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Owens (UT)	Smith (FL)	Yatron
Oxley	Smith (IA)	Young (AK)
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Pallone	Smith (NJ)	
Parker	Smith (TX)	

NAYS—1

Gekas

NOT VOTING—118

Ackerman	Gradison	Panetta
Aspin	Gray	Pickle
Baker	Guarini	Pursell
Ballenger	Gunderson	Quillen
Barnard	Hall (OH)	Rangel
Barton	Hawkins	Robinson
Bates	Hayes (LA)	Rose
Bevill	Holloway	Rostenkowski
Boucher	Horton	Roukema
Boxer	Huckaby	Rowland (CT)
Brennan	Hutto	Rowland (GA)
Broomfield	Jenkins	Russo
Burton	Johnston	Saiki
Callahan	Jones (NC)	Sangmeister
Campbell (CO)	Kleczka	Schaefer
Chapman	LaFalce	Schneider
Clarke	Lantos	Schuette
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 (OR)
Dwyer	Mavroules	Tallon
Early	McDade	Thomas (CA)
Edwards (CA)	McEwen	Thomas (GA)
Edwards (OK)	McGrath	Towns
Feighan	Mink	Traxler
Flake	Morrison (CT)	Valentine
Flippo	Mrazek	Walgren
Ford (MI)	Murphy	Walsh
Gephardt	Neal (MA)	Watkins
Gibbons	Nelson	Weber
Gingrich	Nowak	Whitten
Glickman	Oakar	Wilson
Goodling	Olin	
Gordon	Owens (NY)	

□ 2357

Mr. SAVAGE changed his vote from "nay" 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 pretrial 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 section 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. 906. 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(c).

(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:

"DISTRICTS	JUDGES
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	8
Arkansas:	
Eastern	5
Western	3
California:	
Northern	14
Eastern	6
Central	27
Southern	8
Colorado	7
Connecticut	8
Delaware	4
District of Columbia	15
Florida:	
Northern	4
Middle	11
Southern	16
Georgia:	
Northern	11
Middle	4
Southern	3
Hawaii	3
Idaho	2
Illinois:	
Northern	22
Central	3
Southern	3
Indiana:	
Northern	5
Southern	5
Iowa:	
Northern	2
Southern	3
Kansas	5
Kentucky:	
Eastern	4
Western	4
Eastern and Western	1
Louisiana:	
Eastern	13
Middle	2
Western	7
Maine	3
Maryland	10
Massachusetts	13
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	
Northern	3
Southern	6
Missouri:	
Eastern	6
Western	5
Eastern and Western	2
Montana	3
Nebraska	3
Nevada	4
New Hampshire	3
New Jersey	17
New Mexico	5
New York:	
Northern	4
Southern	28
Eastern	15
Western	4
North Carolina:	
Eastern	4
Middle	4
Western	3
North Dakota	2
Ohio:	
Northern	11
Southern	8
Oklahoma:	
Northern	3
Eastern	1
Western	6
Northern, Eastern, and Western	1
Oregon	6
Pennsylvania:	
Eastern	22
Middle	6
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	9
South Dakota	3
Tennessee:	
Eastern	5
Middle	4
Western	5
Texas:	
Northern	12
Southern	18
Eastern	7
Western	10
Utah	5
Vermont	2
Virginia:	
Eastern	9
Western	4
Washington:	
Eastern	4
Western	7
West Virginia:	
Northern	3
Southern	5
Wisconsin:	
Eastern	4
Western	2
Wyoming	3.".

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

"(B) an annuity or salary in senior status or retirement under section 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 (l)(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.

"(l)(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 376 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	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, 1969.
	7	January 1, 1970, to September 30, 1998.
	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:

"§ 8440b. 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.".

(e) 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 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 SURVIVORS' 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 "(I)"; 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 (t) 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 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, Washabaugh, 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 section 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), recommend 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 (i) 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 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 susection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual 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 righs 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 RESALE 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 pecentage 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(aX8).".

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 Copyright 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. 803. 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. 804. 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, leasings, or lendings (or acts or practices in the nature of rentals, leasings, 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. 805. 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. ECKART). 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 ameded 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 84 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—included 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 judiciary 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 he 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 aproaches 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 micromanaging 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 noncontroversial 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 provison in the next Congress.

There are, in addition, two provisons 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 higer 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 postmortem 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 between the House-passed bill and the Senate amendment addresses an anomally in current copyright law that prevents cretain 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 consitute 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. KASTENMEIER, 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 its 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 appointment from the bill. This has been worked our 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 form 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

Senate Debate

No. 150—Part II

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Northern	3
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Eastern	4
Western	2
Wyoming	3.".

SEC. 204. VIRGIN ISLANDS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, one additional judge for the District Court of the Virgin Islands, who shall hold office for a term of 10 years and until a successor is chosen and qualified, unless sooner removed by the President for cause.

(b) AMENDMENT TO ORGANIC ACT.—In order to reflect the change in the total number of permanent judgeships authorized as a result of subsection (a) of this section, section 24(a) of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1614(a)) is amended by striking "two" and inserting "three".

SEC. 205. 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. 206. EFFECTIVE DATE.

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

AMENDMENT NO. 3204

(Purpose: To amend title 28, United States Code, to provide for civil justice expense and delay reduction plans, authorize additional judicial positions for the courts of appeals and district courts of the United States, provide for the implementation of certain recommendations of the Federal Courts Study Committee, modify judicial discipline and removal procedures, and for other purposes)

Mr. BIDEN. Mr. President, on behalf of myself and Senator THURMOND, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware (Mr. BIDEN), for himself and Mr. THURMOND, proposes an amendment numbered 3204.

Mr. BIDEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. KENNEDY. Mr. President, artists in America, as in every other country and civilization, have been the recorders and preservers of the national spirit. The creative arts are an expression of the character of the country; they mirror its accomplishments, warn of its failings, and anticipate its future. As Katherine Anne Porter wrote in 1940:

The arts live continuously. They outlive governments and creeds and societies, even the very civilizations that produce them. . . . They are what we find again when the ruins are cleared away.

The bill which the Senate has approved today, the Visual Artists Rights Act, will establish new protections for art and artists in America. Under its provisions artists will have the right to claim authorship of a work when it is displayed, and to disclaim the work if it is mutilated or altered. In addition, the bill prohibits the intentional mutilation or grossly negligent destruction of a work of visual art.

Painters and sculptors deserve this action. We are not talking about unearned benefits, but long overdue rights. Visual artists create unique works. If those works are mutilated or destroyed, they are irreplaceable.

A companion bill has been approved by voice vote in the House. I commend Congressman KASTENMEIER and Congressman MARKEY for their diligence and skill in bringing this legislation to enactment. The bill has evolved as a consensus approach to the legitimate needs of painters and sculptors. Earlier concerns expressed by art dealers, conservators, and museum professionals have been addressed so that there remains no opposition to the legislation.

It is the product of extensive hearings by the Subcommitte on Patents, Copyright and Trademarks. I am indebted to Senator DECONCINI for his help in providing a forum for the bill. Expert witnesses were consulted in all aspects of the art community. It is clear that current law does not adequately protect either artists or their works.

Although many other countries around the world already guarantee these basic rights to artists, the United States has been slow to embrace them. It is time for Congress to act and to acknowledge America's responsibility to its creative artists.

Our artists are the chroniclers and guardians of an important part of our national heritage. They express the character of our country, and they contribute immensely to our national spirit. They deserve these modest safeguards for their creativity.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Delaware.

The amendment (No. 3204) was agreed to.

Mr. BIDEN. Mr. President, I am pleased that the Senate is about to pass comprehensive legislation aimed at improving our Federal courts. It is my hope that this legislation will make the courts a little more affordable, a little more efficient, and a little more accessible.

This legislation has three parts. First, it contains a revised version of the civil justice reform bill that Senator Thurmond and I introduced earlier this year. Second, it creates 85 new Federal district court and circuit court judgeships. Third, it contains a number of other reform proposals to improve the functioning of our judicial system.

I will not delve into all the details of this legislation today. The Judiciary Committee's report is extensive and addresses, in particular, the aspects of the civil justice and judgeships legislation. As to title III, Senator GRASSLEY has submitted for the record a detailed section-by-section analysis.

I will limit my comments today to the compromise with the House that this legislation reflects. I am enthusiastic about the compromise we have reached, although, as with all compromises, some parts of the bill are not exactly to my liking. Over-all, though, I believe that the legislation is an excellent compromise that warrants immediate passage and enactment.

Turning to title I, the Civil Justice Reform Act, the compromise reflects two fundamental objectives that I sought to accomplish when this legislation was introduced in January: requiring every U.S. district court to convene a local advisory group, and requiring every district court to implement a civil justice expense and delay reduction plan.

I am also pleased that the compromise includes a provision that I have long believed is necessary: providing to the public statistics and information

on cases and motions that have been pending for an inordinate amount of time without decision. Section 476 ensures that, for the first time, the public will be allowed to learn which cases have been pending for a lengthy period of time and the identity of judges and magistrates before whom those cases have been pending.

