COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Minutes of the Meeting of June 23-24, 1994
Washington, D.C.

The mid-year meeting of the Judicial Conference Committee on Rules of Practice and Procedure was held at the Thurgood Marshall Federal Judicial Building in Washington, D.C. on Thursday and Friday, June 23-24, 1994. The following members were present:

Judge Alicemarie H. Stotler, Chair
Professor Thomas E. Baker
Judge William O. Bertelsman
Judge Frank H. Easterbrook
Judge Thomas S. Ellis, III
Professor Geoffrey C. Hazard, Jr.
Judge James A. Parker
Alan W. Perry, Esquire
Judge George C. Pratt
Sol Schreiber, Esquire
Alan C. Sundberg, Esquire
Judge William R. Wilson

Representing the Department of Justice was Deputy Attorney General Jamie S. Gorelick, who attended part of the meeting on Thursday. Also participating in the meeting on behalf of the Department of Justice were Robert E. Kopp, Roger A. Pauley, Esquire, and Mary Harkenrider. Chief Justice E. Norman Veasey was unable to attend because of illness.

Supporting the committee were Professor Daniel R. Coquillette, reporter to the committee, Peter G. McCabe, secretary to the committee, and John K. Rabiej, chief of the Rules Committee Support Office of the Administrative Office of the United States Courts.

Representing the advisory committees at the meeting were:

Advisory Committee on Appellate Rules -
Judge James K. Logan, Chair
Professor Carol Ann Mooney, Reporter
Advisory Committee on Bankruptcy Rules -
Judge Paul Mannes, Chair
Professor Alan N. Resnick, Reporter
Advisory Committee on Civil Rules -
Judge Patrick E. Higginbotham, Chair
Dean Edward H. Cooper, Reporter
Advisory Committee on Criminal Rules -
Judge D. Lowell Jensen, Chair
Professor David A. Schlueter, Reporter

Advisory Committee on the Rules of Evidence -
Judge Ralph K. Winter, Chair
Dean Margaret A. Berger, Reporter

Also participating in the meeting were: Joseph F. Spaniol, Jr. and Bryan R. Garner, consultants to the committee; Mary P. Squiers, project director of the local rules project; and Judith A. McKenna of the Research Division of the Federal Judicial Center. Additional staff assistance was provided by the Rules Committee Support Office and the Office of Judges Programs of the Administrative Office.

INTRODUCTORY REMARKS

Judge Stotler welcomed the members and thanked the chairs and reporters of the advisory committees for taking the time to participate in the entire meeting of the Standing Committee.

Judge Stotler reported that the Judicial Conference, at the committee's request, had withdrawn its position supporting in principle the offer of judgment proposal contained in S. 585, civil justice reform legislation introduced by Senator Grassley. She pointed out that she had informed the Conference that the Advisory Committee on Civil Rules was actively considering proposed amendments to FED. R. CIV. P. 68, dealing with offers of judgment. The committee, moreover, wished to review the results of a survey by the Federal Judicial Center regarding settlement practices.

The chair pointed out that rulemaking frequently overlaps substantive issues. Accordingly, she emphasized the need for the rules committees to cooperate with other, substantive committees on the Judicial Conference on a continuing basis. To assist in coordination, the Rules Committee Support Office of the Administrative Office had circulated to the members the agendas of the other Conference committees.

Judge Stotler reported that she had been in contact with Judge Ann Williams, chair of the Conference Committee on Court Administration and Case Management, regarding the RAND Corporation's study of implementation of the Civil Justice Reform Act. She noted that the Conference may have to ask the Congress for a one-year extension of the statutory deadline to give RAND additional time to compile its data.

Professor Coquillette cautioned that the deadlines for the CJRA study were very tight and that there would not be sufficient time for the rules committees to study the RAND results carefully before the Conference has to act to meet the statutory deadline.

Several of the members stated that the Civil Justice Reform Act had caused procedural uncertainty and confusion in the district courts. The bar was expressing concern that it is difficult to determine precisely what procedures are in effect in a given district in light of the CJRA experimentation and the recent amendments to the civil rules.

APPROVAL OF THE MINUTES OF THE LAST MEETING

The committee unanimously approved the minutes of the January 13-14, 1994 meeting with two minor, stylistic changes.

