

*House Record*

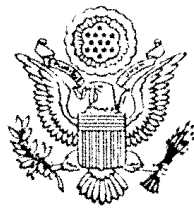
# No. 150—Part II

Vol. 136

WASHINGTON, SATURDAY, OCTOBER 27, 1990

No. 150

# Congressional Record



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of America

PROCEEDINGS AND DEBATES OF THE 101<sup>ST</sup> CONGRESS, SECOND SESSION

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Gekas

NOT VOTING—118

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Boucher	Horton	Roukema
Boxer	Huckaby	Rowland (CT)
Brennan	Hutto	Rowland (GA)
Broomfield	Jenkins	Russo
Burton	Johnston	Saiki
Callahan	Jones (NC)	Sangmeister
Campbell (CO)	Klecza	Schaefer
Chapman	LaFalce	Schneider
Clarke	Lantos	Schuettle
Clay	Laughlin	Schulze
Conte	Leath (TX)	Sharp
Coyne	Lipinski	Shaw
Crane	Luken, Thomas	Shuster
Crockett	Machtley	Sikorski
Derrick	Madigan	Sisisky
Dickinson	Manton	Skelton
Dingell	Martin (IL)	Smith (VT)
Dixon	Matsui	Smith, Denny
Dwyer	Mavroules	(OR)
Early	McDade	Tallon
Edwards (CA)	McEwen	Thomas (CA)
Edwards (OK)	McGrath	Thomas (GA)
Feighan	Mink	Towns
Flake	Morrison (CT)	Traxler
Flippo	Mrazek	Valentine
Ford (MI)	Murphy	Walgren
Gephardt	Neal (MA)	Walsh
Gibbons	Nelson	Watkins
Gingrich	Nowak	Weber
Glickman	Oaker	Whitten
Goodling	Olin	Wilson
Gordon	Owens (NY)	

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Mr. SAVAGE changed his vote from "no" to "yea."  
 So (two-thirds having voted in favor thereof), the rules were suspended and the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

JUDICIAL IMPROVEMENTS ACT OF 1990

Mr. BROOKS, Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 5316) to provide for the appointment of additional Federal circuit and district judges, and for other purposes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert: *That this Act may be cited as the "Judicial Improvements Act of 1990".*

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

The Congress finds that:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pre-trial process; and

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and

other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"471. Requirement for a district court civil justice expense and delay reduction plan.

"472. Development and implementation of a civil justice expense and delay reduction plan.

"473. Content of civil justice expense and delay reduction plans.

"474. Review of district court action.

"475. Periodic district court assessment.

"476. Enhancement of judicial information dissemination.

"477. Model civil justice expense and delay reduction plan.

"478. Advisory groups.

"479. Information on litigation management and cost and delay reduction.

"480. Training programs.

"481. Automated case information.

"482. Definitions.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

**"§ 473. Content of civil justice expense and delay reduction plans**

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months of the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate

cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

**"§ 474. Review of district court action**

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

**"§ 475. Periodic district court assessment**

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

**"§ 476. Enhancement of judicial information dissemination**

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years of filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

**"§ 477. Model civil justice expense and delay reduction plan**

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any

model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

**"§ 478. Advisory groups**

"(a) Within ninety days after the date of enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

**"§ 479. Information on litigation management and cost and delay reduction**

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States Courts shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under sec-

tion 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

**"§ 480. Training programs**

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

**"§ 481. Automated case information**

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

**"§ 482. Definitions**

"As used in this chapter the term 'judicial officer' means a United States district court judge or a United States magistrate."

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

**(c) EARLY IMPLEMENTATION DISTRICT COURTS.—**

(1) Any United States district court that, no earlier than June 30, 1991 and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction

plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

(3) Within eighteen months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such districts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof:

"23. Civil justice expense and delay reduction plans..... 471".

**SEC. 104. DEMONSTRATION PROGRAM.**

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

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(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, 1995, 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 four-year period beginning on January 1, 1991, the Judicial Conference 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).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall im-

plement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the six principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least five of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of three years. At the end of that three-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the six principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, 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 Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the six principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

#### SEC. 406. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than \$15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(e).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than \$5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than \$5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

## TITLE II—FEDERAL JUDGESHIPS

### SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

### SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

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

(1) 2 additional circuit judges for the third circuit court of appeals;

(2) 4 additional circuit judges for the fourth circuit court of appeals;

(3) 1 additional circuit judge for the fifth circuit court of appeals;

(4) 1 additional circuit judge for the sixth circuit court of appeals;

(5) 1 additional circuit judge for the eighth circuit court of appeals; and

(6) 2 additional circuit judges for the tenth circuit court of appeals.

(b) TABLES.—In order that the table contained in section 44(a) of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

Circuits	Number of Judges
District of Columbia.....	12
First.....	6
Second.....	13
Third.....	14
Fourth.....	15
Fifth.....	17
Sixth.....	16
Seventh.....	11
Eighth.....	11
Ninth.....	28
Tenth.....	12
Eleventh.....	12
Federal.....	12

### 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—

(1) 1 additional district judge for the western district of Arkansas;

(2) 2 additional district judges for the northern district of California;

(3) 5 additional district judges for the central district of California;

(4) 1 additional district judge for the southern district of California;

(5) 2 additional district judges for the district of Connecticut;

(6) 2 additional district judges for the middle district of Florida;

(7) 1 additional district judge for the northern district of Florida;

(8) 1 additional district judge for the southern district of Florida;

(9) 1 additional district judge for the middle district of Georgia;

(10) 1 additional district judge for the northern district of Illinois;

(11) 1 additional district judge for the southern district of Iowa;

(12) 1 additional district judge for the western district of Louisiana;

(13) 1 additional district judge for the district of Maine;

(14) 1 additional district judge for the district of Massachusetts;

(15) 1 additional district judge for the southern district of Mississippi;

(16) 1 additional district judge for the eastern district of Missouri;

(17) 1 additional district judge for the district of New Hampshire;

(18) 3 additional district judges for the district of New Jersey;

(19) 1 additional district judge for the district of New Mexico;

(20) 1 additional district judge for the southern district of New York;

(21) 3 additional district judges for the eastern district of New York;

(22) 1 additional district judge for the middle district of North Carolina;

(23) 1 additional district judge for the southern district of Ohio;

(24) 1 additional district judge for the northern district of Oklahoma;

(25) 1 additional district judge for the western district of Oklahoma;

(26) 1 additional district judge for the district of Oregon;

(27) 3 additional district judges for the eastern district of Pennsylvania;

(28) 1 additional district judge for the middle district of Pennsylvania;

(29) 1 additional district judge for the district of South Carolina;

(30) 1 additional district judge for the eastern district of Tennessee;

(31) 1 additional district judge for the western district of Tennessee;

(32) 1 additional district judge for the middle district of Tennessee;

(33) 2 additional district judges for the northern district of Texas;

(34) 1 additional district judge for the eastern district of Texas;

(35) 5 additional district judges for the southern district of Texas;

(36) 3 additional district judges for the western district of Texas;

(37) 1 additional district judge for the district of Utah;

(38) 1 additional district judge for the eastern district of Washington;

(39) 1 additional district judge for the northern district of West Virginia;

(40) 1 additional district judge for the southern district of West Virginia; and

(41) 1 additional district judge for the district of Wyoming.

(b) EXISTING JUDGESHIPS.—(1) The existing district judgeships for the western district of Arkansas, the northern district of Illinois, the northern district of Indiana, the district of Massachusetts, the western district of New York, the eastern district of North Carolina, the northern district of Ohio, and the western district of Washington authorized by section 202(b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353, 98 Stat. 347-348) shall, as of the effective date of this title, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(2)(A) The existing two district judgeships for the eastern and western districts of Arkansas (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be district judgeships for the eastern district of Arkansas only, and the incumbents of such judgeships shall hold the offices under section 133 of title 28, United States Code, as amended by this title.

(B) The existing district judgeship for the northern and southern districts of Iowa (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be a district judgeship for the northern district of Iowa only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(C) The existing district judgeship for the northern, eastern, and western districts of Oklahoma (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title)



and the occupant of which has his official duty station at Oklahoma City on the date of enactment of this title, shall be a district judgeship for the western district of Oklahoma only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(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;

(2) 1 additional district judge for the eastern district of California;

(3) 1 additional district judge for the district of Hawaii;

(4) 1 additional district judge for the central district of Illinois;

(5) 1 additional district judge for the southern district of Illinois;

(6) 1 additional district judge for the district of Kansas;

(7) 1 additional district judge for the western district of Michigan;

(8) 1 additional district judge for the eastern district of Missouri;

(9) 1 additional district judge for the district of Nebraska;

(10) 1 additional district judge for the northern district of New York;

(11) 1 additional district judge for the northern district of Ohio;

(12) 1 additional district judge for the eastern district of Pennsylvania; and

(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 five years or more after the effective date of this title, shall not be filled.

(d) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsections (a) and (b) of this section, such table is amended to read as follows:

Table with 2 columns: DISTRICTS and JUDGES. Lists states and their judicial districts with corresponding judge counts.

Table with 2 columns: State and Judge Count. Lists states and their judicial districts with corresponding judge counts.

SEC. 204. AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title, including such

sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this title.

SEC. 205. STUDY BY GENERAL ACCOUNTING OFFICE.

(a) IN GENERAL.—The Comptroller General of the United States shall review the policies, procedures, and methodologies used by the Judicial Conference of the United States in recommending to the Congress the creation of additional Federal judgeships. In conducting such review the Comptroller General shall, at a minimum, determine the extent to which such policies, procedures, and methodologies—

(1) provide an accurate measure of the workload of existing judges;

(2) are applied consistently to the various circuit courts of appeals and district courts; and

(3) provide an accurate indicator of the need for additional judgeships.

(b) REPORT TO CONGRESS.—The Comptroller General shall, not later than 18 months after the date of the enactment of this Act, report the results of the review conducted under subsection (a) to the Committees on the Judiciary of the House of Representatives and the Senate. The report shall include such recommendations as the Comptroller General considers appropriate for revisions of the policies, procedures, and methodologies used by the Judicial Conference that were reviewed in the report.

SEC. 206. EFFECTIVE DATE.

This title shall take effect on the date of enactment of this title.

TITLE III—IMPLEMENTATION OF FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

SEC. 301. SHORT TITLE.

This title may be cited as the "Federal Courts Study Committee Implementation Act of 1990".

SEC. 302. STUDY OF INTERCIRCUIT CONFLICTS AND STRUCTURAL ALTERNATIVES FOR THE COURTS OF APPEALS BY FEDERAL JUDICIAL CENTER.

(a) INTERCIRCUIT CONFLICTS.—The Board of the Federal Judicial Center is requested to conduct a study and submit to the Congress a report by January 1, 1992, on the number and frequency of conflicts among the judicial circuits in interpreting the law that remain unresolved because they are not heard by the Supreme Court.

(b) FACTORS TO CONSIDER IN STUDY.—In conducting such a study, the Center should consider, to the extent feasible, all relevant factors, such as whether the conflict—

(1) imposes economic costs or other harm on persons engaging in interstate commerce;

(2) encourages forum shopping among circuits;

(3) creates unfairness to litigants in different circuits, as in allowing Federal benefits in one circuit that are denied in other circuits; or

(4) encourages nonacquiescence by Federal agencies in the holdings of the courts of appeals for different circuits,

but are unlikely to be resolved by the Supreme Court.

(c) STRUCTURAL ALTERNATIVES FOR THE COURTS OF APPEALS.—The Board of the Federal Judicial Center is requested to study the full range of structural alternatives for the Federal Courts of Appeals and submit its report to the Congress and the Judicial Conference of the United States, no later than 2 years after the date of the enactment of this Act.

SEC. 303. EFFECT OF APPOINTMENT OF JUDGE AS DIRECTOR OF CERTAIN JUDICIAL BRANCH AGENCIES.

Section 133 of title 28, United States Code, is amended by adding at the end thereof the following:

(1) by inserting "(a)" before "The President"; and

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

"(b)(1) In any case in which a judge of the United States (other than a senior judge) assumes the duties of a full-time office of Federal judicial administration, the President shall appoint, by and with the advice and consent of the Senate, an additional judge for the court on which such judge serves. If the judge who assumes the duties of such full-time office leaves that office and resumes the duties as an active judge of the court, then the President shall not appoint a judge to fill the first vacancy which occurs thereafter in that court.