One issue on which there has been much debate relates to the contents of the district court plans and, more specifically, the degree to which the legislation should mandate the contents. While I believe that the Senate bill is preferable to the House bill on this point, we have reached an appropriate compromise. The legislation now mandates that the district courts consider the six principles of litigation management and cost and delay reduction that we have specified, but leaves them the discretion to determine whether or not to adopt the principles.

In addition, and importantly, a pilot program is established that requires 10 district courts to include the 6 principles in their plans. The legislation specifically requires that at least five of the districts encompass metropolitan areas. It is my hope and expectation that the judicial conference will select these districts carefully and thoughtfully, and in full compliance with this requirement that at least five metropolitan areas will be included. I certainly hope and expect that some of the Nation's larger cities—New York, Atlanta, Chicago, Philadelphia, Los Angeles, for example—are included in the pilot program so as not to frustrate the will of Congress in this respect.

At the end of the pilot period, an independent organization with expertise in Federal court management will evaluate the effectiveness of the 6 principles and the degree to which costs and delays were reduced, compare those results to the impact on costs and delays in 10 other districts, and prepare a report. The judicial conference shall then submit its own report to Congress. If it recommends tht additional districts be required to include the six principles in their plans, it must initiate proceedings under the Rules Enabling Act to implement that recommendation. If the Judicial Conference does not recommend expansion of the pilot program, it—and this is significant—must identify alternative, more effective cost and delay reduction programs that should be implemented and take steps to implement such programs. Of course, Congress can revisit this subject as well, should we be dissatisfied with the manner in which the Judicial Conference proceeds.

Within a set number of years, then, this legislation insures that one of two things will occur. Either the six principles of litigation management and cost and delay reduction that Congress has specified in this legislation will be part of district court plans nationwide, or some other program, that has been shown to be demonstrably better, will be in place. One way or the other, the situation is bound to improve.

The bottom line is that we have, through this legislation, set in motion a sequence of action-enforcing events. Over the long run, these events will ensure that all courts, lawyers and litigants confront the dual problems of cost and delay and develop adequate means of reducing cost and delay.

There is one other provision in the civil justice bill offered today on which I would like to comment. We have amended the provision—section 473(a)(2)(B)—requiring that trial dates be set such that the trial is scheduled to occur within 18 months by including an ends of justice exception.

Frankly, I believe that the provision in the bill reported by the Judiciary Committee provided adequate flexibility to respond to those cases in which such a time frame was not feasible. Nevertheless, I believe the compromise language is acceptable. I would caution, however, that I hope that this exception is not abused—I hope that the exception does not swallow the rule. It is our intention that the ends of justice provison be limited to those few cases in which setting a trial within 18 months would indeed be incompatible with serving the ends of justice.

In title II, the compromise bill creates 85 new judgeships. We have added certain judgeships in the House bill primarily to provide additional resources to those districts hit hardest by drug cases.

This bill, unlike other judgeship proposals, ensures that the district courts with the heaviest drug caseloads will receive additional judgeships. By doing so, this bill is a critical anti-drug, anti-crime initiative. Quite simply, we need this bill to ensure that the courts can try more major drug dealers, bring to justice the S&L crooks, and cope with the explosion of violent crime in our country.

Mr. President, I would like to thank several of my colleagues, without whom passage of this bill would not have been possible. On the Judiciary Committee, Senator THURMOND's invaluable assistance and input on this legislation since its inception was critical. Senators HEFLIN and GRASSLEY, the chairman and ranking member of the Courts Subcommittee, also contributed greatly. Our colleagues in the House—Chairman BROOKS, Congressman FISH, Congressman KASTENMEIER and Congressman MOORHEAD—demonstrated once again that they are committed to improving the Federal court system and the delivery of justice in this country.

The staffs, too, played an integral part in the development of this legislation. Terry Wooten, Mary Avera, and Kevin McMahon of Senator THURMOND's staff deserve special thanks and appreciation, as do Sam Gerdano of Senator GRASSLEY's staff, Winston Lett and Scott Williams of Senator HEFLIN's staff, and Jon Leibowitz of Senator KOHL's staff. On my own staff, I would like to pay special tribute to Ron Klain, Diana Huffman, Jeff Peck, Scott Schell, and Lisa Meyer, whose unyielding commitment to this legislation is obvious. My former chief counsel, Mark Gitenstein, also played a critical role, starting with the Brookings conferences at which the legislation had its genesis.

Finally, I want to pay tribute to the members of the Brookings conferences, whose thoughtfulness, expertise and cooperation have made civil justice reform a reality. They all deserve a special note of thanks from anyone devoted to ensuring the just, speedy and inexpensive resolution of disputes in our Federal courts: Debra Ballen; Robert Banks; Robert G. Begam; Gideon Cashman; Alfred W. Cortese; Susan Geztendanner; Mark Gitenstein; Barry Goldstein; Jamie Gorelick; Marcia D. Greenberger; Patrick Head; Deborah Hensler; W. Michael House; Shirley Hufstedler; Kenneth Kay; Gene Kimmelman; Norman Krivosha; Leo Levin; Carl D. Liggio; Robert E. Litan; Frank McFadden; Francis McGovern; Stephen D. Middlebrook; Edward Muller; Robert M. Osgood; Alan Parker; Richard Paul; Judyth Pendell; John A. Pendergrass; George Priest; Charles B. Renfrew; Tony Roisman; John F. Schmutz; Christopher Schroeder; Bill Wagner; and Diana Wood.

Mr. President, what we have here is the product of a great deal of time, effort, and travail. It is a bill to reform the civil justice system which is very controversial and, after a great deal of time, hearings, compromise and consulation with both the House and the Senate, it has finally been agreed upon.

But even more important, Mr. President, there is the anomaly of a Democratic chairman of the Judiciary Committee rising to propose that the President of the United States, a Republican, appoint 85 new judges.

If past is prolog, they will all be Republican judges. Notwithstanding that, Mr. President, we on the Democratic side feel it very important that the number of judges in this country be expanded to meet the increased workload, a great deal of which is a consequence of the increased drug problem in the United States of America.

So, Mr. President, the judicial conference has suggested over 70-some judges. We have moved that to 85 to accommodate additional needs around the country. This has been worked out with the House of Representatives, with the chairman of the Judiciary Committee on that side and others.

So, Mr. President, I now yield to my colleague from South Carolina, if he wises to speak to this issue.

Mr. THURMOND. Mr. President, I am in accord with the request made by the distinguished chairman of the

committee. The Judicial Conference has recommended these judges are badly needed, and I am in favor of the bill providing for them.

Today we are considering S. 2648, a bill to provide for civil justice expense and delay reduction plans and to authorize the creation of additional Federal judgeships. Originally introduced by Senator BIDEN and myself as S. 2027, the Civil Justice Reform Act, we are today offering a substitute version of the bill which incorporates the suggestions made by many to modify and improve the initial proposal.

The goal of this legislation is very laudable. This bill is intended to increase the administrative efficiency of the civil litigation process in the Federal courts and reduce litigation costs. Over the past several years, the workload of the Federal court system has increased dramatically. Currently, there is a feeling among many members of the bench and bar that civil litigation in the Federal court system is much too costly and takes far too long to resolve disputes.

The recognition of delay and cost concerns has been affirmed by the House of Representatives. On September 12, 1990, the House passed two separate bills addressing civil justice reform and the creation of additional Federal judgeships.

Based upon these concerns, the legislation we are considering today embodies principles from which each individual Federal district will develop their own plan for creating greater efficiencies in the civil litigation process.

Generally, under the modified provisions of title I contained in this substitute, a civil justice delay and expense reduction plan should be implemented for each district of the United States. The purpose of the plan is to simplify adjudication on the merits, monitor discovery, and improve the overall management of the litigation process. Implementation of the plan should result in a just, speedy, and inexpensive resolution of disputes.

While title I addresses judicial reform, title II provides the necessary judicial manpower to carry out these reforms. It is appropriate to consider the procedural changes in title I which will reduce the costs and delays confronted by those who seek to resolve their disputes through the civil litigation system within the Federal courts. However, any attempt to reform the civil justice system is futile without providing adequate manpower.

Title II of S. 2648 creates 85 additional Federal judgeships. Recently enacted drug and crime legislation increased the caseload of many judges across the country. As a result of the needs of the judiciary from the perspective of increased drug- and crime-related prosecution and its impact on the Federal docket, I believe more judgeships are vitally important. The Judicial Conference made recommendations to reflect its assessment of where judicial manpower should be placed. We have made every effort to accommodate these recommendations and embody them in this substitute proposal. The result is a provision to create additional Federal judgeships which will address the current demands on the judiciary and the needs of the citizens of this Nation.

In closing, S. 2648 will create the necessary judgeships and increase the administrative efficiency of the civil litigation process. For the above reasons, I support S. 2648 and urge its passage by this body.

Mr. KOHL. Mr. President, I am pleased to support S. 2648, the Judicial Improvements Act of 1990. As amended, this bill will make a number of significant improvements in our civil justice system, add scores of crucially needed Federal judges, and enhance our protections for intellectual property. I want to extend my congratulations to Chairman BIDEN for the fine job he did in finding the common interests among groups and Members who are often at cross-purposes.