The chair asked the secretary to append to the minutes Mr. Rabiej's flow chart on the status of all pending rules amendments. She also recommended that the members read the draft minutes very carefully to make sure that their comments were properly characterized, since the minutes will be available to the public on computer assisted legal research services.

The committee decided not to make the minutes of the January 12, 1994 executive session public. It was agreed that if there were anything in the minutes that would be helpful for future use, the pertinent speakers could be asked to repeat their remarks for the record.

REPORT ON LEGISLATION

Mr. Rabiej reported that the Senate-passed version of the comprehensive crime legislation pending in the Congress had 10 provisions affecting the federal rules. The House-passed version, though, was very different, since the chair and the Administrative Office had persuaded the House Judiciary Committee to adhere to the Rules Enabling Act process and not include any rule amendments in their bill.

With regard to Rule 412 of the Rules of Evidence, both houses had agreed to amend their respective bills and substitute the language of Rule 412 drafted by the Advisory Committee on the Rules of Evidence—but without the deletions made by the Supreme Court that would have eliminated the rule's application to civil cases. Therefore, it was likely that the revised rule, in the form drafted by the Advisory Committee on the Rules of Evidence and approved by the Judicial Conference, would take effect on December 1, 1994.

Mr. Rabiej reported that both House and Senate versions of the crime bill included an amendment to FED. R. CRIM. P. 32 that would provide a right of victim allocution in certain categories of criminal cases. It appeared that the revised version of the Rule 32 recently promulgated by the Supreme Court—with the victim allocution provision added—would also take effect on December 1, 1994.

GREATER PARTICIPATION BY THE BAR

Mr. Rabiej stated that Senator Heflin would introduce legislation amending the Rules Enabling Act to require that a majority of the members of all the rules committees be practicing attorneys. The moving force behind the effort appeared to be attorney John Frank, who had also been able to convince the American Bar Association to support the change in membership.

Judge Easterbrook suggested that Senator Heflin be advised by the chair that the Standing Committee had undertaken a comprehensive self-study of the rules process that would address, among other things, the membership of the committees. He added that several former committee chairs had recommended: (1) that the Standing Committee's membership be smaller, not larger, and (2) that the chairs of the advisory committees be made *ex officio* members of the Standing Committee. Adding more lawyers to the Standing Committee would make it difficult to achieve these objectives.

Professor Hazard suggested that the rules committees should actively solicit the views of the relevant committees of the American Bar Association on rules issues. Feedback from the bar was very important, and greater outreach by the committees was necessary.

Mr. Perry stated that it would be beneficial to have more members of the bar on the committees, although there was no need for Senator Heflin's legislation.

Judge Higginbotham suggested that much of the problem with bar relations flows from the recent amendments to Rule 26, which were not well received by the bar. He recommended that the committee be more sensitive to the bar, actively solicit bar comments, and respond positively to the request for more lawyers on the committees.

Mr. Rabiej reported that, other than in unusual circumstances, the secretary generally does not receive many comments from lawyers on proposed rules changes. He stated that, in an effort to stimulate comments, the Administrative Office had selected about 2,500 attorneys at random from Martindale-Hubbell and would mail them the call for comment on proposed amendments. He also reported: (1) that he had received mailing labels from the American Bar Association, and (2) that all state bar associations were now included on the committee's mailing list.

Mr. Rabiej stated that the Administrative Office had completed a draft of a new pamphlet summarizing the proposed rules changes ready for public comment in September. He said that the attorneys were more likely to read a brief summary of the amendments than to read the full text and committee notes, as set forth in the call for comment publication. He directed the committee's attention to a copy of the proposed pamphlet, which had been distributed to the members in their folders.

Judge Stotler requested the members to look through the proposed pamphlet for style and format. She asked for their approval of the concept. She agreed that the deadline for submitting

comments to the amendments should be set forth clearly on the first page of the pamphlet.

Mr. Sundberg recommended that the committee ask each state bar association to name an official liaison member to the committee, who would help channel comments on the rules.

Ms. McKenna suggested that a list of attorneys interested in the rules could be produced from the court records of attorneys who appear in federal court. She noted that the Federal Judicial Center had followed this technique, and she recommended that the committee write to these lawyers and send them a questionnaire.

FAX FILING

Mr. Rabiej reported that the Court Administration and Case Management Committee: (1) had withdrawn its original recommendation that the Judicial Conference adopt guidelines to address fax filing in routine situations; and (2) had decided that there was no need to promulgate guidelines to address emergency filings.