"(2) For purposes of paragraph (1), the term 'office of Federal judicial administration' means a position as Director of the Federal Judicial Center, Director of the Administrative Office of the United States Courts, administrative assistant to the Chief Justice."

SEC. 304. EXTENSION OF TERMS OF OFFICE OF BANKRUPTCY JUDGES.

Section 152(a) of title 28, United States Code, is amended by inserting after the third sentence the following: "However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor."

SEC. 305. APPEALS OF JUDGMENTS, ORDERS, AND DECREES OF BANKRUPTCY COURTS.

Section 158(b) of title 28, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and

(2) by inserting after paragraph (1) the following:

"(2) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section."

SEC. 306. RETIREMENT SYSTEM FOR CLAIMS COURT JUDGES.

(a) NEW RETIREMENT SYSTEM.—(1) Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 178. Retirement of judges of the Claims Court

"(a) A judge of the United States Claims Court who retires from office after attaining the age and meeting the service requirements, whether continuously or otherwise, of this subsection shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime, an annuity equal to the salary payable to Claims Court judges in regular active service. The age and service requirements for retirement under this subsection are as follows:

Attained Age:	Years of Service:
65	15
66	14
67	13
68	12
69	11
70	10.

"(b) A judge of the Claims Court who is not reappointed following the expiration of the term of office of such judge, and who retires upon the completion of such term shall, subject to subsection (f), be entitled to receive, during the remainder of such judge's lifetime, an annuity equal to the salary payable to Claims Court judges in regular active service, if—

"(1) such judge has served at least 1 full term as judge of the Claims Court, and

"(2) not earlier than 9 months before the date on which the term of office of such judge expired, and not later than 6 months before such date, such judge advised the President in writing that such judge was willing to accept reappointment as a judge of the Claims Court.

"(c) A judge of the Claims Court who has served at least 5 years, whether continuously or otherwise, as such a judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime—

"(1) an annuity equal to 50 percent of the salary payable to Claims Court judges in regular active service, if before retirement such judge served less than 10 years, or

"(2) an annuity equal to the salary payable to Claims Court judges in regular active service, if before retirement such judge served at least 10 years.

"(d) A judge who retires under subsection (a) or (b), may, at or after such retirement, be called upon by the chief judge of the Claims Court to perform such judicial duties with the Claims Court as may be requested of the retired judge for any period or periods specified by the chief judge, except that in the case of any such judge—

"(1) the aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and

"(2) he or she shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a Claims Court judge in regular active service. Any individual performing judicial duties pursuant to this subsection shall receive the allowances for official travel and other expenses of a judge in regular active service.

"(e)(1) Any judge who retires under the provisions of subsection (a) or (b) of this section shall be designated "senior judge".

"(2) Any judge who retires under this section shall not be counted as a judge of the Claims Court for purposes of the number of judgeships authorized by section 171 of this title.

"(f)(1) A judge shall be entitled to an annuity under this section if the judge elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts in writing. Such an election—

"(A) may be made only while an individual is a judge of the Claims Court (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, such election may be made at any time before the day after the day on which his or her successor takes office); and

"(B) once made, shall, subject to subsection (k), be irrevocable.

"(2) A judge who elects to receive an annuity under this section shall not be entitled to receive—

"(A) any annuity to which such judge would otherwise have been entitled under subchapter III of chapter 83, or under chap-

ter 84, of title 5, for service performed as a judge or otherwise;

"(B) an annuity or salary in senior status or retirement under sections 371 or 372 of this title;

"(C) retired pay under section 7447 of the Internal Revenue Code of 1986; or

"(D) retired pay under section 4096 of title 38.

"(g) For purposes of calculating the years of service of an individual under subsections (a) and (c), only those years of service as a judge of the Claims Court or a commissioner of the United States Court of Claims shall be credited, and that portion of the aggregate number of years of such service that is a fractional part of 1 year shall not be credited if it is less than 6 months, and shall be credited if it is 6 months or more.

"(h) An annuity under this section shall be payable at the times and in the same manner as the salary of a Claims Court judge in regular active service. Such annuity shall begin to accrue on the day following the day on which the annuitant's salary as a judge in regular active service ceases to accrue.

"(i)(1) Payments under this section which would otherwise be made to a judge of the Claims Court based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

"(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

"(3) As used in this subsection, the term "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or court of Indian offense.

"(j)(1) Subject to paragraph (2), any judge of the Claims Court who retires under this section and who thereafter in the practice of law represents (or supervises or directs the representation of) a client in making any civil claim against the United States or any agency thereof shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he so practices law.

"(2) If a judge of the Claims Court who retires under this section fails during any calendar year to perform judicial duties required of such judge by subsection (d), such judge shall forfeit all rights to an annuity under this section for the 1-year period which begins on the first day on which he or she so fails to perform such duties.

"(3) If a judge of the Claims Court who retires under this section accepts compensation for civil office or employment under the Government of the United States (other than the performance of judicial duties under subsection (d)), such judge shall forfeit all rights to an annuity under this section for the period for which such compensation is received.

"(4)(A) If a judge makes an election under this paragraph—

"(i) paragraphs (1) and (2) (and subsection (d)) shall not apply to such judge beginning on the date such election takes effect, and

"(ii) the annuity payable under this section to such judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such judge is entitled on the day before such effective date.

"(B) An election under subparagraph (A)—

"(i) may be made by a judge only if such judge meets the age and service requirements for retirement under subsection (a).

"(ii) may be made only during the period during which such judge may make an election to receive an annuity under this section or while the judge is receiving an annuity under this section, and

"(iii) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

"(C) Any election under this paragraph shall take effect on the first day of the first month following the month in which the election is made.

"(k)(1) Notwithstanding subsection (1)(B), an individual who has filed an election under subsection (f) to receive an annuity may revoke such election at any time before the first day on which such annuity would (but for such revocation) begin to accrue with respect to such individual.

"(2) Any revocation under this subsection shall be made by filing a notice thereof in writing with the Director of Administrative Office of the United States Courts.

"(3) In the case of any revocation under this subsection—

"(A) for purposes of this section, the individual shall be treated as not having filed an election under subsection (b) to receive an annuity.

"(B) for purposes of section 376 of this title—

"(i) the individual shall be treated as not having filed an election under section 376(a)(1), and

"(ii) section 376(g) shall not apply, and the amount credited to such individual's account (together with interest at 3 percent per annum, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual.

"(C) no credit shall be allowed for any service as a judge of the Claims Court or as a commissioner of the United States Court of Claims unless with respect to such service either there has been deducted and withheld the amount required by chapter 83 or 84 (as the case may be) of title 5 or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest.

"(D) the Claims Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (f), and

"(E) if subparagraph (D) is complied with, service on the Claims Court or as a commissioner of the United States Court of Claims shall be treated as service with respect to which deductions and contributions had been made during the period of service.

"(1)(1) There is established in the Treasury a fund which shall be known as the 'Claims Court Judges Retirement Fund'. The Fund is appropriated for the payment of annuities and other payments under this section.

"(2) The Secretary of the Treasury shall invest, in interest bearing securities of the

United States, such currently available portions of the Claims Court Judges Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

"(3)(A) There are authorized to be appropriated to the Claims Court Judges Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

"(B) For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Claims Court Judges Retirement Fund, over the balance in the Fund as of the date the unfunded liability is determined. In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

"(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph."

"(2) The table of sections at the beginning of chapter 7 of title 28, United States Code, is amended by adding at the end the following new item:

"178. Retirement of judges of the Claims Court."

(b) JUDICIAL SURVIVORS' ANNUITIES.—(1) Section 378 of title 28, United States Code, is amended as follows:

(A) Subsection (a)(1) is amended—

(i) by striking out "or" at the end of subparagraph (E);

(ii) by adding "or" at the end of subparagraph (F);

(iii) by inserting after subparagraph (F) the following:

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

(iv) by striking out "or (v)" and inserting in lieu thereof "(v)"; and

(v) by inserting before the semicolon at the end thereof the following: ", or (vi) the date of the enactment of the Federal Court Study Committee Implementation Act of 1990, in the case of a full-time judge of the Claims Court in active service on that date".

(B) Subsection (a)(2) is amended—

(i) by striking out "and" at the end of subparagraph (E);

(ii) by adding "and" at the end of subparagraph (F); and

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

"(G) in the case of a judge of the United States Claims Court, an annuity paid under section 178 of this title;".

(C) Subsection (b) is amended in the last sentence by striking out "section 377" each place it appears and inserting in each such place "section 178 or 377".

(c) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) Section 8331 of title 5, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (24);

(B) by striking out the period at the end of paragraph (25) and inserting in lieu thereof "; and"; and

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

"(26) 'Claims Court judge' means a judge of the United States Claims Court who is appointed under chapter 7 of title 28 or who has served under section 167 of the Federal Courts Improvement Act of 1982."

(2) Section 8334 of title 5, United States Code, is amended—

(A) in subsection (a)(1), by inserting "a Claims Court judge," after "Member," and

(B) in subsection (c), by inserting at the end of the table the following:

Claims Court Judge	Term	Period
2½	August 1, 1920, to June 30, 1926.	
3½	July 1, 1926, to June 30, 1942.	
5	July 1, 1942, to June 30, 1948.	
6	July 1, 1948, to October 31, 1956.	
6½	November 1, 1956, to December 31, 1968.	
7	January 1, 1970, to September 30, 1978.	
8	After September 30, 1988."	

(3) Section 8336(k) of title 5, United States Code, is amended to read as follows:

"(k) A bankruptcy judge, United States magistrate, or Claims Court judge who is separated from service, except by removal, after becoming 62 years of age and completing 5 years of civilian service, or after becoming 60 years of age and completing 10 years of service as a bankruptcy judge, United States magistrate, or Claims Court judge, is entitled to an annuity."

(4) Section 8339(n) of title 5, United States Code, is amended to read as follows:

"(n) The annuity of an employee who is a Claims Court judge, bankruptcy judge, or United States magistrate is computed, with respect to service as a Claims Court judge, as a commissioner of the Court of Claims, as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate, and as a United States commissioner and with respect to the military service of any such individual (not exceeding 5 years) creditable under section 8332 of this title, by multiplying 2½ percent of the individual's average pay by the years of that service."

(d) THRIFT SAVINGS PLAN.—(1) Subchapter III of chapter 84 of title 5, United States Code, is amended by adding at the end thereof the following:

"§ 8449b. Claims Court judges

"(a)(1) A judge of the United States Claims Court who is covered by section 178 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

"(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to this chapter.

"(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to Claims Court judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

"(2) The amount contributed by a Claims Court judge for any pay period shall not exceed 5 percent of basic pay for such pay period.

"(3) No contributions shall be made under section 8432(c) of this title for the benefit of a Claims Court judge making contributions under subsection (a) of this section.

"(4)(A) Section 8433(b) of this title applies to a Claims Court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an annuity under section 178 of title 28 (including a disability annuity under subsection (d) of such section).

"(B) Section 8433(d) of this title applies to any Claims Court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an annuity under section 178 of title 28.



"(5) With respect to Claims Court judges to whom this section applies, retirement under section 178 of title 28 is a separation from service for purposes of this subchapter and subchapter VII.

"(6) For purposes of this section, the terms 'retirement' and 'retire' include removal from office under section 178(c) of title 28 on the sole ground of mental or physical disability.

"(7) Sums contributed pursuant to this section by Claims Court judges, as well as all previous contributions to the Thrift Savings Fund by those judges, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

"(8) In the case of a Claims Court judge who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 178 of title 28, such annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity."

(2) The table of sections at the beginning of chapter 84 of title 5, United States Code, is amended by adding at the end thereof the following:

"8440b. Claims Court judges."

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1)(A) Section 402(1) of the Judicial Improvements and Access to Justice Act (102 Stat. 4650) is amended by striking out "redesignating paragraph (18)" and inserting in lieu thereof "redesignating paragraph (19)".

