequately and responsibly would be clearly reduced to an unacceptable level.

QUESTIONS FROM SENATOR BIDEN FOR JUDGE PECKHAM

1. **QUESTION:** Is it fair to say that the Judicial Conference's March 13 policy statement on case management was issued in response to S. 2027, the original civil justice legislation? Is it also fair to say that the Judicial Conference's "14 Point Program" would not have been developed, at least at this time, in the absence of the civil justice reform legislation?

   ANSWER: It would be fair to say that neither the policy statement of March 13 by the Judicial Conference on case management nor the "14 Point Program" approved in late April, would have been developed, at those times, absent the introduction and attendant urgencies created by S. 2027. We want to give full credit to Senator Biden for being the catalyst that has generated much good and thoughtful debate in recent months on civil case management. We also want to point out, as was explained fully in the prepared statement submitted for the record, that the Conference has initiated and continues to maintain numerous efforts that are all designed to enhance the efficiency and effectiveness of the courts in both civil and criminal matters.

2. **QUESTION:** If S. 2648 in its present form were presented to the President for signature and he asked the Judicial Conference specifically whether he should sign or veto the legislation, what would the Judicial Conference's answer be? Please state clearly and specifically in your answer whether the Conference's recommendation would be to sign or veto the bill.

   ANSWER: The Conference has not taken a position -- nor would it at this time in the absence of a final Act of Congress -- on whether a veto would be sought.

Senator Thurmond

QUESTIONS FOR JUDGE PECKHAM

1. Judge Peckham, provisions contained in S.2648 contemplate a Federal judge taking a more "hands on" approach to case management with the courts than is currently practiced. In your opinion, should Federal judges be actively involved in managing the disposition of cases before them? If so, how so, and to what extent? If not, why not?

2. Judge Peckham, some judges believe that procedures instituted as part of developing a civil justice expense and delay reduction plan are complex and time consuming without any evidence that they will create any greater efficiency in the civil litigation process. However, the 14 point plan suggested by the Executive Committee of the Judicial Conference is strikingly similar to many of the provisions contained in S.2648. Could you cite the significant differences between the approach taken in S.2648 from that taken in the plan suggested by the Judicial Conference?

4. Judge Peckham, subparagraph (D) of Section 473(a)(2) would require the setting of target dates to decide motions. Some have pointed out the vast differences between the various kinds of motions, some of which require much more careful consideration than others. Given this disparity, what approach would you suggest as a means for setting target dates on motions which could provide the necessary flexibility to handle the differing complexity of the various motions encountered?

5. Judge Peckham, in your prepared remarks you state that the five district courts named in Title I of the bill which are slated for participation in demonstration programs would be more properly selected by the Judicial Conference. However, it is my understanding that all 5 districts volunteered to be demonstration districts. Is it not better to have districts involved in this demonstration project that voluntarily assume any of the extra burdens associated with such a program than for individual districts to have such a program forced upon them by the Judicial Conference? Why or why not?

6. Judge Peckham, not withstanding the views of the Subcommittee on the Civil Justice Reform Act of 1990, in your capacity as a district court judge, what is your own opinion as to the merits of Title I and Title II of S.2648?

RESPONSES TO SENATOR THURMOND'S QUESTIONS

1. The first sentence in this question seems to assume that most federal judges currently are not active case managers. We think that assumption is misplaced. Over the last 20 years there has been a dramatic movement in the federal trial bench toward more assertive pretrial case management. That movement was both reflected in and spurred on by the very significant amendments to the federal rules of civil procedure that were adopted in 1983. Practicing in conformity with those amendments, federal district judges engage their civil cases early in the pretrial period and help counsel fashion case development plans that are designed to assure disposition as efficiently as the ends of justice permit. I believe strongly that intellectually active involvement by the assigned judge early in the pretrial period is an essential component of a district judge's role. Early in the pretrial period, judges should help counsel open lines of communication, clarify positions, identify issues whose early resolution will streamline the pretrial process or position the case efficiently for productive settlement negotiations, and plan a sensible, cost-effective discovery and motion practice.