Judge Stotler stated that the Standing Committee and the Automation and Technology Committee had both concurred in the recommendations of the Court Administration and Case Management Committee. Accordingly, fax filing would be limited to emergency filings and would be left up to the local courts.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Professor Mooney presented the report of the advisory committee, as set forth in Judge Logan's memorandum of May 27, 1994. (Agenda Item 5)

1. Rules for Judicial Conference Approval

Professor Mooney reported that the advisory committee was recommending that the Standing Committee approve amendments to five rules and send them to the Judicial Conference: FED. R. APP. P. 4, 8, 10, 47, and 49.

FED. R. APP. P. 4

Professor Mooney explained that the paragraph (a)(4) rule would be amended: (1) to clarify that a party may file a notice of appeal or, if the party had filed a notice of appeal before disposition of a pretrial motion, it may amend the previously filed notice; and (2) to conform it to proposed amendments to FED. R. CIV. P. 50, 52, and 59, which were being amended to require that a post-trial motion be "filed" no later than 10 days after entry of judgment. No public comments were received on the proposal, and the advisory committee was recommending that the

amendments be approved as published.

FED. R. APP. P. 8

The amendment to Rule 8 was a technical change in a cross-reference to FED. R. CRIM. P. 38 to take account of previous changes in that rule. There were no public comments on the proposal, and the advisory committee was recommending that it be approved as published.

FED. R. APP. P. 10

The proposed amendment to Rule 10 would conform the rule to amendments made in FED. R. APP. P. 4(a)(4). It would suspend the 10-day period for ordering a transcript if a timely post-judgment motion were made and the notice of appeal were suspended. There were no public comments on the proposal, and the advisory committee was recommending that it be sent forward as published.

FED. R. APP. P. 47

The proposed redraft of Rule 47 is the FED. R. APP. P. version of a suggested uniform rule specifying the authority of courts to promulgate local rules and of judges to regulate practice before them.

Professor Mooney stated that the appellate advisory committee was recommending a change from the language of the proposed uniform rule to recognize practical differences between an appellate court and a trial court. On lines 5-8 of the draft set forth on page 11 of Agenda Item 5A, the shaded language had been added by the advisory committee to provide that: "A generally applicable direction to a party or a lawyer regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order." The advisory committee had deleted the language earlier, but decided to restore it as a result of the public comments.

Internal operating procedures present a problem unique to the courts of appeals. They sometimes function as local court rules, but they are not subject to the same public notice and comment requirements as local rules. Unlike the district courts and bankruptcy courts, the courts of appeals always sit in panels and do not have standing orders.

Professor Mooney stated that the advisory committee was also recommending a change in subdivision (b). The uniform rule provided that no sanction may be imposed causing a party to lose rights for a procedural violation unless there were actual notice of the requirement. The advisory committee believed that the provision was directed to trial court practice and was not needed in the courts of appeals.

Judge Logan emphasized that while the Advisory Committee on Appellate Rules had approved language that varied slightly from the uniform rule in order to recognize differences

from the trial courts, the substance of FED. R. APP. P. 47 was the same as the uniform rule. Professor Coquillette stated that divergence was acceptable as long as there were specific reasons for it.

Professor Mooney added that the advisory committee had agreed to change the word "negligent" to "nonwillful" on line 23, in accordance with the recommendation of the Advisory Committee on Bankruptcy Rules. Judge Jensen stated that the Advisory Committee on Criminal Rules had decided not to make the change, but would support either version.

Mr. Perry said that he was troubled by elimination of the non-sanctions language in the appellate rule. Its absence would be noted by the lawyers and could cause more mischief than including a sentence in the language of the rule that might be redundant. Professor Baker suggested that the rationale for not including the provision could be explained in the committee note. Judge Logan added that this could be accomplished by restoring the last sentence of the committee note reading: "There should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular court unless the party or attorney has actual notice of those requirements."

Mr. Schreiber moved to leave the no-sanctions sentence out of the rule and to address the matter in the committee note.

Mr. Perry moved to amend Mr. Schreiber's motion to restore the sentence to the rule itself. His motion was approved by a vote of 6-5.