(B) Section 604(a) of title 28, United States Code, (relating to the duties of the Director of the Administrative Office of the United States Courts), as amended pursuant to the amendment made by subparagraph (A) of this paragraph, is amended—

(i) in paragraph (7) by inserting "judges of the United States Claims Court," after "judges of the United States,";

(ii) in paragraph (22) by adding "; and" after the semicolon;

(iii) by redesignating paragraph (23) as paragraph (24); and

(iv) by inserting after paragraph (22) the following:

"(23) Regulate and pay annuities to judges of the United States Claims Court in accordance with section 178 of this title; and"

(2) Section 8334(i) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) Notwithstanding any other provision of law, a judge of the United States Claims Court who is covered by section 178 of title 28 shall not be subject to deductions and contributions to the Fund if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge shall be entitled to a lump-sum credit under section 8342(a) of this title."

(3) Section 8402 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(g) A judge of the United States Claims Court who is covered by section 178 of title 28 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter if the judge notifies the Director of the Administrative Office of the

United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title."

(f) EFFECTIVE DATE.—This section and the amendments made by this section shall apply to judges of, and senior judges in active service with, the United States Claims Court on or after the date of the enactment of this Act.

SEC. 307. APPOINTMENT OF DIRECTOR AND DEPUTY DIRECTOR OF THE ADMINISTRATIVE OFFICE.

Section 601 of title 28, United States Code, is amended in the second sentence by striking out "Supreme Court" and inserting in lieu thereof "Chief Justice of the United States, after consulting with the Judicial Conference".

SEC. 308. MAGISTRATES.

(a) CONSENT TO TRIAL IN CIVIL ACTIONS.—Section 636(c)(2) of title 28, United States Code, is amended—

(1) in the first sentence, by striking out "their right to consent to the exercise of" and inserting in lieu thereof "the availability of a magistrate to exercise"; and

(2) by striking out the third sentence and inserting in lieu thereof the following: "Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences."

(b) EXTENSION OF TERMS OF OFFICE OF MAGISTRATES.—Section 631(f) of title 28, United States Code, is amended by striking out "60" and inserting in lieu thereof "180".

SEC. 309. APPEAL OF CERTAIN DETERMINATIONS RELATING TO BANKRUPTCY CASES.

(a) ABSTENTION DETERMINATIONS UNDER TITLE 11, UNITED STATES CODE.—Section 305(c) of title 11, United States Code, is amended by inserting before the period the following: "by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title".

(b) ABSTENTION DETERMINATIONS UNDER TITLE 28, UNITED STATES CODE.—The second sentence of section 1334(c)(2) of title 28, United States Code, is amended—

(1) by inserting "or not to abstain" after "to abstain", and

(2) by inserting the following before the period: "by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title".

(c) REMAND DETERMINATIONS UNDER TITLE 28, UNITED STATES CODE.—The second sentence of section 1452(b) of title 28, United States Code, is amended by inserting the following before the period: "by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title".

SEC. 310. SUPPLEMENTAL JURISDICTION.

(a) GRANT OF JURISDICTION.—Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1367. Supplemental jurisdiction

"(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction

shall include claims that involve the joinder or intervention of additional parties.

"(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

"(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

"(1) the claim raises a novel or complex issue of State law,

"(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

"(3) the district court has dismissed all claims over which it has original jurisdiction, or

"(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

"(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

"(e) As used in this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States."

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1367. Supplemental jurisdiction."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to civil actions commenced on or after the date of the enactment of this Act.

SEC. 311. VENUE.

Section 1391 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "the judicial district" and all that follows through "arose" and inserting in lieu thereof the following: "(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced";

(2) in subsection (b), by striking out "may be brought" and all that follows through "law" and inserting in lieu thereof the following: "may, except as otherwise provided by law, be brought only if (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no

district in which the action may otherwise be brought”;

(3) in subsection (c) by striking out “or (2)” and all that follows through “(4)”, and inserting in lieu thereof “(2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3)”.

**SEC. 312. REMOVAL OF SEPARATE AND INDEPENDENT CLAIMS.**

Section 1441(c) of title 28, United States Code, is amended—

(1) by striking out “, which would be removable if sued upon alone” and inserting in lieu thereof “within the jurisdiction conferred by section 1331 of this title”; and

(2) by striking out “remand all matters not otherwise within its original jurisdiction” and inserting in lieu thereof “may remand all matters in which State law predominates”.

**SEC. 313. STATUTE OF LIMITATIONS.**

(a) **IN GENERAL.**—Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following:

“§ 1658. Time limitations on the commencement of civil actions arising under Acts of Congress

“Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.”.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections at the beginning of chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new item:

“1658. Time limitations on the commencement of civil actions arising under Acts of Congress.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to causes of action accruing on or after the date of the enactment of this Act.

**SEC. 314. WITNESS AND JUROR FEES.**

(a) **WITNESS FEES.**—Section 1821(b) of title 28, United States Code, is amended by striking out “\$30” and inserting in lieu thereof “\$40”.

(b) **JUROR FEES.**—Section 1871(b) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out “\$30” and inserting in lieu thereof “\$40”;

(2) in paragraph (2) by striking out “\$5” and inserting in lieu thereof “\$10”; and

(3) in paragraph (3) by striking out “\$5” and inserting in lieu thereof “\$10”.

**SEC. 315. POWER OF SUPREME COURT TO DEFINE FINAL DECISION FOR PURPOSES OF SECTION 1291 OF TITLE 28, UNITED STATES CODE.**

Section 2072 of title 28, United States Code, is amended by adding at the end thereof the following:

“(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.”.

**SEC. 316. EXTENSION OF LIFE OF PAROLE COMMISSION.**

For the purposes of section 235(b) of Public Law 98-473 as it relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to “five years” or a “five-year period” shall be deemed a reference to “ten years” or a “ten-year period”, respectively.

**SEC. 317. BANKRUPTCY ADMINISTRATOR PROGRAM.**

(a) **EXTENSION.**—Section 302(d)(3) 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 amended—

(1) in subparagraph (A)(ii), by striking out “October 1, 1992” and inserting in lieu thereof “October 1, 2002”;

(2) in subparagraph (F)(i)(II), by striking out “October 1, 1992” and inserting in lieu thereof “October 1, 2002”;

(3) in subparagraph (F)(i), by striking out “October 1, 1993” and inserting in lieu thereof “October 1, 2003”; and

(4) in subparagraph (F)(ii), by striking out “October 1, 1993” and inserting in lieu thereof “October 1, 2003”.

(b) **STANDING.**—A bankruptcy administrator may raise and may appear and be heard on any issue in any case under title 11, United States Code, but may not file a plan pursuant to section 1121(c) of such title.

(c) **POWER OF THE COURT.**—Section 302(d)(3)(A)(ii) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, as amended by subsection (a), is further amended by inserting before the period at the end thereof the following: “, except that the amendment to section 105(a) of title 11, United States Code, shall become effective as of the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990”.

**SEC. 318. STUDY OF FEDERAL DEFENDER PROGRAM.**

(a) **STUDY REQUIRED.**—The Judicial Conference of the United States shall conduct a study of the Federal defender program under the Criminal Justice Act of 1964, as amended (enacting section 3006A of title 18, United States Code).

(b) **ASSESSMENT OF PROGRAM.**—In conducting the study, the Judicial Conference shall assess the effectiveness of the Federal defender program, including the following:

(1) The impact of judicial involvement in the selection and compensation of the Federal public defenders and the independence of Federal defender organizations, including the establishment and termination of Federal defender organizations and the Federal public defender and the community defender options.

(2) Equal employment and affirmative action procedures in the various Federal defender programs.

(3) Judicial involvement in the appointment and compensation of panel attorneys and experts.

(4) Adequacy of compensation for legal services provided under the Criminal Justice Act of 1964.

(5) The quality of the Criminal Justice Act of 1964 representation.

(6) The adequacy of administrative support for defender services programs.

(7) Maximum amounts of compensation for attorneys with regard to appeals of habeas corpus proceedings.

(8) Contempt, sanctions, and malpractice representation of panel attorneys.

(9) Appointment of counsel in multidefendant cases.

(10) Early appointment of counsel in general, and prior to the pretrial services interview in particular.

(11) The method and source of payment of the fees and expenses of fact witnesses for defendants with limited funds.

(12) The provisions of services or funds to financially eligible arrested but unconvicted persons for noncustodial transportation and subsistence expenses, including food and lodging, both prior to and during judicial proceedings.

(c) **REPORT.**—No later than March 31, 1992, the Judicial Conference shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the results of the study required under subsection (a). The report shall include—

(1) any recommendations for legislation that the Judicial Conference finds appropriate;

(2) a proposed formula for the compensation of Federal defender program counsel that includes an amount to cover reasonable overhead and a reasonable hourly fee; and

(3) a discussion of any procedural or operational changes that the Judicial Conference finds appropriate for implementation by the courts of the United States.

**SEC. 319. AMENDMENTS TO THE ETHICS IN GOVERNMENT ACT OF 1978.**

Section 502 of the Ethics in Government Act of 1978 (5 U.S.C. App.), as amended by the Ethics Reform Act of 1989, is amended—

(1) by inserting “(a) LIMITATIONS.—” before the first sentence; and

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

“(b) **SENIOR JUDGES TEACHING COMPENSATION.**—Any compensation for teaching received by a senior judge (as designated under section 294(b) of title 28, United States Code) approved under subsection (a)(5) of this section shall not be treated as outside earned income for the purpose of the limitation under section 501(a).”.

**SEC. 320. BIENNIAL CIRCUIT JUDICIAL CONFERENCE.**

The first paragraph of section 333 of title 28, United States Code, is amended—

(1) in the first sentence, by striking out “annually” and inserting “biennially, and may summon annually.”; and

(2) in the last sentence—

(A) by striking out “the United States District Court for the District of the Canal Zone.”; and

(B) by striking out “and the District Court of the Virgin Islands shall also be summoned annually” and inserting in lieu thereof “the District Court of the Virgin Islands, and the District Court of the Northern Mariana Islands shall also be summoned biennially, and may be summoned annually.”.

**SEC. 321. CHANGE OF NAME OF UNITED STATES MAGISTRATES.**

After the enactment of this Act, each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge, and any reference to any United States magistrate or magistrate that is contained in title 28, United States Code, in any other Federal statute, or in any regulation of any department or agency of the United States in the executive branch that was issued before the enactment of this Act, shall be deemed to refer to a United States magistrate judge appointed under section 631 of title 28, United States Code.

**SEC. 322. LENGTH OF SERVICE REQUIRED FOR ELIGIBILITY UNDER THE JUDICIAL SERVING ANNUITIES ACT.**

(a) **ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.**—Section 376(h)(1) of title 28, United States Code, is amended—

(1) in the matter preceding subparagraph (A)—

(A) by inserting “(A)” before “after having completed”; and

(B) by inserting after “have actually been made” the following: “, or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made”;

(2) by redesignating existing subparagraph (A) as clause (i);

(3) in existing subparagraph (B)—

(A) by striking out “(B)” and inserting in lieu thereof “(ii)”;

(B) by striking out "(i)" and inserting in lieu thereof "(1)"; and

(C) by striking out "(ii)" and inserting in lieu thereof "(II)";

(4) in existing subparagraph (C)—

(A) by striking out "(C)" and inserting in lieu thereof "(iii)";

(B) in clause (i)—

(i) by striking out "(i)" and inserting in lieu thereof "(I)";

(ii) by striking out "subparagraph (1)(A) of this subsection" and inserting in lieu thereof "clause (i) of this paragraph";

(iii) by striking out "(ii)" and inserting in lieu thereof "(II)"; and

(iv) by striking out "(iii)" and inserting in lieu thereof "(III)"; and

(5) by adding at the end of subsection (h) the following:

"(6) In the case of the survivor or survivors of a judicial official to whom paragraph (1)(B) applies, there shall be deducted from the annuities otherwise payable under this section an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months prior to the judicial official's death."

(b) DEFINITION OF ASSASSINATION.—Section 376(a) of title 28, United States Code, is amended—

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

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

(3) by inserting at the end the following new paragraph:

"(7) 'assassinated' and 'assassination' mean the killing of a judicial official described in paragraph (1) (A), (B), (F), or (G) of this section that is motivated by the performance by that judicial official of his or her official duties."

(c) DETERMINATION OF ASSASSINATION BY DIRECTOR.—Section 376(i) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(i)"; and

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

"(2) The Director of the Administrative Office of the United States Courts shall determine whether the killing of a judicial official was an assassination, subject to review only by the Judicial Conference of the United States. The head of any Federal agency that investigates the killing of a judicial official shall provide information to the Director that would assist the Director in making such determination."

