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MINUTES
Civil Rules Committee
Meeting of April 7-8, 1988

Rule 44. The Committee decided that it would prefer a generic description of those governments whose records should be deemed "domestic" for purposes of this Rule. The Reporter was directed to consult with the State Department to establish an appropriate generic term if one can be found.

Rule 47. The Committee decided that the revision of Rule 47 should be enlarged to include Rule 48 and to reflect the decision of the Supreme Court in Colgrove v. Battin. There was some attraction to the idea of eliminating the concept of alternate jurors, allowing all jurors who hear the evidence to participate in the decision. There was also some support for increasing the minimum size of the jury, partly to take account of the elimination of alternate jurors, and partly in response to criticism of the small jury. The Reporter was directed to prepare a summary of empirical studies of small juries. A very tentative draft of Rules 47 and 48 designed to reflect discussion by some members of the committee is attached to these minutes.

Rule 63. The Committee approved Rule 63 and the note as prepared by the Reporter in response to the suggestion of the Standing Committee. The new text will be transmitted to the Standing Committee.

Rules 4 and 4.1. Most of the meeting was devoted to Rule 4. It was decided that the draft should state positively that the jurisdictional reach of a federal court in a federal question case is limited only by the Constitution and statutes, and that this provision of the Rule should probably be submitted to Congress for enactment as legislation in order to avoid any problem that might otherwise arise under the Rules Enabling Act. Many suggestions were made and adopted for the improvement of the Reporter's draft. A revised draft reflecting that discussion is attached to these minutes. The Chairman directed the Reporter to circulate such a draft promptly, and also directed each member to make written comments on the circulated draft as soon as possible, to the end that consideration of Rule 4 at the next meeting could be abbreviated. It did appear to be the sense of the meeting that the Committee was close to approval of a text which would be ready for transmission to the Standing Committee prior to publication for comment. It was contemplated that yet another draft of Rule 4, based on comments received meanwhile, will be circulated by the Reporter during the summer.

Some dissatisfaction was expressed with the third sentence of the proposed Rule 4.1, and the Reporter was directed to study the issue presented by that sentence.

Rules 26 and 28. Rule 28 was approved as presented by the Reporter, but concern was expressed that the language proposed

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for addition to Rule 26 may go too far in guaranteeing access to discovery against foreign nationals. The Reporter undertook to re-draft a compromise on this question.

Rule 45. Substantial discussion was conducted of this draft. Most of the proposed text seemed to meet approval, with a few suggestions which are reflected in the draft (with tentative committee notes) which accompanies these minutes. Unresolved is the question of which court should have jurisdiction over a motion to quash or limit a remote deposition or production of evidence. Among matters not discussed was the issue of whether a court should be empowered by special order to compel a witness to travel substantial distances to attend trial.

Next Meeting. The Committee will next meet on November 17-19, 1988 in Washington. The meeting will extend for three full days in order to deal with the many items accumulating on the agenda.

Respectfully submitted,



Paul D. Carrington, Rptr.