Professor Mooney advised that the language of the appellate version of the uniform rule would still be a little different from the bankruptcy version of the rule because it would contain no reference to the official forms and the rules of the district courts.

The committee approved Mr. Schreiber's motion, as amended by Mr. Perry's motion, by a vote of 7-2.

The committee then voted unanimously to approve the amendments to Rules 4, 8, 10, and 47 and send them to the Judicial Conference. The committee also voted to approve the parallel amendments in the other sets of rules dealing with local rules of court: Bankruptcy Rules 8018 and 9029, Civil Rule 83, and Criminal Rule 53.

FED. R. APP. P. 49

Professor Coquillette stated that serious policy concerns were raised by proposed new Rule 49, the appellate version of the proposed uniform rule giving the Judicial Conference authority to amend the federal rules to make technical and conforming amendments. He noted that Professor Baker had distributed a fine memorandum arguing that if the proposal were to be approved at all, it would have to be enacted by legislation, rather than through the Rules Enabling Act process.

He noted that: (1) the Advisory Committee on Bankruptcy Rules was opposed to the proposal in any form; (2) the Advisory Committee on Criminal Rules had found the proposed rule acceptable; and (3) the Advisory Committee on Civil Rules believed that the provision could only be effectuated through legislation. Judge Higginbotham added that he was personally opposed to the amendment on the merits and that it would be a political mistake to pursue the matter. Judge Logan stated that the Advisory Committee on Appellate rules had approved the proposed rule, but with reservations and without extensive debate.

Mr. Kopp pointed out that the Department of Justice had opposed the proposal in the past because its scope was uncertain.

Some members of the committee argued on the merits that the Judicial Conference should have the authority to make technical and conforming amendments, while others saw no need for the proposal. There was general agreement, however, that it would not be advisable to forward the proposed rule to the Congress.

Judge Easterbrook suggested that reliance on the supersession clause in the Rules Enabling Act to amend the Act itself was highly problematic. Legislation would be necessary to effect the change. He noted that the same issue would arise again later in the meeting in connection with the proposed amendments to FED. R. CRIM. P. 16 and their impact on the Jencks Act.

Judge Bertelsman moved to table the proposed uniform rule on technical and conforming amendments in all sets of the rules (FED. R. APP. P. 49, FED. R. BANKR. P. 9037, FED. R. CIV. P. 84, and FED. R. CRIM. P. 59). He then amended his motion to disapprove, rather than table, the proposed amendments. His motion on the amendment was approved 11-1, and the amended motion to disapprove the proposal was approved unanimously.

Professor Coquillette explained that the action just taken would include the changes to both FED. R. CIV. P. 83(a) and 83(b), since they are essentially similar.

2. Rules for Publication

Professor Mooney reported that the advisory committee was seeking authority to publish amendments to six appellate rules.

FED. R. APP. P. 21

Professor Mooney pointed out that Rule 21, dealing with mandamus, was before the committee for the second time. The advisory committee was seeking republication, following lengthy discussions before both the standing committee and the advisory committee on whether a trial court judge who is the subject of mandamus should have the right to appear before the court of appeals.

In amending the proposal, the advisory committee had deleted the right of the trial judge to appear before the appellate court. Thus, the judge could appear only if ordered by the court of appeals. Judge Logan and Professor Mooney stated that the advisory committee was concerned that providing a right to appear would place the trial judge in a position of advocacy. Moreover, in most cases the trial judge would have no need to appear. They pointed out that under the amendment the court of appeals could request the trial judge to appear, when appropriate.

One member emphasized that he was in favor of giving the trial judge the right to appear, at least in writing. The right would be particularly important where both parties oppose the action of the trial judge in a particular case. He also stated that the rule should require the trial judge to receive personal notice of the pleadings.

Some concern was expressed as to the meaning of the provision on lines 10-11 of the amendment that: "All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes." A potential ambiguity was cited between the rule and the committee note. Lines 43-45 of the proposed rule would provide that the respondent must answer within a fixed time, while lines 27-28 of the note would explain that the court may order the judge to respond.

The committee approved the draft rule and committee note for publication on a vote of 7-5.

FED. R. APP. P. 25

Professor Mooney stated that the advisory committee had published a simple rule dealing with service by mail, but had received responses recommending that the rule be further amended to authorize service by public courier service. The advisory committee thereupon decided to amend the rule to provide that filing of a brief or appendix under the mailbox rule may be made either by mail or by "a reliable commercial carrier."