(d) COMPUTATION OF WIDOW'S AND WIDOWER'S ANNUITY.—Section 376(l)(1)(ii) of title 28, United States Code, is amended by striking out "but more than eighteen months,"

(e) REFUND OF CONTRIBUTIONS TO FUND.—Section 376(o) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(o)";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) in subparagraph (A) as so redesignated, by inserting "subject to paragraph (2) of this subsection," before "before having completed"; and

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

"(2) In cases in which a judicial official dies as a result of assassination and leaves a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (l) of this section, paragraph (1)(A) of this subsection shall not apply."

(f) OTHER BENEFITS.—Section 376 of title 28, United States Code, is amended by adding at the end thereof the following:

"(u) In the case of a judicial official who is assassinated, an annuity shall be paid under

this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of title 5 for any year would exceed the current salary for that year of the office of the judicial official."

(g) EFFECTIVE DATE AND TRANSITION.—

(1) EFFECTIVE DATE.—Subject to paragraph (2), the amendments made by this Act shall apply to all judicial officials assassinated on or after May 28, 1979.

(2) RULES FOR RETROACTIVE APPLICATION.—

(A) In the case of a judicial official who was assassinated on or after May 28, 1979, and before the date of the enactment of this Act, if the salary deductions provided by subsection (b) of section 376 of title 28, United States Code, or the deposits required by subsection (d) of such section, have been withdrawn pursuant to subsection (o) of such section, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount so withdrawn, with interest on the amount withdrawn at 3 percent per annum compounded on December 31 of each year.

(B) In the case of the survivor or survivors of a judicial official to whom this paragraph applies who had less than 18 months of service before being assassinated, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months before the judicial official's death, plus interest as described in subparagraph (A).

(C) Subject to subparagraphs (A) and (B), the survivor or survivors of a judicial official to whom this paragraph applies shall be entitled to the payment of annuities they would have received under section 376 of title 28, United States Code, for the period beginning on the date such judicial official was assassinated and ending the date of the enactment of this Act. The Secretary of the Treasury shall pay into the Judicial Survivors' Annuities fund, out of any money in the Treasury not otherwise appropriated, the amount of the annuities to which the survivor or survivors are entitled under this subparagraph.

(3) DEFINITION.—For purposes of this subsection, the term—

(A) "assassinated" and "assassination" have the meanings given those terms in section 376(a)(7) of title 28, United States Code, as added by this section; and

(B) "judicial official" has the meaning given that term in section 376(a)(1)(A) and (B) of title 28, United States Code.

(g) CONFORMING AMENDMENTS.—Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (h) is amended—

(A) in paragraph (2) by striking out "subparagraphs (1)(A) or (1)(B)" and inserting in lieu thereof "clause (i) or (ii) of paragraph (1)";

(B) in paragraph (3) by striking out "subparagraph" each place it appears and inserting in each such place "paragraph";

(C) in paragraph (4)—

(i) by striking out "subparagraph (1)(B)" each place it appears and inserting in each such place "paragraph (1)(ii)"; and

(ii) by striking out "subparagraph (1)(C)" and inserting in lieu thereof "paragraph (1)(iii)".

(2) Subsection (a)(5)(C) is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

SEC. 323. COMPOSITION OF JUDICIAL COUNCILS.

(a) COMPOSITION OF COUNCILS.—Section 332(a)(1) of title 28, United States Code, is amended to read as follows:

"(a)(1) The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he or she may designate, a meeting of the judicial council of the circuit, consisting of the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit, as such member is determined by majority vote of all such judges of the circuit in regular active services."

(b) CONFORMING AMENDMENT.—Section 332(a) of title 28, United States Code, is amended by striking out paragraph (3) and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively.

SEC. 324. MISCELLANEOUS PROVISIONS.

(a) PLACE OF HOLDING COURT.—(1) Section 108 of title 28, United States Code, is amended by striking out "and Reno" in the last sentence and inserting in lieu thereof ", Reno, Ely and Lovelock".

(2) Section 112(a) of title 28, United States Code, is amended by striking out "and Utica" in the last sentence and inserting in lieu thereof "Utica, and Watertown".

(b) REVISION OF DIVISIONS OF SOUTH DAKOTA JUDICIAL DISTRICT.—Section 122 of title 28, United States Code, is amended—

(1) in paragraph (3), by striking out "Jackson"; and

(2) by paragraph (4)—

(A) by inserting "Jackson," after "Harding"; and

(B) by striking out "Shannon, Washbaugh, and Washington" and inserting in lieu thereof "and Shannon".

SEC. 325. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) TITLE 9, UNITED STATES CODE.—

(1) The section 15 of title 9, United States Code, that is designated "Appeals" is amended by redesignating such section as section 16.

(2) The table of sections at the beginning of chapter 1 of title 9, United States Code, is amended by striking out

"15. Appeals."  
and inserting in lieu thereof

"15. Inapplicability of the Act of State doctrine."

"16. Appeals."

(b) TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended as follows:

(1) Section 332(f)(1) is amended by striking out "(5 U.S.C. 5316)" and inserting in lieu thereof "under section 5315 of title 5".

(2) Section 375(a)(1) is amended by striking out "377 of title" and inserting in lieu thereof "377 of this title".

(3) Section 377 is amended—

(A) in subsection (f) by striking out "any annuity to which" and all that follows through the end of the subsection and inserting in lieu thereof the following:

"(1) any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as such a judge or magistrate or otherwise;

"(2) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

"(3) retired pay under section 7447 of the Internal Revenue Code of 1986; or  
 "(4) retired pay under section 4096 of title 38."; and

(B) in subsection (h) by striking out "in or after" and inserting in lieu thereof "on or after".

(4) Section 602(b) is amended by striking out "604(a)(15)(B)" and inserting in lieu thereof "604(a)(16)(B)".

(5) Section 995(a)(22) is amended by striking out "and" after the semicolon.

(6) Section 996(b) is amended by striking out "89 (Health Insurance), and 91 (Conflicts of Interest)" and inserting in lieu thereof "and 89 (Health Insurance)".

(7) Section 1499 is amended by inserting "and Safety" after "Hours".

(8) Section 1605(a)(6) is amended by striking out "State" and inserting in lieu thereof "state".

(9) Section 1610 is amended—

(A) in subsection (a)(6) by striking out "State" and inserting in lieu thereof "state"; and

(B) in subsection (e) by striking out "State" and inserting in lieu thereof "state".

(c) OTHER PROVISIONS OF LAW.—(1) Section 1011 of the Judicial Improvements and Access to Justice Act (102 Stat. 4668) is amended—

(A) by striking out "inserting a comma in lieu of the semicolon at the end thereof and adding thereafter" and inserting in lieu thereof "at the end"; and

(B) by striking out "Provided, That" and inserting in lieu thereof "except that".

(2) Section 204(b)(5)(A)(ii) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (102 Stat. 2201) is amended by striking out "whichever, occurs later," and inserting in lieu thereof "whichever occurs later".

**TITLE IV—JUDICIAL DISCIPLINE AND JUDICIAL REMOVAL**

**SEC. 401. SHORT TITLE.**

This title may be cited as the "Judicial Discipline and Removal Reform Act of 1990".

**Subtitle I—Judicial Discipline**

**SEC. 402. AMENDMENTS TO JUDICIAL COUNCILS REFORM AND JUDICIAL CONDUCT AND DISABILITY ACT OF 1980.**

(a) IDENTIFICATION OF COMPLAINTS BY CHIEF JUDGE.—Paragraph (1) of section 372(c) of title 28, United States Code, is amended by adding at the end thereof the following: "In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint."

(b) MEMBERSHIP OF SPECIAL INVESTIGATIVE COMMITTEES.—Paragraph (4) of section 372(c) of such title is amended by adding at the end thereof the following: "A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee."

(c) PUBLIC AVAILABILITY OF IMPEACHMENT RECOMMENDATION.—(1) Paragraph (8) of sec-

tion 372(c) of such title is amended by adding at the end thereof the following sentence: "Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination."

(2) Paragraph (14) of such section is amended—

(A) by striking out "All" and inserting in lieu thereof "Except as provided in paragraph (8), all";

(B) by striking out "unless" and inserting in lieu thereof "except to the extent that";

(C) in subparagraph (B) by inserting "such disclosure is" before "authorized";

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

(E) by inserting the following new subparagraph (A) immediately before subparagraph (B) (as so redesignated):

"(A) The judicial council of the circuit in its discretion releases a copy of a report of a special investigative committee under paragraph (5) to the complainant whose complaint initiated the investigation by that special committee and to the judge or magistrate whose conduct is the subject of the complaint;"

(d) IMPEACHMENT RECOMMENDATIONS WITH RESPECT TO CONVICTED JUDGES.—Section 372(c) of such title is further amended in paragraph (8)—

(1) by inserting "(A)" after "(8)"; and

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

"(B) If a judge or magistrate has been convicted of a felony and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under paragraph (7), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary."

(e) RULES BY JUDICIAL CONFERENCE AND JUDICIAL COUNCILS.—Paragraph (11) of section 372(c) of such title is amended by adding at the end thereof the following: "No rule promulgated under this subsection may limit the period of time within which a person may file a complaint under this subsection."

(f) CONCLUSION OF PROCEEDINGS BY CHIEF JUDGE.—Paragraph (3)(B) of section 372(c) of such title is amended by inserting before the period the following: "or that action on the complaint is no longer necessary because of intervening events".

(g) DISMISSAL OF COMPLAINTS BY JUDICIAL COUNCILS.—Paragraph (6) of section 372(c) of such title is amended—

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

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following:

"(C) may dismiss the complaint; and"

(h) REIMBURSEMENT FOR EXPENSES AND ATTORNEYS' FEES.—Section 372(c) of such title is further amended—

(1) by redesignating paragraphs (16) and (17) as paragraphs (17) and (18); and

(2) by inserting after paragraph (15) the following new paragraph:

"(16) Upon the request of a judge or magistrate whose conduct is the subject of a complaint under this subsection, the judicial council may, if the complaint has been finally dismissed under paragraph (6)(C), rec-

ommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge or magistrate during the investigation which would not have been incurred but for the requirements of this subsection."

(i) TECHNICAL CORRECTIONS.—(1) Paragraph (7)(B) of section 372(c) of such title is amended—

(A) by striking out "has engaged in conduct" and inserting in lieu thereof "may have engaged in conduct"; and

(B) in clause (1) by striking out "article I" and inserting in lieu thereof "article II".

(2) Paragraph (14)(C) of such section, as redesignated by subsection (c)(2)(D) of this section, is amended by striking out "subject to the complaint" and inserting in lieu thereof "subject of the complaint".

**SEC. 403. CONTEMPT POWER FOR CIRCUIT COUNCILS.**

Section 332(d)(2) of title 28, United States Code, is amended by adding at the end thereof the following: "In the case of failure to comply with an order made under this subsection or a subpoena issued under section 372(c) of this title, a judicial council or a special committee appointed under section 372(c)(4) of this title may institute a contempt proceeding in any district court in which the judicial officer or employee of the circuit who fails to comply with the order made under this subsection shall be ordered to show cause before the court why he or she should not be held in contempt of court."

**SEC. 404. AMENDMENT TO OATH OF JUSTICES AND JUDGES.**

Section 453 of title 28, United States Code, is amended by striking out "according to the best of my abilities and understanding, agreeably to" and inserting "under".

**SEC. 405. AMENDMENT TO ETHICS IN GOVERNMENT ACT.**

Section 104(b) of the Ethics in Government Act of 1978 (5 U.S.C. App. 104(b)) is amended by adding at the end thereof the following: "Whenever the Judicial Conference refers a name to the Attorney General under this subsection, the Judicial Conference also shall notify the judicial council of the circuit in which the named individual serves of the referral."

**SEC. 406. ADVISORY COMMITTEES FOR JUDICIAL DISCIPLINE RULES.**

Section 2077(b) of title 28, United States Code, is amended by inserting before the period at the end of the first sentence the following: "and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit".

**SEC. 407. EFFECTIVE DATE.**

The amendments made by this subtitle shall take effect 90 days after the date of the enactment of this Act.

**Subtitle II—National Commission on Judicial Impeachment**

**SEC. 408. SHORT TITLE.**

This subtitle may be cited as the "National Commission on Judicial Discipline and Removal Act".