I would like to speak briefly about my section, title IV, which will help develop and implement needed modifications to the judicial discipline and impeachment process. Much of the credit for this title should go to BOB KASTENMEIER, the dean of the Wisconsin delegation and chairman of the Courts Subcommittee, who introduced identical legislation in the House.

The first section of title IV would improve the method of filing and investigating complaints against Federal judges. I think a recent example demonstrates some of the problems with the existing system. After Federal Judge Harry Claiborne was convicted of tax fraud, he continued to collect his judicial salary even in prison. The House could not initiate impeachment proceedings because the chief circuit judge had not made a proper recommendation. The chief judge could not act until he had received a formal complaint. As a result, the Senate did not vote to remove Judge Claiborne until 2 years after his criminal trial. Similarly, it took more than 3½ years after Judge Walter Nixon's criminal conviction for us to complete his impeachment trial.

My provision will prevent such situations from occurring in the future. Under this proposal, when a judge has been convicted of a felony and has exhausted all direct appeals, the Judicial Conference may immediately transmit a recommendation of impeachment to the House. This would dispense with the requirement of an additional lengthy investigation by the circuit's special committee of judges. And in cases where there has been no conviction, the chief circuit judge may initiate a complaint of his own volition, so that there will be no unreasonable delay in commencing an investigation.

Neither of these proposed changes endangers the independence of the judiciary. On the contrary, by allowing more efficient action in the clearest cases of judicial abuse, this provision should enhance people's faith in our judges and in our legal system.

The second section of title IV would create a blue-ribbon commission to study and report on possible changes in the impeachment structure. Last yer, I served on the panel considering the removal from office of Judge Walter Nixon. That experience brought home to me the importance of the Senate's constitutional role in a thorough and fair impeachment process. But I also learned first hand of some of the problems with the system.

Judicial impeachment has recently become so cumbersome and unwieldy that it adequately serves neither the Senate nor the accused. Two hundred years ago it was possible for every Senator to hear all the arguments and determine the credibility of the witnesses in every impeachment case. Today, there are 100 Senators and a full schedule of pending legislative actions. For the full Senate to listen to dozens of witnesses would require us to suspend pressing legislative business for weeks, or even months. Therefore, we are forced to handle impeachments just as we do all other issues—through committees. But by treating impeachment like other issues, we are asking the entire Senate to decide guilt or innocence based on the recommendations of a 12-member panel and a few days of summarized arguments. I know many Senators—particularly those who have served on impeachment committees—find this option practicable but not entirely satisfactory.

At the same time, some have argued that the existing process is unfair to the accused judge. In their view, the defendant should be able to make his case to each individual who will decide his fate—ultimately, that is 100 Senators. Instead, according to this viewpoint, we have delegated the task to ever smaller bodies—a judicial committee for the complaint, a House subcommittee for the impeachment articles, and a Senate panel for the verdict. While I believe that the current approach is constitutional, we must consider some changes.

The Commission created by this measure would examine the current impeachment process and suggest modifications. Commission members will be appointed by the President, the Chief Justice, and leaders of the House and Senate. On the basis of hearings and other expert assistance, the Commission will release a nonbinding report within 1 year of its first meeting. The Commission's proposals could include legislation, administrative, or constitutional reforms and should provide momentum for streamlining the process of removing article III judges.

Over the years, many of my colleagues have proposed changes in how judges are removed from office. In the 96th Congress, for example, Senator

DECONCINI proposed a special court to evaluate complaints and recommend possible disciplinary actions. In the 99th Congress, Senator THURMOND introduced a constitutional amendment that would automatically remove a judge from office upon conviction for a felony. And in the current Congress, Senator HEFLIN introduced a constitutional amendment that would authorize Congress to address judicial discipline through legislation. Ultimately, we did not move on any of the proposals, though each has merit. But with the support of a bipartisan blue-ribbon commission, Congress might finally take the necessary steps to reform the impeachment process and preserve the integrity of our life-tenured judiciary.

Mr. President, S. 2648 includes many worthwhile components to make our legal system function more efficiently and more fairly. The new judgeships should reduce the backlog of cases in the Federal courts and the civil justice reform provisions will help ensure that the quality of justice is not strained by the quantity of demands. I am pleased to have contributed to this legislation, and I look forward to it soon becoming law.

Mr. HATCH. Mr. President, I am pleased to join with my colleagues in the passage of S. 2648, dealing with civil justice reform. This bill creates 85 new Federal judgeships. This will go a long way to expediting both criminal and civil cases in the Federal system. I commend Chairman BIDEN and Senator THURMOND for their work on this matter. Chairman BIDEN has recognized the dire need for new judgeships and has acted with statesmanship and skill in seeking this necessary increase.

This bill also contains the Computer Software Rental Amendments Act, which I introduced as S. 198. We have spent over 3 years attempting to move this important legislation.

The computer software industry, is a dynamic and blossoming source of growth for our Nation's economy. Yet today it is threatened by an emerging software rental industry which would make it possible for software users to make illegal copies; creating the potential for lost sales and the subsequent collapse of the software industry. This practice, if it is allowed to continue, will be devastating, and one of the brightest stars of the modern U.S. economy will be extinguished in its infancy.

The overwhelming rationale for renting a computer program is to make an unauthorized copy. Computer software cannot be enjoyed for an evening's entertainment and then returned. To have meaning to a user, the software packages require mastery of complex user manuals, often running hundreds of pages in length. Even after a user has mastered the use of a program, it has little value until he or she adds his or her own data base to the program. The functions of learning how to use a program and utilizing it in connection with one's own data base cannot be accomplished in the few hours or days available under a rental arrangement without copying the program and displacing a legitimate sale of the program.

The provision which we are voting on today provides software protection by prohibiting the rental of computer software unless authorized by the copyright owner. This portion of this legislative package has been the subject of extensive hearings and lengthy negotiations. I believe that it is a worthwhile change in the law.

ADDITIONAL FEDERAL JUDGESHIPS

Mr. DOMENICI. Mr. President, I am pleased that the bill now before the Senate will authorize the appointment of an additional Federal judge in New Mexico and two new judges on the Tenth Circuit Court of Appeals.

New Mexico, like other States along the southwest border, has seen a dramatic increase in drug-related crime in recent years. As a result, the number of felony filings per Federal judge in New Mexico increased 57 percent between 1984 and 1989, and is now twice the national average. Twenty-four percent of all criminal felony cases filed in 1989 were drug offenses.

The number of pending cases in the district increased 32 percent between 1984 and 1989 to 2,159. Our judges are doing their best to clear off this backlog, as evidenced by the fact that New Mexico—with an average of 70 trials per judge—is now ranked second in the country in the number of trials per judge.

This bill adopts the recommendation of the Judicial Conference that an additional Federal judgeship be created in New Mexico and that two judges be added to the Tenth Circuit Court of Appeals, which is the Federal appeals court that handles cases from New Mexico.

These judges are much needed to help clear the backlog of cases in New Mexico caused by the drug epidemic. I am pleased that the Senate is acting to create these positions, and I urge all Senators to support this bill.

Mr. GRAHAM. Mr. President, over the last few years Congress has stepped up its war on crime by providing additional resources to Federal, State, and local law enforcement, and passing tough new prosecutoral and sentencing measures.

However, we have overlooked the needs of a key player in the war on crime—the Federal judiciary.

While Congress has authorized increases in the number of FBI agents, DEA agents, border patrol officers, and Federal prosecutors, little corollary action has been taken to enable the judiciary to handle the rising caseload.

For example, Mr. President, the middle district of Florida has experienced a 30-percent increase in civil cases and a 55-percent increase in criminal cases over the last 8 years.

In the last year alone, the criminal caseload increased by 15 percent.

However, there have been no new judgeships authorized in the middle district since 1982.

In fact, Congress has not provided for any additional Federal judgeships in the Nation since 1984.

The northern district of Florida has one of the busiest trial dockets in the Nation.

Judges in this district completed 71 trials per judge over a 12-month period when the national average for that same time was 35 trials.

With the addition of five new DEA and customs offices in the northern district, and with added personnel in the U.S. Attorney's Office, there will continue to be an increase in the criminal litigation caseload.

Florida is additionally burdened by the slow speed at which judicial vacancies are filled.

Two seats on the bench are currently vacant, and other vacancies are expected with retirements and elevations.

The result of increasing caseloads without increasing capacity to handle these cases is that justice is delayed. Justice delayed, Mr. President, is justice denied.

Every effort we make to improve apprehension and prosecution of criminals will be negated if the judiciary is ill equipped to process those cases.

I am proud to be a cosponsor of this bill and I strongly encourage my colleagues to move quickly in passing this much-needed legislation.

Mr. GRASSLEY. Mr. President, I am pleased to support the Judicial Improvements Act of 1990—a most important and badly needed court reform package. I commend the chairman of the committee and Senator THURMOND, and their staff for their hard work to this point.