The rule would require a certification of service. It would also require that, when feasible, service on a party be by a manner at least as expeditious as the manner of filing with the court.

One member asked whether the postal service had expressed any views on the legality of the proposal, particularly in light of its monopoly statute. The members agreed that the postal service was free to respond to the proposal during the public comment period.

Judge Logan stated out that proposed new subparagraph 25(a)(2)(D) would authorize electronic filing of papers, and he emphasized the need for the appellate version of the rule to be uniform with the companion electronic filing amendments in the civil and bankruptcy rules.

Judge Easterbrook recommended that the amendment, at lines 28-32, be revised as follows: "A court of appeals may, by local rule, permit papers to be filed by electronic means, provided such means are consistent with any technical standards established by the Judicial Conference of the United States."

At the suggestion of Judge Ellis, the committee decided to work from the proposed Bankruptcy Rule 5005, using it as a model for an electronic filing authorization in all three sets of rules.

Professor Resnick pointed out that the bankruptcy version of the amendment used the words "standards, if any" to make it clear that individual courts could proceed with electronic filing by local rule without having to wait for the Judicial Conference to promulgate standards. He explained that the Conference's standards would deal only with technical matters. Procedural issues would have to be addressed either by national or local rule. He added that if the committee decided in the future that it would be better to have national procedural uniformity on electronic filing, it could propose a more detailed, national rule.

Professor Resnick reported that the Advisory Committee on Bankruptcy Rules was strongly opposed to fax filing, and its original draft of Rule 5005 had excluded fax filing. Nevertheless, he had been advised that the term "facsimile" was not limited to standard fax machine transmissions, but was broad enough to include certain computer to computer transmissions.

He noted that the amended rule covered signing and verification of papers, and it provided that an electronic filing constitutes "a written paper." The latter provision was necessary because the bankruptcy rules require that certain matters, such as a proof of claim, be initiated "in writing."

Judge Logan stated that the Advisory Committee on Appellate Rules could adopt the language of the proposed bankruptcy rule amendment, stopping after the words "applying these rules," *i.e.*, deleting the reference on line 21 to the Federal Rules of Civil Procedure and section 107 of the Bankruptcy Code. He added that his advisory committee could consider minor language changes, if necessary, after the public comment period.

Dean Cooper stated that the Advisory Committee on Civil Rules would likely agree with the appellate committee. But he was concerned that the civil committee had not yet addressed the specifics of the proposal. He said that drafting was complicated by recent changes in FED. R. CIV. P. 5(e) and recent controversy concerning fax filing. Judge Higginbotham added that he believed the civil advisory committee would generally be pleased with the bankruptcy proposal.

One member expressed concern that the Standing Committee was being asked to publish a rule that had not been considered in detail by the appellate and civil committees and that the proposal would foster further diversity in local court practices. Other members suggested, however, that courts needed authority to experiment with developing technology. It was also pointed out that if the committee waited further to publish an amendment, it would be at least another year before electronic filing could be authorized in the courts.

The discussion on electronic filing was continued later in the meeting in connection with Bankruptcy Rules 5005 and 8008.

FED. R. APP. P. 26

The proposed amendment to Rule 26 would make a conforming amendment to Rule 25, allowing service by an "equally reliable commercial carrier."

The members questioned the appropriateness of the word "equally," using the postal service as the standard.

Judge Wilson moved to adopt Rule 26 as proposed, but to strike the word "equally," both in Rule 26 and in Rule 25. The motion was approved with one dissent.

Mr. Schreiber asked whether the additional three days authorized for a party to act after being served by mail was sufficient in light of recurring mail delivery problems. He suggested that it might be better to change the three-day provision to five days. **He thereupon moved to amend Rule 26 to increase the grace period following service by mail from three days to five days.**

Professor Resnick stated that the time periods fixed in the bankruptcy rules were generally shorter than those in the other rules. Giving a party an additional five days after service, rather than three days, could present real problems for bankruptcy practice and probably would not be acceptable to the Advisory Committee on Bankruptcy Rules.

Some members questioned the wisdom of making any change, since the bench and bar were used to the traditional three-day provision and would likely complain about what they perceived to be a needless change in the rules.