**SEC. 409. ESTABLISHMENT.**

There is hereby established a commission to be known as the "National Commission on Judicial Discipline and Removal" (hereafter in this subtitle referred to as the "Commission").

**SEC. 410. DUTIES OF COMMISSION.**

The duties of the Commission are—  
 (1) to investigate and study the problems and issues involved in the tenure (including



discipline and removal) of an article III judge.

(2) to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for discipline or removal of judges that would require amendment to the Constitution; and

(3) to prepare and submit to the Congress, the Chief Justice of the United States, and the President a report in accordance with section 415.

#### SEC. 411. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 13 members as follows:

(1) Three appointed by the President pro tempore of the Senate.

(2) Three appointed by the Speaker of the House of Representatives.

(3) Three appointed by the Chief Justice of the United States.

(4) Three appointed by the President.

(5) One appointed by the Conference of Chief Justices of the States of the United States.

(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

(c) QUORUM.—Six members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(d) CHAIRMAN.—The members of the Commission shall select one of the members to be the Chairman.

(e) APPOINTMENT DEADLINE.—The first appointments made under subsection (a) shall be made within 60 days after the date of the enactment of this Act.

(f) FIRST MEETING.—The first meeting of the Commission shall be called by the Chairman and shall be held within 90 days after the date of the enactment of this Act.

(g) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(h) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a Member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of a government becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

#### SEC. 412. COMPENSATION OF THE COMMISSION.

(a) PAY.—(1) Except as provided in paragraph (2), each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

(2) A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

(b) TRAVEL.—All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

#### SEC. 413. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) DIRECTOR.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, have a Director who

shall be appointed by the Chairman and who shall be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

(b) STAFF.—The Chairman of the Commission may appoint and fix the pay of such additional personnel as the Chairman finds necessary to enable the Commission to carry out its duties. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the annual rate of pay for any individual so appointed may not exceed a rate equal to the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of such title.

(c) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

#### SEC. 414. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission or, on authorization of the Commission, a member of the Commission may, for the purpose of carrying out this subtitle, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(b) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department, agency, or entity within the executive or judicial branch of the Federal Government information necessary to enable it to carry out this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of any Federal agency is authorized to make any of the facilities and services of such agency available to the Commission to assist the Commission in carrying out its duties under this subtitle.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

#### SEC. 415. REPORT.

The Commission shall submit to each House of Congress, the Chief Justice of the United States, and the President a report not later than one year after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

#### SEC. 416. TERMINATION.

The Commission shall cease to exist on the date 30 days after the date it submits its report to the President and the Congress under section 415.

#### SEC. 417. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated the sum of \$750,000 to carry out the provisions of this subtitle.

#### SEC. 418. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this Act.

### TITLE V—TELEVISION PROGRAM IMPROVEMENT

#### SEC. 501. TELEVISION PROGRAM IMPROVEMENT.

(a) SHORT TITLE.—This section may be cited as the "Television Program Improvement Act of 1990".

(b) DEFINITIONS.—For purposes of this section—

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition;

(2) the term "person in the television industry" means a television network, any entity which produces programming (including theatrical motion pictures) for telecasting or telecasts programming, the National Cable Television Association, the Association of Independent Television Stations, Incorporated, the National Association of Broadcasters, the Motion Picture Association of America, the Community Antenna Television Association, and each of the networks' affiliate organizations, and shall include any individual acting on behalf of such person; and

(3) the term "telecast" means—

(A) to broadcast by a television broadcast station; or

(B) to transmit by a cable television system or a satellite television distribution service.

(c) EXEMPTION.—The antitrust laws shall not apply to any joint discussion, consideration, review, action, or agreement by or among persons in the television industry for the purpose of, and limited to, developing and disseminating voluntary guidelines designed to alleviate the negative impact of violence in telecast material.

(d) LIMITATIONS.—(1) The exemption provided in subsection (c) shall not apply to any joint discussion, consideration, review, action, or agreement which results in a boycott of any person.

(2) The exemption provided in subsection (c) shall apply only to any joint discussion, consideration, review, action, or agreement engaged in only during the 3-year period beginning on the date of the enactment of this section.

### TITLE VI—VISUAL ARTISTS RIGHTS

#### SEC. 601. SHORT TITLE.

This title may be cited as the "Visual Artists Rights Act of 1990".

#### SEC. 602. WORK OF VISUAL ART DEFINED.

Section 101 of title 17, United States Code, is amended by inserting after the paragraph defining "widow" the following:

"A 'work of visual art' is—

"(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of two hundred or fewer that are consecutively numbered by the author and bear



the signature or other identifying mark of the author; or

"(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

"A work of visual art does not include—

"(A)(i) any poster, map globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

"(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

"(iii) any portion or part of any item described in clause (i) or (ii);

"(B) any work made for hire; or

"(C) any work not subject to copyright protection under this title."

SEC. 603. RIGHTS OF ATTRIBUTION AND INTEGRITY.

(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Chapter 1 of title 17, United States Code, is amended by inserting after 106 the following new section:

"106A. Rights of certain authors to attribution and integrity

"(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

"(1) shall have the right—

"(A) to claim authorship of that work, and

"(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

"(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor reputation; and

"(3) subject to the limitations set forth in section 113(d), shall have the right—

"(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

"(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

"(b) SCOPE AND EXERCISE OF RIGHTS.—Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are coowners of the rights conferred by subsection (a) in that work.

"(c) EXCEPTIONS.—The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not distortion, mutilation, or other modification described in subsection (a)(3)(A).

"(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

"(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of 'work of visual art' in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

"(d) DURATION OF RIGHTS.—(1) With respect to works of visual art created on or after the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

"(2) With respect to works of visual art created before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

"(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

"(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

"(e) TRANSFER AND WAIVER.—(1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

"(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work."

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by inserting after the item relating to section 106 the following new item:

"106A. Rights of certain authors to attribution and integrity."

SEC. 604. REMOVAL OF WORKS OF VISUAL ART FROM BUILDINGS.

Section 113 of title 17, United States Code, is amended by adding at the end thereof the following:

"(d)(1) In a case in which—

"(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), and

"(B) the author consented to the installation of the work in the building either before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal,

then the rights conferred by paragraphs (2) and (3) of section 106A(a) shall not apply.

"(2) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), the author's rights under paragraphs (2) and (3) of section 106A(a) shall apply unless—

"(A) the owner has made a diligent, good faith attempt without success to notify the author of the owner's intended action affecting the work of visual art, or

"(B) the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal.

For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if, the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.

"(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection."

SEC. 605. PREEMPTION.

Section 301 of title 17, United States Code, is amended by adding at the end the following:

"(f)(1) On or after the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, all legal or equitable rights that are equivalent to any of the rights conferred by section 106A with respect to works of visual art to which the rights conferred by section 106A apply are governed exclusively by section 106A and section 113(d) and the provisions of this title relating to such sections. Thereafter, no person is entitled to any such right or equivalent right in any work of visual art under the common law or statutes of any State.

"(2) Nothing in paragraph (1) annuls or limits any rights or remedies under the common law or statutes of any State with respect to—

"(A) any cause of action from undertakings commenced before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990;

"(B) activities violating legal or equitable rights that are not equivalent to any of the rights conferred by section 106A with respect to works of visual art; or

"(C) activities violating legal or equitable rights which extend beyond the life of the author."

SEC. 606. INFRINGEMENT ACTIONS.

(a) IN GENERAL.—Section 501(a) of title 17, United States Code, is amended—

(1) by inserting after "118" the following: "or of the author as provided in section 106A(a)"; and

(2) by striking out "copyright," and inserting in lieu thereof "copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to

include the rights conferred by section 106A(a)."

(b) **EXCLUSION OF CRIMINAL PENALTIES.**—Section 506 of title 17, United States Code, is amended by adding at the end thereof the following:

"(f) **RIGHTS OF ATTRIBUTION AND INTEGRITY.**—Nothing in this section applies to infringement of the rights conferred by section 106A(a)."

(c) **REGISTRATION NOT A PREREQUISITE TO SUIT AND CERTAIN REMEDIES.**—(1) Section 411(a) of title 17, United States Code, is amended in the first sentence by inserting after "United States" the following: "and an action brought for violation of the rights of the author under section 106A(a)".

(2) Section 412 of title 17, United States Code, is amended by inserting "an action brought for a violation of the rights of the author under section 106A(a) or" after "other than".

**SEC. 607. FAIR USE.**

Section 107 of title 17, United States Code, is amended by striking out "section 106" and inserting in lieu thereof "sections 106 and 106A".

**SEC. 608. STUDIES BY COPYRIGHT OFFICE.**

(a) **STUDY ON WAIVER OF RIGHTS PROVISION.**—

(1) **STUDY.**—The Register of Copyrights shall conduct a study on the extent to which rights conferred by subsection (a) of section 106A of title 17, United States Code, have been waived under subsection (e)(1) of such section.

(2) **REPORT TO CONGRESS.**—Not later than 2 years after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report on the progress of the study conducted under paragraph (1). Not later than 5 years after such date of enactment, the Register of Copyrights shall submit to the Congress a final report on the results of the study conducted under paragraph (1), and any recommendations that the Register may have as a result of the study.

(b) **STUDY ON RESEAL ROYALTIES.**—

(1) **NATURE OF STUDY.**—The Register of Copyrights, in consultation with the Chair of the National Endowment for the Arts, shall conduct a study on the feasibility of implementing—

(A) a requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and

(B) other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work.

(2) **GROUPS TO BE CONSULTED.**—The study under paragraph (1) shall be conducted in consultation with other appropriate departments and agencies of the United States, foreign governments, and groups involved in the creation, exhibition, dissemination, and preservation of works of art, including artists, art dealers, collectors of fine art, and curators of art museums.

(3) **REPORT TO CONGRESS.**—Not later than 18 months after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report containing the results of the study conducted under this subsection.

**SEC. 609. FIRST AMENDMENT APPLICATION.**

This title does not authorize any governmental entity to take any action or enforce restrictions prohibited by the First Amendment to the Constitution of the United States.

**SEC. 610. EFFECTIVE DATE.**

(a) **IN GENERAL.**—Subject to subsection (b) and except as provided in subsection (c), this title and the amendments made by this

title take effect 6 months after the date of the enactment of this Act.

(b) **APPLICABILITY.**—The rights created by section 106A of title 17, United States Code, shall apply to—

(1) works created before the effective date set forth in subsection (a) but title to which has not, as of such effective date, been transferred from the author, and

(2) works created on or after such effective date, but shall not apply to any destruction, distortion, mutilation, or other modification (as described in section 106A(a)(3) of such title) of any work which occurred before such effective date.

(c) **SECTION 608.**—Section 608 takes effect on the date of the enactment of this Act.

**TITLE VII—ARCHITECTURAL WORKS**

**SEC. 701. SHORT TITLE.**

This title may be cited as the "Architectural Works Copyright Protection Act".

**SEC. 702. DEFINITIONS.**

(a) **ARCHITECTURAL WORKS.**—Section 101 of title 17, United States Code, is amended by inserting after the definition of "anonymous work" the following:

"An 'architectural work' is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features."

(b) **BERNE CONVENTION WORK.**—Section 101 of title 17, United States Code, is amended in the definition of "Berne Convention work"—

(1) in paragraph (3XB) by striking "or" after the semicolon;

(2) in paragraph (4) by striking the period and inserting "; or"; and

(3) by inserting after paragraph (4) the following:

"(5) in the case of an architectural work embodied in a building, such building is erected in a country adhering to the Berne Convention."

**SEC. 703. SUBJECT MATTER OF COPYRIGHT.**

Section 102(a) of title 17, United States Code, is amended—

(1) in paragraph (6) by striking "and" after the semicolon;

(2) in paragraph (7) by striking the period and inserting "; and"; and

(3) by adding after paragraph (7) the following: "(8) architectural works."

**SEC. 704. SCOPE OF EXCLUSIVE RIGHTS IN ARCHITECTURAL WORKS.**

(a) **IN GENERAL.**—Chapter 1 of title 17, United States Code, is amended by adding at the end the following:

"§120. Scope of exclusive rights in architectural works

"(a) **PICTORIAL REPRESENTATIONS PERMITTED.**—The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

"(b) **ALTERATIONS TO AND DESTRUCTION OF BUILDINGS.**—Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building."