I particularly thank Chairman BIDEN for being responsive to the legitmate concerns of Federal district judges around the country with respect to the title on civil case management. Mr. President, I know that Federal judges in Iowa were especially concerned about the initial version of title I. These judges, like many others, do a fine job keeping their dockets current, and thus resisted the idea that Washington would seek to micromanage case management. The judges have a point, Mr. President. After all, a Congress that cannot perform its own constitutional obligations with respect to the Federal budget ought not to presume to tell another branch how to do its business. I am grateful that our chairman has worked out an accommodation that preserves a critical level of judicial automony.

With respect to the addition of new judges in title II, this is a long overdue action to enhance the ability of the third branch to simply keep up with current backbreaking caseloads. We have not had a judgeship authorization since 1984. Again, I thank the

chairman and ranking member for their efforts on this provision.

Mr. President, I am pleased that we are also adding a title III to this important court reform package. This title consists of a number of noncontroversial and somewhat technical recommendations of the Federal Courts Study Committee.

As you know, Mr. President, this past April, a blue-ribbon panel of judges, lawyers and members of Congress—authorized by Public Law 100-702, and appointed by the Chief Justice—proposed more than 100 changes in the administration and operation of the Federal court system. The study was historic: The work of the Federal Courts Study Committee represented the most comprehensive examination of the Federal courts since the passage of the Judiciary Act of 1789.

During the course of its work, the study committee solicited and received comments from hundreds of individuals and organizations. Public hearings were held early in the process to identify the areas of study. After a number of tentative recommendations were developed, the study committee held a second round of public hearings around the country.

Along with my colleague Senator HEFLIN, the chairman of the Subcommittee on Courts, I was privileged to serve on the study committee. Our final report represented the culmination of 15 months of work, under the direction and able leadership of Judge Joseph F. Weis, Jr. of the Third Circuit Court of Appeals. Others on the study committee included J. Vincent Aprile, II, the general counsel of the Department of Public Advocacy in the State of Kentucky, the Honorable Jose A. Cabranes, a distict court judge from Connecticut, the Honorable Keith M. Callow, the Chief Justice of the Supreme Court of the State of Washington, the Hon. Levin H. Campbell, a judge on the U.S. Court of Appeals for the Second Circuit, the Hon. Edward S.G. Dennis, Jr., the then-assistant attorney general for the Criminal Division of the U.S. Department of Justice, Morris Harrell, a prominent lawyer in private practice in Dallas, TX, the Hon. ROBERT KASTENMEIER, chairman of the House Judiciary Subcommittee on Courts, Intellectual Property and the Administration of Justice, the Hon. Judith Keep, a District Court judge from California, Rex E. Lee, the president of Bringham Young University and former solicitor general, the Hon. Carlos Moorhead, ranking member of the House Judiciary Subcommittee on Courts, Diana Gribbon Motz, a prominent lawyer from Baltimore, MD, and the Hon. Richard A. Posner, a judge on the U.S. Court of Appeals for the Seventh Circuit.

A principal focus of the study committee was on institutional and procedural change, rather than substantive law reform. Some of the recommendations—such as the abolition of diversity jurisdiction and the repeal of mandatory minimum criminal sentences—do represent major changes in the law, and will require more study by Congress. The changes proposed by this amendment today, however, represent only those consensus items that enjoyed unanimous support among study committee members. Taken individually, these changes are quite modest. Collectively, I believe these changes will substantially improve the administration of justice in the Federal system.

I thank the chairman of the Judiciary Committee, Senator BIDEN, for being willing to consider this package of amendments as a compliment to titles I and II of S. 2648. Each of these titles, in their separate ways, will help the judiciary better serve the public by reducing costs and delays in litigation, by increasing resources so that courts can better cope with burdensome caseloads, and by improving the efficiency and fairness of Federal court procedures.

I would also like to thank the many staff people who worked for months on this amendment, particularly Samuel Gerdano, my chief counsel, Winston Lett and Scott Williams with Senator HEFLIN, Jeff Peck and Scott Schell with Senator BIDEN, and Tony Coe with the Office of Senate Legislative Counsel. I am also grateful for the technical advice provided by the Administrative Office of the U.S. Courts.

I ask unanimous consent that a more detailed section-by-section analysis of title III be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

TITLE III—IMPLEMENTATION OF THE FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

SECTION-BY-SECTION ANALYSIS

Section 301 states the short title of this title.

Section 302 requests that the Federal Judicial Center study and report back to Congress by 1992 on the number and frequency of unresolved intercircuit conflicts.

As the Federal Courts Study Committee pointed out in its report,

"As recently as 1960, the Supreme Court reviewed approximately 3 percent of all federal appeals. That proportion has dropped precipitously to less than 1 percent, and will continue to drop as the total number of appeals rises. The Supreme Court handles roughly 150 or fewer cases annually (and that number may be dropping); approximately 75 percent come from the federal courts of appeals. This figures has remained constant for some time, with little prospect for expansion. We are not persuaded that the Court could increase its output, given the difficulty of the cases that the Court hears.

"Although the Court sits at the apex of the state and federal systems, theoretically to harmonize the federal law coming from both, the Court has long since given up granting certiorari in every case involving an intercircuit conflict. Thus, a federal statute may mean one thing in one area of the country and something quite different elsewhere—and this difference may never be settled. Some conflicts, of course, may have the redeeming feature, especially in the constitutional area, of helping to develop legal doctrine and insight. Other conflicts need rapid resolution. Conflicts over some procedural rules and law affecting actors in only one circuit at a time may have a negligible effect. A federal judicial system, however, must be able within a reasonable time to provide a nationally binding construction of these acts of Congress needing a single, unified construction in order to serve their purpose.

"It appears from academic analyses that the Supreme Court in 1988 refused review to roughly sixty to eighty "direct" intercircuit conflicts presented to it by petitions for certiorari. This number does not include cases involving less direct conflicts (e.g., fundamentally inconsistent approaches to the same issue). Not all these sixty to eighty conflicts, however, are necessarily "intolerable," to use a commonly applied adjective."

The Federal Courts Study Committee recommended that these conflicts be analyzed to determine, as objectively as we can, those that are intolerable and yet, for whatever reason, are unlikely to be resolved by the Supreme Court.

Commentators have suggested various criteria for identifying "intolerable" conflicts. For example, does the conflict:

Impose economic costs or other harm to multi-circuit actors, such as firms engaged in maritime and interstate commerce?

Encourage forum shopping among circuits, especially since venue is frequently available to litigants in different fora?

Create unfairness to litigants in different circuits—for example, by allowing federal benefits in one circuit that are denied elsewhere?

Encourage "non-acquiescence" by federal administrative agencies, by forcing them to choose between the uniform administration of statutory schemes and obedience to the different holdings of courts in different regions?

Section 302 is not intended to prescribe a rigid research scheme for the FJC to follow. Indeed, the details of the study are intended to be left to the sound discretion of the Board of the FJC. Nor does Section 302 anticipate any particular result from the FJC's analysis.

Section 302, in subsection (c), also seeks the FJC's analysis and report to Congress within two years on a range of structural alternatives for the Federal Courts of Appeals. The Federal Courts Study Committee studied various structural alternatives, without endorsing any particular approach. As with subsection (a), this provision is not intended to suggest that the FJC will need to undertake massive, original research. Rather, it contemplates that, for example, the existing literature on structural alternatives will be canvassed and analyzed for the benefit of Congress.

Section 303 would amend Title 28 to provide, in effect, that the appointment of an active Federal judge to the position of Director of the Federal Judicial Center, Director of the Administrative Office of the United States Courts, or Administrative Assistant to the Chief Justice will create a vacancy in the courts on which the judge was sitting and, if the judge subsequently returns to the court as an active judge, the next judicial vacancy on the court will not be filled.

The purpose of this section is to encourage active judges to seek to serve in these important Judicial Branch administrative positions without penalizing the court from which they come or prejudicing their opportunity to return to active service as a judge.

Section 304 amends 28 U.S.C. 152(a) to permit a bankruptcy judge whose 14-year term of appointment has expired to continue to serve until a successor has been appointed. The provision includes a 180-day limitation on such extended service and is subject to the approval of the judicial council of the circuit.

Allowing a bankruptcy judge to serve up to 180 days after the judge's term of appointment has expired will provide invaluable assistance when the appointment of a successor is delayed. At present, the only assistance available during such a "gap" period is from visiting judges or retired bankruptcy judges recalled to active service. Because bankruptcy filings have increased rapidly across most of the country in recent years, visiting judges and recall judges are not available for all of the districts which need assistance.

Section 305 would permit, but not require, the judicial councils of two or more circuits to establish a joint bankruptcy panel if authorized by the Judicial Conference of the United States. This would allow small circuits (such as the First Circuit) to form multi-circuit bankruptcy appellate panels. (BAP).