2. We agree there are striking similarities between the Conference's 14-point program and the provisions of S.2648. The principal difference in approach between the Judicial Conference's 14-point program and the most recent version of the proposed Civil Expense and Delay Reduction legislation is that the provisions of section 473(a) of the latter would impose mandatory provisions on all district courts **before** the local advisory groups have met, assessed local conditions, and formulated responsive recommendations. Under the Judicial Conference's program, by contrast, each local advisory group would begin its work with the guidelines established by the Conference, assess the civil and criminal dockets and filing trends, and be free to recommend any procedural or program innovations that promise to help reduce cost or delay. We believe that this open-ended process, that works at the local level from detailed consideration of the specifics of local conditions, is preferable to the approach of section 473(a).

In our written statement and in my oral testimony we pointed to three specific mandatory provisions of the current version of Title I which the executive committee finds particularly troubling: (1) the restrictive provision for setting a trial date, (2) the requirement that target dates be set for ruling on all pretrial motions, and (3) the requirement that certain matters be reported after being under submission for prescribed

periods. Since the views of the executive committee are set forth on these matters in detail in our written statement, we will not repeat them here.

4. [no question numbered "3" was presented]. We believe that the most constructive course for dealing with this kind of problem is to ask each local advisory group and district court first to assess the nature and magnitude of the problem in their court. The discussion between the judges and lawyers in this forum would raise the level of awareness that unreasonable delay in deciding motions can increase unnecessarily the cost of litigation. Before any rigid approaches are adopted, it is essential not only that the dimensions and sources of the problem be carefully identified, but also that a whole range of solution-options be carefully examined. For instance, in the Central District of California if a judge has a motion under submission for more than 120 days, a local rule requires counsel for all parties to write a joint letter (with a copy to the Chief Judge) bringing this fact to the judge's attention. The local rule further provides that if the judge does not render a decision within 30 days, he or she shall inform counsel of the date by which the decision will be made. The District of Oregon has a similar rule. We are especially concerned that rigidly mechanical approaches might result in counterproductive pressures, e.g., pressures whose effect could be to sacrifice quality of decision-making for the appearance of efficiency. As

you appreciate, we discuss these kinds or concerns in some detail in our written statement.

5. While it is true that the districts named in the statute have expressed interest in participating in the kinds of procedural experiments contemplated in the 14-point program and in the proposed legislation, and undoubtedly these districts will originate instructive and innovative data and results, we believe that as a matter of policy it is preferable to permit this kind of decision to be made within the judiciary, where the Judicial Conference and Federal Judicial Center can participate. We certainly agree that it would be counterproductive for the Judicial Conference or Congress to mandate individual courts, without their consent, to participate in this kind of experimental effort.

6. You have asked for my personal opinion about Titles I and II. I share the views of Judge McGovern with respect to Title II.

I would favor Title I S.2648 if certain modifications set forth below were made.

I support most concepts of the legislation--use of advisory groups, the principles, guidelines and techniques of litigation management and cost and delay reduction (except as explained in the next paragraph), the provisions for demonstration and

implementation districts, and the authorization for appropriations for training, education and automation.

I continue to recommend that §473(a) be folded into §473(b) so that there would not be any mandatory provisions for the plans. Further, even after folding them into §473(b), there are two specific provisions of what is now §473(a) that I would urge amending. First, I would add the following concept at the end of what is now §(a)(2)(B): "unless a judicial officer certifies that the trial cannot reasonably be held within such time because . . . the ends of justice outweigh the policy of providing an early trial date." For reasons set forth in the formal statement and in my answer to question number 4, I also urge that what is now §(a)(2)(D) be amended by deleting the last phrase: "and target dates for the deciding of motions."

If §473(a) were no longer mandatory, a district's plan would be implemented in the main by local rules adopted in accordance with the Rules Enabling Act. The Conference would review periodically the plans, experiments, and local rules, and any found to have merit for system-wide adoption would be submitted for enactment through the rule-making process under the Rules Enabling Act.

With these modifications, I would support the legislation as it would be consistent with the 14 points and the case management statement adopted by the U.S. Judicial Conference.