(b) **CONFORMING AMENDMENTS.**—(1) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end of the following:

"120. Scope of exclusive rights in architectural works."

(2) Section 106 of title 17, United States Code, is amended by striking "119" and inserting "120".

**SEC. 705. PREEMPTION.**

Section 301(b) of title 17, United States Code, is amended—

(1) in paragraph (2) by striking "or" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; or"; and

(3) by adding after paragraph (3) the following:

"(4) State and local landmarks, historic preservation, zoning, or building codes, relating to architectural works protected under section 102(a)(8)."

**SEC. 706. EFFECTIVE DATE.**

The amendments made by this title apply to—

(1) any architectural work created on or after the date of the enactment of this Act; and

(2) any architectural work that, on the date of the enactment of this Act, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under title 17, United States Code, by virtue of the amendments made by this title, shall terminate on December 31, 2002, unless the work is constructed by that date.

**TITLE VIII—COMPUTER SOFTWARE**

**SEC. 801. SHORT TITLE.**

This title may be cited as the "Computer Software Rental Amendments Act of 1990".

**SEC. 802. RENTAL OF COMPUTER PROGRAMS.**

Section 109(b) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(2) by striking paragraph (1) and inserting the following:

"(b)(1)(A) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording or the owner of copyright in a computer program (including any tape, disk, or other medium embodying such program), and in the case of a sound recording in the musical works embodied therein, neither the owner of a particular phonorecord nor any person in possession of a particular copy of a computer program (including any tape, disk, or other medium embodying such program), may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord or computer program (including any tape, disk, or other medium embodying such program) by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution. The transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes under this subsection.

"(B) This subsection does not apply to—

"(i) a computer program which is embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; or

"(ii) a computer program embodied in or used in conjunction with a limited purpose computer that is designed for playing video games and may be designed for other purposes."

"(C) Nothing in this subsection affects any provision of chapter 9 of this title.

"(2)(A) Nothing in this subsection shall apply to the lending of a computer program for nonprofit purposes by a nonprofit library, if each copy of a computer program which is lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

"(B) Not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990, and at such times thereafter as the Register of Copyrights considers appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether this paragraph has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations that the Register of Copyrights considers necessary to carry out the purposes of this subsection.", and

(3) by striking paragraph (4), as redesignated by paragraph (1) of this section, and inserting the following:

"(4) Any person who distributes a phonorecord or a copy of a computer program (including any tape, disk, or other medium embodying such program) in violation of paragraph (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18."

**SEC. 103. PUBLIC DISPLAY OF ELECTRONIC VIDEO GAMES.**

Section 109 of title 17, United States Code, is amended by adding at the end the following:

"(e) Notwithstanding the provisions of sections 106(4) and 106(5), in the case of an electronic audiovisual game intended for use in coin-operated equipment, the owner of a particular copy of such a game lawfully made under this title, is entitled, without the authority of the copyright owner of the game, to publicly perform or display that game in coin-operated equipment, except that this subsection shall not apply to any work of authorship embodied in the audiovisual game if the copyright owner of the electronic audiovisual game is not also the copyright owner of the work of authorship."

**SEC. 104. EFFECTIVE DATE.**

(a) **IN GENERAL.**—Subject to subsection (b), the amendments made in sections 102, 104 and 105 shall take effect on the date of enactment. The amendments made by section 103 shall take effect one year from the date of enactment.

(b) **PROSPECTIVE APPLICATION.**—Section 109(b) of title 17, United States Code, as amended by section 102 of this Act, shall not affect the right of a person in possession of a particular copy of a computer program, who acquired such copy before the date of the enactment of this Act, to dispose of the possession of that copy on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code, as in effect on the day before such date of enactment.

(c) **TERMINATION.**—The amendments made by section 102 shall not apply to rentals, leaseings, or lendings (or acts or practices in the nature of rentals, leaseings, or lendings) occurring on or after October 1, 1997. The

amendments made by section 103 shall not apply to public performances or displays that occur on or after October 1, 1995.

**SEC. 105. RECORDATION OF SHAREWARE.**

(a) **IN GENERAL.**—The Register of Copyrights is authorized, upon receipt of any document designated as pertaining to computer shareware and the fee prescribed by section 708 of title 17, United States Code, to record the document and return it with a certificate of recordation.

(b) **MAINTENANCE OF RECORDS; PUBLICATION OF INFORMATION.**—The Register of Copyrights is authorized to maintain current, separate records relating to the recordation of documents under subsection (a), and to compile and publish at periodic intervals information relating to such recordations. Such publications shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

(c) **DEPOSIT OF COPIES IN LIBRARY OF CONGRESS.**—In the case of public domain computer software, at the election of the person recording a document under subsection (a), 2 complete copies of the best edition (as defined in section 101 of title 17, United States Code) of the computer software as embodied in machine-readable form may be deposited for the benefit of the Machine-readable Collections Reading Room of the Library of Congress.

(d) **REGULATIONS.**—The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions of the Register under this section. All regulations established by the Register are subject to the approval of the Librarian of Congress.

The SPEAKER pro tempore (Mr. ECKHART). Is a second demanded?

Mr. FISH. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

The SPEAKER pro tempore. The gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, and the gentleman from New York [Mr. FISH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us represents the consolidation of various pieces of legislation passed by the House during this Congress and amended by the Senate earlier today.

The centerpiece of the bill is the Federal Judgeship Act of 1990, which provides badly-needed additional resources to the Federal judiciary. These provisions create 85 new Federal judgeships—74 for the district courts and 11 for the circuit courts of appeals. As amended, this section reflects the 61 judgeships included in the judgeship bill passed by the House last month, plus the 24 additional positions in the Senate judgeship proposal.

The bill also includes the Civil Justice Reform Act—legislation intended to reduce the high costs and unnecessary delays sometimes associated with civil litigation in Federal courts. The version reported by the Senate Judiciary Committee would have required each district court to adopt various

new and innovative cost and delay reduction techniques. Many Federal judges objected to requiring such procedures across-the-board to all 94 district courts—particularly since it is unclear whether these new approaches will actually work as intended. As a result, the House-passed version made their use voluntary.

The compromise proposal before us today requires the use of such techniques only in a 10-district pilot program. The procedures will be voluntary in the other 34 districts.

Title III of the bill implements certain recommendations of the Federal Courts Study Committee—a blue-ribbon panel of judges, practicing attorneys, and Members of Congress formed to find ways of improving the operations of the courts. This section of the bill is very similar to the provisions of H.R. 5381, as passed by the House last month.

Title IV incorporates the language of the Judicial Discipline and Removal Reform Act passed by the House earlier this year. This section of the bill is intended to improve current judicial discipline mechanisms and establish a commission to study issues involving the tenure of article III Federal judges—including discipline and removal.

Title V reflects the Television Violence Act, passed by the House last year. These provisions grant a 3-year exemption from the antitrust laws to television networks for the purpose of developing voluntary guidelines to alleviate the negative effect of violence in TV programs.

Title VI includes the Visual Artists Rights Act. This section, which reflects minor amendments to the version of the bill passed by the House earlier this year, provides rights "attribution" and "integrity" to certain visual artists. The purpose of these provisions is to protect both the reputations of such artists and the works of art they create.

Title VII incorporates the provisions of the House-passed Architectural Works Copyright Protection Act, which creates a new category of copyright subject matter for the constructed design of buildings.

Title VIII is a modified version of the Computer Software Rental Amendments Act passed by the House last month. These provisions create a narrowly focused exemption to the "first sale" doctrine of copyright law by prohibiting the unauthorized direct or indirect commercial rental of computer software.

Mr. Speaker, I must say that I am not enthusiastic about bringing to the floor a bill that reflects such a diverse collection of legislative initiatives. I would point out, however, that each piece of this bill has—in either an identical or similar form—already been approved by the House this Congress. In addition, the changes made by the Senate are reasonable and acceptable.

In short, this is a solid legislative package and I urge my colleagues to support it.

□ 2400

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume.

(Mr. FISH asked and was given permission to revise and extend his remarks.)

Mr. FISH. Mr. Speaker, I am pleased to speak in support of important legislation that authorizes badly needed new Federal judgeships. In addition, this measure contains important provisions which would promote civil justice reform, which would implement certain recommendations of the Federal Courts Study Committee, and address matters relating to judicial discipline, and would discourage violence on television.

#### TITLE I

As an original cosponsor of title I, the civil justice expense and delay reduction plan, I have followed its progress with considerable interest. Given the pressures that a litigious society continues to place on the administration of justice in the Federal courts, it's important that Congress recognize the pressing need for procedural reform. We need an expedited discovery process, firm trial dates, and the expanded use of alternative dispute resolution mechanisms. Title I of this legislation focuses attention upon case management as a vehicle for reducing cost and delay.

The basic issues boiled down to whether the provisions contained in this title should be made mandatory for each judicial district. I know that many of our colleagues in the other body feel strongly that, to be effective, it must be made mandatory. The Federal judiciary, however, vigorously opposed the mandatory feature of this proposal. A compromise acceptable to both the judiciary and the Congress has been worked out whereby the judicial conference will designate 10 district courts out of the 94 districts to implement expense and delay reduction plans in accordance with the mandate of the bill.

A survey of more than 2,000 Americans in 1987 showed that 71 percent believed that the overall cost of lawsuits is too high, and 57 percent believed that the system fails to provide resolution of disputes without delay. In my opinion, title I of this legislation will begin to correct the dual problems of excessive cost and delay in our Federal courts.

#### TITLE II

Mr. Speaker, title II authorizes an additional 11 judgeships for U.S. Courts of Appeals and 74 new judgeships for U.S. district courts. An evaluation of current information relating to the capacities of Federal courts to handle their caseloads leads to the inescapable conclusion that relief is urgently needed. The legislation before us incorporates many of the judgeship

recommendations of the judicial conference of the United States.

Long delays in judicial dispositions leave disputes unresolved and undermine the administration of justice. Improvements in case management techniques, in some situations, may provide the key to increases in judicial productivity—but new judgeships become essential when other mechanisms for addressing caseload pressures prove inadequate.

During a markup in the Subcommittee on Economic and Commercial Law, I offered an amendment providing a third new district court judgeship for the eastern district of New York and converting a new temporary judgeship for the southern district of New York into a permanent position. I was pleased that the subcommittee, in recognition of caseload demands in these districts, approved my amendment—which effectively is incorporated in the legislation before us.

Congress last acted 6 years ago to increase article III judicial positions for the district courts and the courts of appeals. We now must respond to the realities of caseloads today—including an upsurge in time-consuming drug-related criminal cases—by providing the Judiciary with the necessary positions to handle adjudications expeditiously.

#### TITLE III

Mr. Speaker, our courts subcommittee chairman, the gentleman from Wisconsin [Mr. KASTENMEIER], and the ranking minority member, the gentleman from California [Mr. MOORHEAD], deserve special credit for their diligent efforts as members of the Federal Courts Study Committee and their involvement in the drafting of title III of the bill.

The study committee's recommendations provide us with a useful, comprehensive list of key problems—both substantive and procedural—currently facing the Federal judiciary. The recommendations deal with topics ranging from mandatory minimum sentences to civil rights suits to intercircuit conflicts to the resource needs of the Federal courts.

House Judiciary Committee members know first hand about court congestion, delay, and the ever escalating cost of litigation. This title would, in part, implement the recommendations of the Federal courts study committee so as to deal with these problems.

#### TITLE IV

Mr. Speaker, title IV addresses the problems of judicial discipline and would create a commission to study the different approaches to impeaching and removing a judge for bad behavior. Judicial discipline has become a major concern in the past decade. Whether considered as a legislative issue under the United States Code or a constitutional issue under article III, judicial discipline is a current issue that requires our attention. Confidence in our judiciary can only be sustained and preserved if our citizens respect individual judges.

In addition, title IV creates a national commission to study the application of the impeachment process and perhaps propose alternatives for consideration by the Congress. I believe this is both timely and appropriate in light of the recent increases in the size of the judiciary, the recent number of judicial impeachments, and the legislative workload of the Congress.