The Federal Courts Study Committee recommended that Congress require each circuit to establish BAPs, with an "opt-out" provision, as well as authorize small circuits to create multi-circuit BAPs. The Study Committee was impressed with the experience of the Ninth Circuit BAP, which disposed of 902 appeals in 1987 and 664 in 1988, reducing the workload of both district and appellate courts. The Ninth Circuit BAP received favorable reviews from both bench and bar. It is expected that BAPs foster expertise and increase the morale of bankruptcy judges, in part by offering them an opportunity for appellate work. Section 305 is intended to be a modest first step, short of mandating BAPs, so as to encourage further experimentation with BAPs.

Section 306 provides a new retirement system for judges of the U.S. Claims Court, generally modeled after the system in place for judges of the U.S. Tax Court. This section solves a serious problem in the Claims Court: the apparent lack of independence of the judges.

This seriously undermines the ability of the court to be seen as an impartial decider between the government and the taxpayer, the contractor, the Indian tribe, government employees or patent holders. The independence problem is created by the fact that the judges livelihood is dependent upon reappointment by the defendant's representative. Under the current retirement system, most claims court judges are not eligible for any retirement at the time their term ends. Unlike bankruptcy judges and magistrates whose appointment is made by the judiciary, Article I judges are appointed by the President through the Department of Justice. Also, unlike the bankruptcy judges and magistrates whose independence is not threatened by the judicial appointment process, Article I judges might well be reluctant to rule against an executive branch that holds their future livelihood in its hands.

Currently, all United States Claims Court judges have a fifteen-year term, with no possibility of recall or pension until they are eligible for retirement, generally at age sixty-five. Some may not even be eligible for any significant pension at age sixty-five because of a lack of prior government service. There are only two realistic options available to a judge who will not be sixty-five when that judge's term ends (a majority of judges now serving on the court).

The judge must either seek reappointment from the President through the Justice Department or seek employment as a litigating attorney. The Justice Department is the defendant's representative in all suits pending before Claims Court judges. The most likely source of litigation employment is with firms that appear before the court on behalf of plaintiffs. A judge's seeking employment through either is unseemly and may at least appear to threaten the Claims Court judges' independence.

Since 1969, the judges of the United States Tax Court have been provided with both judicial independence and adquate job security through their reappointment and retirement provisions, 26 U.S.C. 7443(e), 7447(b)-(f). Prior to the expiration of a Tax Court judge's fifteen-year term, that judge will advise the President of a desire to be reappointed. A judge not reappointed becomes a senior judge of the Tax Court and immediately receives retirement pay. The Congress, in creating the most recent Article I court, the United States Court of Veterans Appeals, instituted almost identical reappointment and retirement provisions for that court as exist for the United States Tax Court. See 38 U.S.C. 4095-97.

The purpose of Section 306 then, is to generally conform the reappointment and retirement provisions of the Claims Court to that now in place at the Tax Court.

Under this section, the President can ensure continued judicial service by reappointment. If this does not occur, however, the judge who is willing to serve (and who seeks reappointment but is denied) receives his or her full salary. In return, the Claims Courts benefits from the continued service of the judge as a senior judge for life, or as long as that judge retains his or her full salary. Section 306 also eliminates the threat to the system's independence created by having judges who can be terminated by one party to its cases. Finally, the section sharply restricts what the judges can do outside of being senior judges. In the Tax Court, this system has led to a general trend of reappointment and has provided an active corps of senior judges to expedite the handling of cases.

Generally here is how the section would operate: if a Claims Court judge seeks reappointment by the President but is not reappointed, the judge then becomes a Senior Judge of the Claims Court. Senior Judges are subject to compulsory recall by the Chief Judge for up to 90 calendar days per year and voluntary recall for unlimited time. If a Senior Judge does not perform mandatory recall service, the full annuity for that year is forfeited. Senior Judges are sharply restricted in the work they may underake while not on recall service.

They may not assist in making any civil claim against the United States. Violation of this restriction will result in a permanent forfeiture of their annuities and possible criminal penalties under 28 U.S.C. 454. A person serving as a Senior Judge under the age of 65 does not have an option provided to those judges over 65 of freezing the annuity then paid and avoiding further mandatory recall and outside employment restrictions.

Section 306 creates a new 28 U.S.C. 178. Subsection (a), pertaining to normal retirement based on age and years of service, tracks the portion of 26 U.S.C. 7447 applicable to Tax Court Judges permitting retirement under the "Rule of 80" after age 65 and upon 15 years of service.

Subsection (b) pertains to retirement upon failure of reappointment and tracks the provisions of 26 U.S.C. 7447 applicable to Tax Court judges. It provides that a judge must serve at least one full term and seek reappointment by timely notice to the President in order to be eligible for an annuity upon failure of reappointment.

Subsection (c), pertaining to retirement or removal from office by reason of physical or mental disability, tracks a similar provision in 26 U.S.C. 7447 for Tax Court judges. The amount of the annuity will be based on whether the judge served 10 years or less, but in no case less than five years.

Subsection (d) provides that judges who retire on the basis of age and years of service and upon failure of reappointment would, without age limitation, be subject to compulsory recall for up to 90 days per year. This requirement matches the current Tax Court provisions.

Subsection (e) provides that a retired judge shall be designated "senior judge" and shall not be counted as a judge of the court for purposes of the number of authorized regulator active judgeships. This tracks a similar provision in 28 U.S.C. 7447 applicable to the Tax Court.

Subsection (f) provides that an eligible judge must elect into the new retirement system by notifying the Administrative Office of the United States Courts and that election of an annuity under the new system precludes any other federal annuity.

Subsection (g) pertains to calculation of service on which an annuity would be based. It provides that only prior service as a judge of the Claims Court or as a commissioner of the Court of Claims may be included in the calculation. This corresponds precisely to the creditable service provisions applicable to Tax Court judges.

Subsection (h) provides that the time and manner for making annuity payments will be the same as for a judge in active service. These provisions track a similar provision in 28 U.S.C. 7447 pertaining to the Tax Court.

Subsection (i) provides for payments from a judge's annuity to a former spouse or family member pursuant to court decree upon notice to the Director of the Administrative Office of the U.S. Courts.

Subsection (j) pertains to permanent and temporary forfeiture of annuities in certain circumstances. Tracking a related provision in 28 U.S.C. 7447 applicable to retired Tax Court judges, it provides that there shall be permanent forfeiture if a retired judge, in the practice of law, represents a client in making any civil claim against the United States provided that upon advance election and notice such retired judge could avoid total forfeiture and instead freeze his annuity at its level immediately prior to representing a claimant against the United States. This subsection also provides for a one-year forfeiture if a retired judge falls to render required judicial services when called upon by the chief judge. This subsection also provides for a temporary forfeiture in the case of a retired judge who accepts compensation for other federal government service.

Subsection (k) is a housekeeping provision detailing the manner and effect of revoking an election to receive an annuity under the new system.

Subsection (l) contains a housekeeping provision pertaining to funding and management of the retirement fund ("Claims Court Judges Retirement Fund") from which annuities under the new system would be paid.

Subsection (b) of Section 306 pertains to judicial survivors' annuities. It makes the Judicial Survivors Annuity Plan set forth in 28 U.S.C. 376 applicable to Claims Court judges and is thus analogus to 26 U.S.C. 7448 for Tax Court judges.

Subsection (c) of Section 306 pertains to the Civil Service Retirement System and

would apply to judges who, for whatever reason, prefer to remain under Civil Service rather than elect the new retirement system. It would specifically provide for enhanced civil service (vesting at 2½ percent year year) in exchange for a higher contribution rate. Some Claims Court judges with long federal service may prefer to retire at an earlier age under the Civil Service system without a restriction on the practice of law and could take advantage of these provisions which also apply to bankruptcy judges and magistrates. *See* 5 U.S.C. 8339(m). A judge who chose to retire under the Civil Service System rather than under the proposed new retirement system would receive a smaller annuity with a resulting savings to the Treasury.

Subsection (d) of Section 306 pertaining to participation in the Thrift Savings Plan is verbatim with language included in the recently enacted bankruptcy judge retirement legislation and participation in the plan has specifically been provided for the Article III judiciary. *See* 5 U.S.C. 8440a.

The Thrift Savings Plan is currently available to Claims Court judges and is participated in by most of them. Without subsection (d), a Claims Court judge who elected the new retirement system would no longer be eligible to participate in the Thrift Savings Plan. As a result, Claims Court judges would be losing an opportunity currently available to them. Participation in the Thrift Savings Plan pursuant to the subsection (d) provisions would involve no matching contribution by the Government.

Subsection (e) of Section 306 would make a number of technical and conforming amendments consistent with the purposes of section 306.

Subsection (f) of Section 306 provides that these new retirement provisions apply to all active and senior judges in active service as of the date of enactment of the Judicial Improvements Act of 1990.

Mr. President, I should note here that the Federal Courts Study Committee also recommended that a similar reappointment and retirement provision be included for judges of the U.S. Court of Military Appeals. Judges of this Article I court appear to face similar threats to their judicial independence. The U.S., through the Department of Defense and its military departments, is the prosecuting authority in all cases before the Court of Military Appeals. Judges of the Court must seek reappointment from the President through the Defense Department.

Because of an objection from the Armed Services Committee, however, no provision for these judges is included in this amendment.

Section 307 modifies 28 U.S.C. 601 which now states that the Supreme Court shall appoint the Director and Deputy Director of the Administrative Office, to instead provide that the Chief Justice shall make the appointment after consulting with the Judicial Conference of the United States.

The Chief Justice is the only member of the Supreme Court with official administrative duties regarding the courts of appeals and district courts and, of course the Chief Justice is the titular head of the Judicial Branch and Chairman of the Judicial Conference of the United States.

In these capacities, he works on a daily basis with the Director of the Administrative Office and has an obvious substantial interest in naming a qualified person to fill this major judicial branch position.

By giving the appointment authority specifically to the Chief Justice, the law will be modified to reflect actual practice and responsibility. By including a requirement that the election be made after consulting with the Judicial Conference, the law will also reflect in large part present practice and recognize the great interest that the Conference has in who becomes the District and Deputy Director of the Administrative Office.

Section 308(a) amends 28 U.S.C. 636(c)(2) to permit judges and magistrates to advise civil litigants of the option to consent to trial by a magistrate.

Under present provisions, judicial officers may not attempt to persuade or induce any party to consent to reference of a civil matter to a magistrate. Many judges refrain entirely from even mentioning to parties the option of consent to civil trial by a magistrate. Litigants in many jurisdictions often receive little more than a standardized written notification of this option with the pleadings in a civil case.

As a result, most parties in civil cases do not consent to magistrate jurisdiction. The present procedures have effectively frustrated the intent of the 1979 amendments to the Federal Magistrates Act which authorized magistrates to try civil consent cases.

The right of a litigant to have his civil case heard by an Article III judge remains paramount. Under the present Act, judicial officers are restricted from informing parties of their opportunity to have a civil matter referred to a magistrate because of concerns that judges would coerce parties to accept a reference to a magistrate. Those concerns have not been borne out in the decade since the 1979 revisions. The amendment made by Section 308 safeguards the right of a civil litigant to trial by an Article III judge by requiring judges and magistrates to advise parties of their freedom to withhold consent to magistrate jurisdiction without fear of adverse consequences. The amendment thus provides a proper balance between increased judicial flexibility and continued protection of litigants from possible undue coercion.

The need for the court system to have greater flexibility in utilizing judicial resources was recognized by the Federal Courts Study Committee. This need is particularly acute in handling the expanding civil caseload of federal courts. Liberalizing the civil case consent procedures furthers the goal of efficient and maximum utilization of judicial resources. Both the Judicial Conference and the Federal Courts Study Committee have endorsed this amendment.

Section 308(b) amends 28 U.S.C. 631(f) by extending the period that a magistrate may continue to serve until a sucessor is appointed from 60 days to 180 days, so as to endure that no judicial district suffers from a gap in magistrate service. This section follows the rationale articulated in Section 304 with respect to bankruptcy judges.

Section 309 would amend 11 U.S.C. 305(c) and 38 U.S.C. 1334(c)(2) and 1452(b) to clarify that, with respect to certain determinations in bankruptcy cases, they forbid only appeals from the district courts to the courts of appeals, not from bankruptcy courts to the district courts.

The statutes provide that bankruptcy judges' orders deciding certain motions (motions to abstain in favor of, or remand to, state courts) are unreviewable "by appeal or otherwise." Because bankruptcy judges may enter trial orders only if there is appellate review in an Article III court, one result of this limitation is that bankruptcy judges cannot make final judgments in such cases even when they clearly involve "core" proceedings.

Section 309 would authorize bankruptcy judges to enter binding orders in connection with abstention determinations under Title 11 or Title 28 and remand determinations under Title 28, subject to review in the district court. The statutory language under each of these sections now provides that the decision of the bankruptcy court (to abstain or remand) "is not reviewable by appeal or otherwise." The proposed amendment would modify these three sections to provide that the decision of the bankruptcy court is not reviewable "by the court of appeals . . . or by the Supreme Court of the United States . . ." Such determinations would therefore by reviewable by the district court.

Speeding the disposition of these types of motions will better serve the purpose of the limitation on appeals from the district courts to the courts of appeals.

Section 310 implements a recommendation of the Federal Courts Study Committee by authorizing federal courts to assert pendent jurisdiction over parties without an independent federal jurisdictional base. The language originated in the House of Representatives after the benefit of substantial helpful comment from the academic community. We here adopt the analysis of the House.

The doctrines of pendent and ancillary jurisdiction, in this section jointly labeled supplemental jurisdiction, refer to the authority of the federal courts to adjudicate, without an independent basis of subject matter jurisdiction, claims that are so related to other claims within the district court's original jurisdiction that they form part of the same cases or controversy under Article III of the United States Constitution. Supplemental jurisdiction has enabled federal courts and litigants to take advantage of the federal procedural rules on claim and party joinder to deal economically—in single rather than multiple litigations—with related matters, usually those arising from the same transaction, occurrence, or series of transactions or occurrences.

Moreover, the district courts' exercise of supplemental jurisdiction, by making federal court a practical arena for the resolution of an entire controversy, has effectuated Congress's intent in the jurisdictional statutes to provide plaintiffs with a federal forum for litigating claims within original federal jurisdiction.

Recently, however, in *Finley v. United States*, 109 S. Ct. 2003 (1989), the Supreme Court cast substantial doubt on the authority of the federal courts to hear some claims within supplemental jurisdiction. In *Finley* the Court held that a district court, in a Federal Tort Claims Act suit against the United States, may not exercise supplemental jurisdiction over a related claim by the plaintiff against an additional nondiverse defendant. The Court's rationale—that "with respect to the addition of parties, as opposed to the addition of only claims, we will not assume that the full constitutional power has been congressionally authorized, and will not read jurisdictional statutes broadly," 109 S. Ct. at 2007—threatens to eliminate other previously accepted forms of supplemental jurisdiction. Already, for example, some lower courts have interpreted *Finley* to prohibit the exercise of supplemental jurisdiction in formerly unquestioned circumstances.

Legislation, therefore, is needed to provide the federal courts with statutory authority to hear supplemental claims. Indeed, the Supreme Court has virtually invited Congress to codify supplemental jurisdiction by commenting in *Finley*, "What ever we say regarding the scope of jurisdiction . . . can of course be changed by Congress. What is of paramount importance is that Congress would be able to legislate against a background of clear interpretive rules, so that it may know the effect of the language it

adopts." *Finley*, 109 S. Ct. at 2007. This section would authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understanding of the authorization for and limits on other forms of supplemental jurisdiction. In federal question cases, it broadly authorizes the district courts to exercise supplemental jurisdiction over additional claims, including claims involving the joinder of additional parties. In diversity cases, the distict courts may exercise supplemental jurisdiction, except when doing so would be inconsistent with the jurisdictional requirements of the diversity statute. In both cases, the district courts as under current law, would have discretion to decline supplemental jurisdiction in appropriate circumstances.

Section 310 adds a new 28 U.S.C. 1368. Subsection (a) of the new section generally authorizes the district court to exercise jurisdiction over a supplemental claim whenever it forms part of the same constitutional cases or controversy as the claim or claims that provide the basis of the district court's original jurisdiction. In so doing, subsection (a) codifies the scope of supplemental jurisdiction first articulated by the Supreme Court in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). In providing for supplemental jurisdiction over claims involving the addition of parties, subsection (a) explicitly fills the statutory gap noted in *Finley v. United States*.

Subsection (b) prohibits a district court in a case over which it has jurisdiction founded solely on the general diversity provision, 28 U.S.C. 1332, from exercising supplemental jurisdiction in specified circumstances. In diversity-only actions the district courts may not hear plaintiffs' supplemental claims when exercising supplemental jurisdiction would encourage plaintiffs to evade the jurisdictional requirement of 28 U.S.C 1332 by the simple expedient of naming initially only those defendants whose joinder satisfies section 1332's requirements and later adding claims not within original federal jurisdiction against other defendants who have intervened or been joined on a supplemental basis.

In accord with case law, the subsection also prohibits the joinder or intervention of persons as plaintiffs if adding them is inconsistent with section 1332's requirements. The section is not intended to affect the jurisdictional requirements of 28 U.S.C. 1332 in diversity-only class actions, as those requirements were interpreted prior to *Finley*.

Subsection (b) makes one small change in pre-*Finley* practice. Anomalously, under current practice, the same party might intervene as of right under Federal Rule of Civil Procedure 24(a) and take advantage of supplemental jurisdiction, but not come within supplemental jurisdiction if parties already in the action sought to effect the joinder under Rule 19. Subsection (b) would eliminate this anomaly, excluding Rule 24(a) plaintiff-intervenors to the same extent as those sought to be joined as plaintiffs under Rule 19. If this exclusion threatened unavoidable prejudice to the interests of the prospective intervenor if the action proceeded in its absence, the district court should be more inclined not merely to deny the intervention but to dismiss the whole action for refiling in state court under the criteria of Rule 19(b).

Subsection (c) codifies the factors that the Supreme Court has recognized as providing legitimate bases upon which a district court may decline jurisdiction over a supplemental claim, even though it is empowered to hear the claim.