At best, the impeachment process is cumbersome, time consuming, and expensive. I have been involved directly in the last three impeachments of Federal judges and realize that we must explore the constitutional possibilities of lessening what is a very burdensome process. The problem is removal, not the appointment of Federal judges. Nomination of a Federal judge to the bench is a presidential prerogative, and I am pleased to see that the question the administration had over the scope of the Commission's authority has been worked out. Study of the appointment process should not be a part of the mandate of such a commission. I appreciate the efforts on the part of the chairman of the Courts Subcommittee, the gentleman from Wisconsin, in making clear to everyone that what we are concerned with here is the burdensome process of removing a Federal judge. I am looking forward to the recommendations of the Commission.

#### TITLE V

The Television Improvement Act of 1990 is identical to legislation which passed this House on August 1, 1989. The bill is, quite simply, a response to the fact that for some years representatives of the broadcasting industry have regularly cited their antitrust anxiety as a reason to avoid holding joint discussions to develop voluntary guidelines designed to limit television violence.

The Television Violence Act does not compel participation in such discussions. It neither requires, nor prohibits the broadcast of any specific program or material. It mandates nothing. It merely provides producers and broadcasters with an assurance they now lack—the ability to rely on the fact that no antitrust liability will attach if they should choose to meet and jointly discuss the subject of violence on television.

Mr. Speaker, this legislation constructively addresses important judiciary related matters. I urge my colleagues to support it.

Mr. BROOKS. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. KASTENMEIER], the distinguished ranking majority member of this committee.

Mr. KASTENMEIER. Mr. Speaker, I rise in support of H.R. 5316, an omnibus administration of justice and intellectual property improvements package. The bill creates 85 new Federal judgeships. Six additional titles of the bill were initiated or processed by the House Judiciary Committee's Subcom-



mittee on Courts, Intellectual Property, and the Administration of Justice, which I chair. I would like to add my thoughts about these titles, centering on Senate changes to previously passed House versions.

#### TITLE II—CIVIL JUSTICE REFORM

Title II, the Civil Justice Reform Act, is intended to reduce costs and delays associated with civil litigation by improving case management. It has been returned to us in substantially the same form as it was passed by this body on September 27, as H.R. 3898. The bill that had been reported by the Judiciary Committee and the bill that passed the House were different in one important respect. The Senate version provided that the contents of the expense and delay reduction plans which Federal judges are to implement "shall" include six principles and guidelines, while the House bill provided only that the plans "may" include those principles and guidelines. That difference was important, because it is one thing for the Congress to improve access to justice by encouraging effective case management as a means for reducing excessive costs and delays—which is what the House bill did. It is quite another for Congress to tell the judges how to do their job by micro-managing their dockets and scheduling decisions—which, I fear, is what the Senate bill would have done.

Title II as passed by the Senate preserves the district courts' discretion in fashioning expense and delay reduction plans. The only significant change from the House bill is that it creates a pilot program in which 10 districts—to be named by the judicial conference—are to participate in a 4-year experiment, in which the contents of those districts' expense and delay reduction plans are to conform with the six principles and guidelines identified in the bill. Because this pilot project is limited in size and duration, and gives the judicial conference the discretion to select the participating districts, it is unobjectionable to the judiciary and is deserving of your support.

#### TITLE III—FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

Title III is a revised version of the Federal Courts Study Committee Implementation Act, which passed the House on September 27 as H.R. 5381. Its purpose is to implement the non-controversial recommendations of the Federal Courts Study Committee, which completed its congressionally mandated study last April. The principle difference between title III, and H.R. 5381, is that title III includes five provisions that were in the House bill as introduced, but which were deleted or revised before the House bill was passed. Four of those provisions—sections 304, 305, 309, and 417—relate to bankruptcy matters. They were withdrawn from the House bill because they were within the jurisdiction of the Subcommittee on Economic and Commercial Law, which did not have

sufficient time to informally review and approve them before the bill was reported out of the Judiciary Committee. They have since been reviewed and agreed to. The fifth provision, section 316, extends the life of the Parole Commission. It too was in the House bill as introduced. My subcommittee, however, worked in coordination with the Department of Justice and the Subcommittee on Criminal Justice to substitute a more elaborate variation of this provision that would have created a successor agency to the Parole Commission. Senate representatives expressed reluctance to accept this more elaborate provision without having held hearings. In accepting the simpler Senate version today, we do not close the door on revisiting the House provision in the next Congress.

There are, in addition, two provisions in the Senate bill that were not in the House bill at any time. One, in section 324, creates new places of holding court in Nevada and revises the judicial district divisions in South Dakota. These provisions are supported by the judicial conference and are completely noncontroversial. The second, section 319, amends the Ethics in Government Act, to exempt teaching salaries from the financial limits imposed on the outside income of senior judges. In so doing, it encourages teaching among senior judges—who by virtue of their considerable experience, have much to contribute to institutions of higher learning, and who by virtue of being on senior status, have a reduced workload that allows them greater opportunity to teach without interfering with their judicial duties. This section is supported by the judicial conference and is acceptable.

Finally, there is one important change contained in section 315. The House bill had intended merely to authorize the Supreme Court to prescribe rules defining the scope of final decisions for purposes of appeal, but might have been misunderstood to require the Supreme Court to prescribe such rules. Section 315 makes it clear that we intend merely to permit the Supreme Court to prescribe rules on this subject.

#### TITLE IV—JUDICIAL DISCIPLINE REFORM

Title IV contains provisions relating to judicial discipline and removal. They are intended to improve the functioning of the Federal judicial discipline mechanism. This title is virtually identical to H.R. 1620, a bill that I authored in the House, with cosponsorship from Mr. MOORHEAD, and which passed on June 5 of this year. I am especially pleased to see that the Senate-passed bill includes the House bill's sections creating a National Commission on Judicial Impeachment, which will go a long way toward improving our understanding of a serious intergovernmental problem: The impeachment and removal from office of a growing number of Federal judges.

I would like to thank the two Senate sponsors, the Senator from Wisconsin

[Mr. KOHL] and the Senator from Arizona [Mr. DeCONCINI], for their support and assistance. Senator DeCONCINI and I were, of course, sponsors of the 1980 Judicial Discipline Act that basically has worked well, but is now in need of several curative amendments. The Act and the amendments respect the autonomy of the Federal judicial branch and will promote citizen respect for the rule of law.

#### TITLE VI—VISUAL ARTISTS RIGHTS

Title VI, the Visual Artists Rights Act of 1990, protects the integrity of the works of visual artists and the reputations and honor of those artists. By creating a right of integrity, it protects society against the mutilation and destruction of those works of visual art that make up an important part of our cultural heritage, and gives individual artists the legal right to prevent distorting changes in their work. By also creating a right of attribution, the act gives visual artists the legal right to prevent misattributions of their work. While this title is not necessary for this country's adherence to the Berne Convention, a very important international copyright treaty that the United States recently joined, it certainly strengthens our commitment to that convention.

The Senate has in certain respects amended the bill that was passed by the House, but in my opinion, and that of the Copyright Office, those amendments either do not harm the essential purpose of the bill, or they in fact add clarity to our work product.

One clarification provides that no governmental entity is authorized by this act to take any action or enforce any restrictions prohibited by the first amendment to the U.S. Constitution. I believe that the act in the form passed by the House did not authorize any such action or restriction, but of course, even if it had, the first amendment would prevail. This clarification is therefore acceptable.

A second amendment removes the House requirement that distortions, mutilations, or modifications of the work forming the basis of violations of the right of attribution be done intentionally or negligently. The artist must still, however, show that the distortion, mutilation, or other modification is prejudicial to his or her honor or reputation. This is an appropriate modification to the scope of the right of attribution.

A third amendment requires that actionable violations of the right of integrity through distortion, mutilation, or other modification be done intentionally, rather than negligently.

A fourth amendment separates destruction of works of visual art from distortions, mutilations, or modifications. For such destructions to be actionable, they must involve works of recognized stature. The required state of mind is intentional or grossly negligent. This change does not affect our adherence to the Berne Convention,



since the convention does not create a destruction right.

A fifth amendment creates an exception to the integrity right to clarify that a modification of a work that results from the passage of time or the inherent nature of the materials is not actionable. The House version permitted legal action if such modification was the result of gross negligence. Appropriately, this change does not apply to the destruction right. In addition, the Copyright Office has advised me that the practical effect of the amendment may be minimal, since the Senate continues to permit causes of action for destruction, mutilation, or other modifications that are not the result of the passage of time, but which are the result of gross negligence.

A sixth amendment relates to the presentation exception. The modification of a work that is the result of a public presentation or conservation carried out in a grossly negligent manner remains actionable. The House version did not distinguish between public and private presentations, but in my opinion, this distinction will have no practical effect.

A seventh amendment limits the duration of the rights of attribution and integrity to the life of the author. The House bill extended the duration to the term applied to economic rights: the life of the author plus 50 years. While I believe that the interests of consistency in the copyright law support the House position, I am willing to go along with the Senate amendment because of an eighth, and very important, amendment to the preemption section of the act.

This eighth amendment narrows the scope of the general preemption language. It clarifies that Congress does not intend to preempt section 989 of the California Civil Code, the "cultural heritage protection," or any other similar State code. I believe that, in light of the Senate's limitation on the duration of the rights afforded by the act, this amendment is necessary to ensure compatibility with the Berne Convention.

Article 6bis of Berne in effect allows the United States to terminate some part of the moral rights of authors at the death of the author to the extent that our domestic law provided such a limitation at the time of our accession to the convention. Because the act terminates the rights it confers in works created on or after its effective date at the death of the author, it is necessary expressly to provide for the post-mortem continuation of some aspects of the rights of attribution and integrity.

The approach taken by the Senate is to provide that State and common law rights that survive the death of the author are not preempted by the system of rights created by the act. The act does not expand or contract State or common law protections of artists' rights. It provides only that to

the extent State and common law rights and remedies endure beyond the death of the author, such rights and remedies shall not be affected by the provisions of the act. Nor does the act require that State or common law causes of action akin to moral rights be extended past the death of the author where they are not now so extended. By so doing, we leave undisturbed the preexisting law based upon which the Berne Implementation Act of 1988 dealt with the general question of artists' rights.

The final Senate change concerns the effective date of the act. It provides that the rights created by this act are limited to works created after the effective date and to works created before the effective date, but title to which, as of the effective date, has not been transferred. This amendment in fact avoids takings clause arguments, and in this respect is salutary.

Without the efforts of the gentleman from Massachusetts [Mr. MARKEY], the senior Senator from Massachusetts, Senator KENNEDY, and my colleague from California [Mr. MOORHEAD], this bill could not have become law. I would like to express my gratitude to them for their hard work and patience.

#### TITLE VII—ARCHITECTURAL WORKS

Title VII provides intellectual property protection for certain types of architectural works. Its purpose is to bring the United States into compliance with very significant multilateral treaty obligations under the Berne Copyright Convention with respect to works of architecture, by creating a new category of copyright subject matter for the constructed design of buildings. Title VII is in all respects the same as title II of H.R. 5498, which I introduced with the ranking minority member, Mr. MOORHEAD, and which passed the House just last month. Architecture is a form of artistic expression that performs a very significant societal function. As a son of my congressional district, Frank Lloyd Wright, observed: "Buildings will always remain the most valuable aspect in a people's environment, the one most capable of cultural reaction." It is appropriate that we react, not only culturally, but legislatively as well, to promote and protect architectural expression.

#### TITLE VIII—COMPUTER SOFTWARE RENTAL

Title VIII is the Computer Software Rental Act of 1990, originally introduced by a key member of my subcommittee, Mr. SYNAR, and which passed the House on September 27. The software rental legislation balances the rights of software owners and users by establishing a narrowly drafted exception to the first sale doctrine to copyright law. The continued progress of software—the technology that makes computers work and fuels our information society—will result from a reduction of the first sale rights of purchasers. The only real difference be-

tween the House-passed bill and the Senate amendment addresses an anomaly in current copyright law that prevents certain coin-operated equipment—electronic video games—from being used for their intended purpose. Called the Red Baron controversy, the bill circumscribes the public performance right for the playing of electronic games. However, at the insistence of the Senate the provision is subjected to both a sunrise—effective 1 year after the date of enactment—and a sunset—after 5 years.

The Senate made a technical change to title VIII at the request of the Association of Shareware Professionals and I agree with that change. The amendment authorizes the Library of Congress to accept public domain computer software rather than, as before, public domain shareware. I recognize that creators of computer shareware typically retain copyright in their works.