Subsection (c) (1)-(3) codifies the factors recognized as relevant under current law. Subsection (c)(4) acknowledges that occasionally there may exist other compelling reasons for a district court to decline supplemental jurisdiction, which the subsection does not foreclose a court from considering in exceptional circumstances. As under current law, subsection (c) requires the district court, in exercising its discretion, to undertake a case-specific analysis.

If, pursuant to subsection (c), a district court dismisses a party's supplemental claim, a party may choose to refile that claim in state court. In that circumstance, the Federal district court, in deciding the party's claims over which the court has retained jurisdiction, should accord no claim preclusive effect to a state court judgment on the supplemental claim. It is also possible that, if a supplemental claim is dismissed pursuant to this subsection, a party may move to dismiss without prejudice his or her other claims for the purpose of refiling the entire action in state court. Standards developed under Rule 41(a) of the Federal Rules of Civil Procedure govern whether the motion should be granted.

Subsection (d) provides a period of tolling of statutes of limitations for any supplemental claim that is dismissed under this section and for any other claims in the same action voluntarily dismissed at the same time or after the supplemental claim is dismissed. The purpose is to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court. It also eliminates a possible disincentive from such a gap in tolling when a plaintiff might wish to seek voluntary dismissal of other claims in order to pursue an entire matter in state court when a federal court dismisses a supplemental claim.

Subsection (e) defines "State" in accordance with other sections of this title.

Section 311 is intended to establish venue for both diversity and federal question cases in identical terms.

The general venue statute (28 U.S.C. 1391) includes "the judicial district . . . in which the claim arose" as one of the districts where civil actions may be brought. The implication that there can be only one such district encourages litigation over which of the possible several districts involved in a multi-forum transaction is the one "in which the claim arose."

This section clarifies that phrase by substituting the words: "any 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.". Congress used the same phrasing in a 1976 amendment designating venue in actions against foreign states.

This section also eliminates the century-old anomaly, now codified in the venue statute, providing for venue in diversity but not federal question cases "in the judicial district where all plaintiffs . . . reside." There is no good historical or functional reason for this distinction, which perversely favors home-state plaintiffs in diversity cases. The American Law Institute's 1969 Study of the Division of Jurisdiction Between State and Federal Courts proposed eliminating plaintiffs residence as a basis for venue and providing for venue in a judicial district in which "any defendant resides, if all defendants reside in the same State." This moderate broadening of venue means that if a litigation has a significant relation to a plaintiff's home state, it may be brought there; if it has no such relation, the plaintiff's residence alone should not suffice for venue.

Subparagraph (3) makes a similar change (regarding "substantial part") in venue rules for civil cases where the government is a defendant.

Section 312, regarding removal of separate and independent claims (28 U.S.C. 1441(c)), would eliminate most of the problems that have been encountered in attempting to administer the "separate and independent claim or cause of action" test. Most of the cases have involved the requirement of absolute diversity to establish diversity removal jurisdiction. The plaintiff, for example, might sue a diverse defendant for breach of contract and join a claim against a nondiverse defendant for inducing the breach. Courts have found the test very difficult to administer and have reached confusing and conflicting results. At the same time, the need to provide removal to the defendants who are diverse is not great.

The amendment would, however, retain the opportunity for removal in the one situation in which it seems clearly desirable. The joinder rules of many states permit a plaintiff to join completely unrelated claims in a single action. The plaintiff could easily bring a single action on a federal claim and a completely unrelated state claim. The reasons for permitting removal of federal question cases applies with full force. In addition, the amended provision could actually simplify determinations of removability. In many cases the federal and state claims will be related in such a way as to establish pendant jurisdiction over the state claim. Removal of such cases is possible under 28 U.S.C. 1441(a).

The further amendment to 28 U.S.C. 1441(c) that would permit remand of all matters in which state law predominates also should simplify administration of the separate and independent claim removal. Of course, a district court must remand state claims that are so unrelated to the federal claim that they do not form part of the same Article III case or controversy.

Section 313 provides a fall-back statute of limitations (codified at new section 28 U.S.C. 1658) for federal civil actions by providing that, except as otherwise provided by law, a civil action arising under an Act of Congress may not be commenced later than four years after the cause of action accrues.

Statutes of limitations provide a specific time period after the contested event within which a case must be commenced. At present, the federal courts "borrow" the most analogous state law limitations period for federal claims lacking limitations periods. Borrowing, while defensible as a decisional approach in the absence of legislation, appeals to lack persuasive support as a matter of policy.

It also creates several practical problems: It obligates judges and lawyers to determine the most analogous state law claim; it imposes uncertainty on litigants; reliance on varying state laws results in undesirable variance among the federal courts and disrupts the development of federal doctrine on the suspension of limitation periods.

Section 314 would provide for a modest increase in juror and witness fees, to account in part for an increase in the cost of living since the last adjustment and in recognition of the important contribution these citizens make to our Federal justice system. These fees were last set by congress in 1978. Witness and juror fees would increase from $30 per day to $40 per day.

Section 315 delegates to the Supreme Court the authority, pursuant to and limited by the Rules Enabling Act, to define what constitutes a "final decision" for purposes of 28 U.S.C. 1291. As the Federal Courts Study Committee noted;

"The state of the law on when a district court ruling is appealable because it is

'final,' or is an appealable interlocutory action, strikes many observers as unsatisfactory in several respects. The area has produced much purely procedural litigation. Courts of appeals often dismiss appeals as premature. Litigants sometimes face the possibility of waiving their right to appeal when they fail to seek timely review because it is unclear when a decision is 'final' and the time for appeal begins to run.

"Decisional doctrines—such as 'practical finality' and especially the 'collateral order' rule—blur the edges of the finality principle, require repeated attention from the Supreme Court, and may in some circumstances restrict too sharply the opportunity for interlocutory review."

The Supreme Court's rulemaking authority is, of course, constrained by the requirement that any rule "not abridge, enlarge or modify any substantive right."

Section 316 extends the life of the Parole Commission for five years beyond the 1992 date for abolition set out in the Sentencing Reform Act of 1984. This extension would permit the Commission an adequate time to consider cases where the offense occurred prior to November 1, 1987 (so-called "old law" cases).

Section 317 extends, for 10 years, the bankruptcy administrator program currently operating in the judicial districts of Alabama and North Carolina. These programs, established by the "Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986" (P.L. 99-554), as an exception to the nationwide expansion of the U.S. Trustee program, would otherwise expire on October 1, 1992. Any of the six affected districts may elect to become part of the U.S. Trustee program before the year 2002.

This section also amends the 1986 law to give bankruptcy administrators in the six districts standing to raise issues and appear and be heard in the same manner as U.S. Trustees. The section further provides that the power given to bankruptcy courts to act *sua sponte* to take any action or make "any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process" is given to the six affected districts on the date of enactment of this Act. The section thus makes uniform the authority of courts under 11 U.S.C. 105.

Section 318 requires the Judicial Conference to conduct a comprehensive review of the Federal defender program with a report back to Congress, with recommended changes, by March 31, 1992. As the Federal Courts Study Committee reported:

"Some years have passed since the last comprehensive review of the Criminal Justice Act program. Since that time, the federal defender program has grown substantially in size and complexity. For example, panel attorney appointements have risen from 16,000 in 1966 to 65,000 in 1988. There have been many other changes: the maturation of the defender movement, the dramatic increase in criminal prosecutions, the evolving sophistication and complexity of criminal law, the constitutionally mandated necessity of competent defense counsel, the small percentage of the legal profession that practices criminal law, the legal and ethical requirement of an independent criminal defense bar, the heavy workload of the federal judiciary, the independence of the federal prosecutor, and the revival of the federal death penalty."

Consistent with the importance of this program, Section 318 contemplates that the Judicial Conference will appoint a special committee to conduct a detailed study of the federal defender program.

The review should assess the current effectiveness of the CIA program (consistent with the areas suggested for study in subsection (b)) and recommend appropriate legislative, procedural, and operational changes, including those dealing with compensation. In addition to present and former federal defenders, the study committee should include a cross-section of those knowledgeable with CIA matters.

Section 319 amends the Ethics in Government Act of 1978, as amended, to provide that compensation for teaching received by a federal senior judges shall not be subject to an outside income limitation.

In contrast to the federal judicial retirement system, which allows judges who satisfy age and service requirements to retire at full salary, senior judge status enables eligible federal judges to continue to serve, but with a reduced workload. Pursuant to the Ethics Reform Act, federal judges who take senior status rather than choosing to retire are currently required to carry a minimum caseload corresponding to 25% of the caseload of a full-time active federal judge.

The Federal Courts Study Committee report recognizes the significant contribution of senior judges to effective court operations and additional judicial capacity. The Report recommended that "Congress *not* enact disincentives to senior judge service." Section 319 is consistent with this recommendation, by removing a disincentive to senior judge service.