In response to correspondence and inquires about the scope of the proposed legislation—such as a letter to me from the Institute of Electric and Electronics Engineers and another from United Technologies—some thoughts supplementing the House report are necessary.

Section 802 of title VIII of H.R. 5316 amends section 109(b) of title 17, United States Code, to give copyright owners of computer programs the right to prohibit the direct or indirect rental, lending, or lease of their computer programs for purposes of direct or indirect commercial advantage. There are, however, three exceptions to this right. These exceptions are for: First, nonprofit libraries and nonprofit educational institutions; second, computer programs embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; and, third, computer programs embodied in limited purpose computers designed for playing video games. Questions regarding the first two exceptions have arisen.

At the request of nonprofit educational institutions, the following provision was included in new section 109(b)(1)(A), title 17, United States Code:

The transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes under this subsection.

Certain for-profit companies have inquired whether this language implies that the common practices of employees of a company carrying portable computers and associated software to other worksites, and of transferring employer-owned software among employees at the same location would be considered to constitute direct or indirect commercial advantage.

The bill is not intended to prohibit these common practices. The sole purpose of the quoted language is to highlight legitimate activities that occur in a nonprofit educational setting. The committee did not intend the provision to imply that similar activities, if carried out by for-profit entities, would be infringing. The transfer of copies within a single entity, whether nonprofit or for-profit, is exempt.

I have also heard concern that section 802 would interfere with the existing legitimate rental market for machines that are not themselves computer but which contain computer programs that govern or facilitate their operation as well as for computer hardware itself. This question was carefully considered by my subcommittee and the committee. In my view, the provisions of new subsection 109(b)(1)(i) adequately allow the rental of computer hardware that embody computer programs which cannot be copied during the ordinary operation or use of that machine, including the lease or lending of computers embodying software, by, for example, hotels and airports for patrons' individual business purposes. The touchstone in all these cases is whether the computer program embodied in the computer being rented or leased can be copied during the ordinary operation of the computer. The loading of a computer program into a computer is a copying of the program, and, if unauthorized or not exempt under other provisions of the Copyright Act, is an infringement. The focus of this bill is not on this question, but rather on the rental of a computer program that has already lawfully been loaded into a computer or other machine or product. If, after having been embodied in the computer or other machine or product, such a computer program can be copied during the ordinary operation of that machine or product, then the exemption does not apply.

Related questions have arisen with respect to purchase leasebacks of hardware and software, and, software purchase return policies. The question whether a transaction is a sale or a lease is typically one of State law. The computer industry uses a variety of license agreements, ranging from shrink wrap licenses for over-the-counter software to lengthy negotiated contracts for mainframe computers. Congress cannot draft legislation that addresses every such conceivable fact situation. We, however, should not disturb legitimate commercial activities that routinely involve a variety of products, one of which may include software. For example, most retail stores have return policies for purchases of products. Sometimes these policies include restocking charges. Where software is purchased under such policies, there is no rental or lease. On the other hand, where a store offers to repurchase software for a substantial part of the purchase

price and offers free blank diskettes for copying, questions may arise whether the activity involves indirect commercial advantage.

In conclusion, I would again like to thank the gentleman from Texas [Mr. Brooks], the gentleman from New York [Mr. Fish], and the gentleman from California [Mr. Moorhead] for their support and cooperation in bringing this fine piece of legislation to the floor. I would also like to express my appreciation to the Senator from Delaware [Mr. Biden], the Senator from Iowa [Mr. Grassley], and the Senator from Wisconsin [Mr. Kohl] for their able leadership on the court reform aspects of the legislation, and to the Senator from Massachusetts [Mr. Kennedy], the Senator from Arizona [Mr. DeConcini], and the Senator from Utah [Mr. Hatch] for their unflagging efforts to pass the intellectual property components of the package.

Mr. Fish. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. Moorhead].

(Mr. Moorhead asked and was given permission to revise and extend his remarks.)

Mr. Moorhead. Mr. Speaker, I would like to commend the gentleman from Texas Chairman Brooks, the gentleman from New York Mr. Fish and the gentleman from Wisconsin Mr. Kastenmeyer, on bringing this legislation to the floor and for the compromises reached with the other body. The time constraints and various pressures that they and the committee have operated under have been considerable and to bring this important issue to the House reflects highly on their deep concerns for civil justice, court reform, and copyright revision.

Last January the gentleman from Wisconsin and I joined as cosponsors of H.R. 3898, the Civil Justice Reform Act as introduced by our chairman, the gentleman from Texas [Mr. Brooks], and the gentleman from New York [Mr. Fish], which was the counterpart to a bill introduced in the other body. Since that time an enormous amount of discussion has occurred in the legal community over nearly every aspect of that bill. Nobody challenges the goals of the bill; namely, to cut cost and delay in civil litigation.

Through very productive negotiations among the other body, the judicial branch and the House, a good middle ground has been worked out and is contained in title I of this legislation. The compromise would require the Judicial Conference to select 10 districts throughout the country to implement mandatory civil justice and delay reduction plans. The bill also includes a 7-year sunset. This legislation represents an important first step in requiring certain procedural changes in the U.S. district courts in order to promote just and inexpensive determinations.

Title II of H.R. 5316 is the Federal Judgeship Act of 1990, legislation which would authorize additional Federal district court and Federal circuit court judgeships.

While this bill does not go as far as the administration and Judicial Conference hoped it would, it is nevertheless a significant step toward dealing with the serious caseload problem faced in our Federal courts. The bill before the House of Representatives today would establish a total of 85 Federal judgeships—11 U.S. Court of Appeals judges and 74 new district court judgeships.

It has been over 6 years since additional judgeships were last authorized for the Federal courts. During that time we have seen tremendous changes in both the volume and the complexity of the workload of the Federal courts. Numerous pieces of legislation in recent years have had a strong impact on the courts. The implementation of the sentencing guidelines, new initiatives to fight the war on drugs, and the advent of mandatory minimum sentences, have all resulted in substantial additional work for the courts, and all have the potential to increase the burdens even more in the coming years.

Since the last judgeships were authorized in 1984, the number of criminal cases filed in the district courts has grown by nearly 30 percent. Drug cases alone have increased by nearly 130 percent and now represent approximately 30 percent of all criminal cases. In the courts of appeals, the situation is similar to that of the district courts. New filings have grown by nearly 30 percent since 1984 and by 13 percent in just the last 2 years.

The legislation before the House today makes it clear that the Federal courts most in need of additional resources are in the south, the southwest, and in my own State of California. I am pleased to note that during the markup of H.R. 5316 in the Subcommittee on Economic and Commercial Law, I sponsored an amendment to add an additional district court judgeship for the Central District of California. The legislation introduced by Chairman Brooks and called for four additional judges in the central district, but as a result of my amendment, there would now be five. This Moorhead amendment was agreed to in subcommittee.

The Attorney General has stated many times that the justice system is a pipeline—investigators need prosecutors to bring cases and prosecutors need judges to try the cases. The new judgeships provided for in H.R. 5316 are badly needed and overdue resources. Congress must recognize that the war on drugs and the S&L prosecutions necessitate these ongoing commitments.

Mr. Speaker, I want to commend the gentleman from Wisconsin and our staffs for all of the work done in draft-

ing title 3. We spent many months working on the study committee to come up with these changes. As you pointed out in an earlier statement, most of the problems that the Department of Justice had with the original bill have been deleted or modified.

These proposals are not controversial. Title 3 deals with institutional rather than substantive changes. This title, along with title 1 and title 2, are directed at fine tuning our Federal court system in order to secure a just, speedy and inexpensive determination of every action. Our Federal judiciary has problems in all three of these areas, delay, caused by rising caseloads and insufficient support services; spiraling costs, caused by litigation expenses and attorney fees; and inconsistent decisions, caused by the pressures placed on judges who must cope with the torrent of litigation.

This legislation will go a long way in helping to correct these problems and by so doing improve the delivery of justice in our Federal courts.

Title 4 addresses the conduct and discipline of Federal judges. I suppose it's inevitable that the larger the Federal judiciary becomes the more likely are the increases in the number of bad judges. The responsibility for the ultimate discipline of a Federal judge lies with the Judiciary Committee, and the Congress. The Congress, in 1980, set in place a mechanism for judges to assist us in reviewing complaints and disciplinary problems relating to Federal judges. Title 4 would further fine tune that mechanism we put in place a decade ago.

To have a competent and honest judiciary is absolutely critical to any form of self government. If the people don't have confidence and trust in their judiciary, our whole system of government is substantially weakened.

In addition, title 4 would set up a national commission to briefly study and report back to the Congress on the different alternatives that might be available for disciplining and removing Federal judges. As a practical matter, the Judiciary Committee will not have time to address the problem this Congress but by this time next year we will have the work product of the commission and we can begin hearings on the problem.

Mr. Speaker, in conclusion, the Department of Justice when they testified before the subcommittee expressed concern that the study commission might go beyond the scope of its authority and study the appointment process for Federal judges. To correct this, and at the suggestion of the department, I offered an amendment that would limit the authority of the commission to recommend constitutional amendments relating only to the discipline and removal of Federal judges. That amendment was adopted by the subcommittee and further accepted by the full committee. To further clarify this point our chairman has agreed to drop the word appoint-

ment from the bill. This has been worked out with the Department of Justice and the administration.

Mr. Speaker, this legislation also contains a number of copyright provisions, especially the limitation on computer software rental, of which I am a cosponsor.

The potential loss to the U.S. economy should the rental of software become any more widespread can be seen clearly when we look to the losses suffered by the U.S. software developers by virtue of their inability to restrict commercial copy of their products in many foreign markets.

The future of U.S. trade in products and services based on intellectual and industrial properties, is critically dependent on a worldwide system of laws that provide adequate and effective protection against theft and unauthorized exploitation by others. Many of the newly industrialized countries and less developed countries do not have effective protection. How serious is this? A 1988 study prepared by the U.S. International Trade Commission, estimated the aggregate worldwide losses in sales for the U.S. as a result of inadequate, international copyright protection, range from \$23 to \$65 billion. This can also be translated into 300,000 to 600,000 jobs lost for the American worker. More than 80 countries, including the United States, belong to the Berne Convention. We became members as of March 1, 1989, as a result of legislation I cosponsored last Congress.

Mr. Speaker, this is important legislation, it represents the hard work of a number of Congressman over many years and I urge its adoption.

□ 0010

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. HUGHES].

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Speaker, I rise in very strong support of this legislation. It is a good bill. The committees have worked very hard.

I want to congratulate in particular our distinguished chairman.

Mr. Speaker, the judges in this bill are desperately needed. There are three judges slated for New Jersey. Their workload is staggering, and we have needed those judges for a long time, so I urge my colleagues to support the bill.

Mr. FISH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ECKART). The question is on the motion offered by the gentleman from Texas [Mr. Brooks] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 5316.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment to the bill was concurred in.

A motion to reconsider was laid on the table.

#### COMMUNICATION FROM HON. GLENN ANDERSON, CHAIRMAN, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

The SPEAKER laid before the House the following message from the Committee on Public Works and Transportation, which was read and referred to the Committee on Appropriations:

##### COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION.

Washington, DC, October 24, 1990.

HON. THOMAS S. FOLEY,  
The Speaker, House of Representatives,  
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the provisions of the Public Buildings Act of 1959, the House Committee on Public Works and Transportation approved the following resolutions on October 3, 1990:

##### LEASE RESOLUTIONS

Environmental Protection Agency, Chapel Hill, North Carolina.

Department of Justice, Cleveland, Ohio.  
Department of the Navy, Norfolk, Virginia.

Bureau of Mines, Department of the Interior, Washington, DC.

Office of Personnel Management, Washington, DC.

Federal Building, Oakland, California (amendment).

The original and one copy of the authorizing resolution is enclosed.

Sincerely,

GLENN M. ANDERSON,  
Chairman.

#### FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 4808. An act to encourage solar, wind, waste, and geothermal power production by removing the size limitations contained in the Public Utility Regulatory Policies Act of 1978.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 185. An act to amend title 18 of the United States Code to punish as a Federal criminal offense the crimes of international parental child abduction, and

S. 3012. An act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1991, 1992, and 1993, and for other purposes.

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate numbered 7 to the bill (H.R. 5229) "An Act making appropriations