Section 501 of the Ethics in Government Act currently imposes a federal employees a 15% ceiling on outside earned income. 5 U.S.C. app. 210 (1988). Section 319 excepts from that 15% ceiling teaching income earned by eligible federal judges who choose to take senior status pursuant to section 294(b) of title 28, United States Code. This exception applies only to teaching income earned by federal judges on senior judge status. It does not apply to active status federal judges or other federal employees or officers.

Section 320 requires that circuit judicial conferences be held once every two years (instead of every year as in current law) with an option to be held in the off year, as a way to reduce the judiciary's costs. This provision, supported by the Judicial Conference, was included in S. 1482 (100th Congress) as introduced and H.R. 4807, as passed by the House.

Though the provision did not prevail, the idea of providing this degree of flexibility into expensive circuit conference meetings is cost-conscious and sound.

Section 321 changes the title of "United States Magistrates" to "United States Magistrate Judge." The effect of this provision is that any magistrate appointed pursuant to section 631 of 28 shall henceforth be referred to as a United States Magistrate Judge. The change in designation is intended to apply equally to full and part-time magistrates.

"Judge" is a name commonly assigned to non-article III adjudicators in the federal court system. Examples include Claims Court Judges, Tax Court Judges and Bankruptcy Judges. Accordingly, appending "judge" to the magistrates' title renders it consistent with adjudicators of comparable status. Moreover, United States magistrates are commonly addressed as "judge" in their courtrooms, so that the change of designation provided for in this section largely conforms to current practice. The provision is one of nomenclature only and is designed to reflect more accurately the responsibilities, duties and stature of the office. It does not affect the substantive authority or jurisdiction of full-time or part-time magistrates.

Section 322 amends the Judicial Survivors' Annuities System (JSAS), 28 U.S.C. 376, which provides for annuities for the survivors of Federal judges and judicial officials who elect to participate in JSAS. Current law limits entitlement to the survivors of those who had completed at least 18 months of service. Section 322 eliminates the 18-month service requirement for survivor annuity eligibility in cases where a judge or judicial officer (as defined in 28 U.S.C. 376(a)(1)(A), (B), and (F)) is assassinated. Amounts necessary to equal a full 13 months of contributions are to be deducted from the annuity where an assassinated judge or judicial officers served for less than 18 months.

Section 322 further amends 28 U.S.C. 376 to permit a survivor of a judge or judicial officer who is assassinated to receive an annuity notwithstanding the survivor's concurrent eligibility for Federal workers' compensation benefits under 5 U.S.C. chapter 81. Under existing law, survivors must elect between workers' compensation benefits and a JSAS annuity.

The determination as to whether the killing of a judge or judicial officer who is an assassination is to be made by the Director of the Administrative Office, subject to review by the Judicial Conference of the United States.

The amendments made by section 322 apply retroactively to May 18, 1979, and thus would permit the receipt of JSAS annuities by survivors of the three judges who have been assassinated since that date—Judge John Wood (W.D. Tex.) in 1979, Judge Richard Daronco (S.D. N.Y.) in 1988, and Judge Robert Vance (11th Cir.) in 1989.

Section 323 amends section 332 of Title 28 with respect to the composition of judicial councils, in a manner designed to better equalize the representation between circuit and district judges on the policy making body of the circuit. Circuit judges will still have one additional vote on the council, because of the presence of the circuit chief judge. In other respects, however, the number of district judges will equal that of circuit judges.

Section 324 contains several miscellaneous provisions. Subsection (a)(1) creates two new places for holding court in Nevada, at Ely and Lovelock. These cities, which recently have become locations for major state prisons, need to be designated as places of holding court so that space can be rented on an occasional basis for civil jury trials relating to prisoner civil rights cases.

The new maximum security prison located in Ely, Nevada, which is 284 miles from Las Vegas and 317 miles from Reno, houses all maximum security prisoners including death row inmates previously housed in Carson City (a designated court location). The new medium security prison under construction in Lovelock, Nevada, which is 439 miles from Las Vegas and 92 miles from Reno, is scheduled to open in September 1992.

The Nevada Department of Prisons has constructed a small hearing room and judge's chambers in the Ely prison and the same will be included in the Lovelock facility. Therefore, most hearings will be held inside the prisons. However, in order to accommodate the additional space requirements of jury trials, it will become necessary from time to time to rent space to supplement the existing facilities. Designation of the locations as places of holding court is required in order to allow the rental of space for such purposes.

Subsection (a)(2) amends Section 112(a) of Title 28, to add Watertown, New York as a place of holding court within the Northern

District of New York. The Northern District of New York is a large district consisting of approximately 28,000 square miles. Litigants in the Watertown area presently have to travel approximately 70 miles to Syracuse, the nearest place of holding court.

There are federal facilities and Indian reservations in the Watertown area and litigation in the area has been increasing rapidly. The addition of Watertown as a place of holding court will reduce travel times and thus litigation expenses. The district court and the Judicial Council of the Second Circuit support the addition of Watertown and the Judicial Conference at its March 1988 session voted to support the designation of Watertown as a place of holding court.

Subsection (a)(3) amends Section 118(a) of Title 28 to add Lancaster, Pennsylvania as a place of holding court within the Eastern District of Pennsylvania. Litigants from Lancaster currently have to travel over 70 miles to Philadelphia. While Reading, over 30 miles from Lancaster, is also a place of holding court, no active district judge regularly sits in Reading. The addition of Lancaster as a place of holding court will reduce travel time and thus litigation expenses and will result in greater convenience for litigants from the Lancaster area. In addition, Lancaster County is one of the two fastest growing counties in Pennsylvania, and it has experienced the largest proportionate increase in federal court case filings of any of the ten counties within the Eastern District between 1987 and 1989.

Subsection (b) amends Section 122 of Title 28 to transfer Jackson County, South Dakota, to the Western Division of the district and to eliminate the designation of Washabaugh and Washington counties as part of the Western Divison. This technical change is made necessary to reflect the fact that the latter two counties were eliminated through merger.

The transfer of Jackson County to the Western Division was requested by the United States Attorney for the District of South Dakota. As a result of the merger of Washabaugh County into Jackson County, cases from the Pine Ridge Reservation which were formerly all in the Western Division (in Washabaugh and Shannon counties) were split between the Central and Western Divisions. The United States Attorney believes that this result is cumbersome and inconvenient for all concerned and that it is appropriate to handle all Pine Ridge Reservation cases in the Western Division. The transfer of Jackson County to the Western Division will accomplish this result and eliminate legal challenges which have arisen from the splitting of the reservation.

Section 325 makes a number of minor, technical amendments to existing law and tables of sections, consistent with this Act and other recent enactments.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 907, H.R. 5316, and that all after the enacting clause be stricken and that the text of S. 2648, as amended, be inserted in lieu thereof, and that the bill be deemed read for a third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, will the Senator from Delaware be good enough to explain, is this the package of antitrust amendments that we are talking about?

Mr. BIDEN. No; it is not. That is next.

Mr. METZENBAUM. I see. I thank the Senator.

Mr. BIDEN. Mr. President, I ask unanimous consent that Calendar Nos. 768, 906, and 908 be indefinitely postponed.

Mr. METZENBAUM. Parliamentary inquiry. I do not believe we ever reached the point of passing the Senate bill.

Mr. BIDEN. We are not passing the Senate bill. We are indefinitely postponing it. The House bill contained all of the provisions that are in question.

Mr. METZENBAUM. I appreciate the clarification. I thank the Senator.

Mr. BIDEN. Now, I have trouble seeing the Chair because there is a 7-foot Senator standing between us.

Mr. SIMPSON. Six-seven.

Mr. BIDEN. Six-seven. I beg your pardon.

Part of the problem, Mr. President, I am informed by some of my colleagues that my jacket is so loud it is causing the lights to cause the TV cameras not to function well. These are the notes I keep being handed here, and the reflection is making it difficult for me to see the Chair.

Mr. President, I ask unanimous consent, to finish my request, that Calendar Nos. 768, 906, and 908 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERLOCKING DIRECTORATES ACT

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 555, H.R. 29, an act to amend the Clayton Antitrust Act concerning interlocking directorates.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 29) to amend the Clayton Act regarding interlocking directorates and officers.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill? There being no objections, the Senate proceeded to consider the bill.

AMENDMENT NO. 3205

Mr. BIDEN. Mr. President, on behalf of Senators METZENBAUM and THURMOND, I send a substitute to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] for Mr. METZENBAUM (for himself and Mr. THURMOND) proposes an amendment numbered 3205.

Mr. BIDEN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

That this Act may be cited as the "Antitrust Amendments Act of 1990".

SEC. 2. Section 8 of the Clayton Act (15 U.S.C. 19) is amended to read as follows:

SEC. 8. (a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

"(A) engaged in whole or in part in commerce; and

"(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than $10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

"(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

"(A) the competitive sales of either corporation are less than $1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

"(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

"(C) the competitive sales of each corporation are less than 4 per centum of that corporations total sales.

For purposes of this paragraph, 'competitive sales' means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, 'total sales' means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

"(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

"(4) For purposes of this section, the term 'officer' means an officer elected or chosen by the Board of Directors.

"(5) For each fiscal year commencing after September 30 1990, the $10,000,000 and $1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decreased) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but