Judge Wilson made a substitute motion to have the chair ask the advisory committees to consider the matter of increasing the time period of Rule 26(c) from three days to five days. The motion was approved by voice vote without objection.

FED. R. APP. P. 27

Professor Mooney stated that Rule 27, governing motions, had been completely rewritten based on the work of the local rules project. The major changes proposed were: (1) to prohibit separate briefs on motions; (2) to impose a 20-page limit on motions and responses to motions, (3) to make it clear that the moving party had an opportunity to file a reply to a response, (4) to limit replies to 10 pages, (5) to move the provisions governing the form of motions from Rule 32 to Rule 27, so all motions requirements would be set forth in one rule, and (6) to add a new subdivision (e) providing that motions will be decided without oral argument unless the court orders otherwise.

The committee voted unanimously to approve the revised rule for publication.

FED. R. APP. P. 28

Professor Mooney stated that Rule 28 contained a companion amendment to Rule 32. It would delete subdivision (d), specifying page limits on briefs, because the limits on the length of briefs would be moved to Rule 32.

The committee voted unanimously to approve the revised rule for publication.

FED. R. APP. P. 32

Professor Mooney pointed out that Rule 32 had been discussed at length at the January 1994 meeting of the Standing Committee. She stated that substantial changes had been made in the draft following public comment and technical advice from printing companies. Professor Mooney stated that the text of the proposed amendment submitted by the advisory committee (Agenda Item 5B) should be revised to include the following additional seven changes: (1) on lines 27-28, change the typeface examples to read: "New Century Schoolbook, Bookman, and Garamond," (2) on line 40, add the words "at least" after the word "be," (3) on line 46, strike the words "in leading" and add the word "a" after the word "use," (4) on line 48, substitute the words "type matter" for the word "typeface," (5) on line 75, strike the word "any" and add the words "an original," (6) on line 76, add the word "printed" before the word "published," and (7) on line 108, strike the word "that.

Judge Logan subsequently withdrew the proposed change on line 75, deleting "an original" and restoring "any."

Professor Mooney stated that the draft: (1) expressed a preference for proportional typeface; (2) provided definitions for both proportionately spaced typeface and monospaced typeface; (3) prescribed the margins for a page; (4) set the limit for the length of the brief; expressed in the total number of words; and (5) limited the number of words on an individual page. She explained that a party filing a brief must certify the number of words in the brief, but could rely on word processing software to do so. Safe harbors would be provided, relieving a party from having to certify the word count as long as the number of pages in a brief were less than a set number.

The committee voted unanimously to approve Rule 32 for republication.

3. Ninth Circuit Local Rule 22

Judge Logan reported that the attorneys general of five states had requested the Judicial Conference to use its authority under 28 U.S.C. § 2071(c)(2) to abrogate Local Rule 22 of the Ninth Circuit. The local rule was designed to expedite the handling of death penalty cases by the court of appeals.

He explained that the attorneys general had made their recommendation in a letter to the Chief Justice, who had referred it to the chair of the Standing Committee, who had in turn referred it to the Advisory Committee on Appellate Rules. Judge Logan pointed out that the advisory committee had had little time to act on the matter and had before it only the relatively brief letter from the attorneys general and a response from the chief judge of the circuit. The committee considered the matter at its April 1994 meeting and had submitted the report and recommendations found at Agenda Item 5C.

Judge Logan stated that the advisory committee first had to determine the appropriate standard for the Judicial Conference to apply in modifying or abrogating a local court of appeals rule under 28 U.S.C. § 2071(c)(2). It decided that the Conference should only abrogate a rule if it violates federal law, and it should not void a rule simply because it does not agree with it as a matter of policy.

Second, the advisory committee had to consider the presumption to be accorded a local court rule and the manner of presenting the issues to the Conference. It decided to give the Standing Committee the full benefits of its views, even if an issue were in doubt or there were split votes among the members. Accordingly, the committee took individual votes on each of the four principal legal issues raised by the attorneys general that raised serious consistency questions.

1. Local Rule 22-4(e)(4) provides for a two-tiered in banc review—first by 11 judges and then possibly by the entire 28 judges of the court.

   The advisory committee voted 4-3 with 2 abstentions against abrogating the dual in banc procedure. Judge Logan stated that a member of the advisory committee had undertaken a legal study of the issue following the meeting and had concluded that the law on the point was not clear.

2. Local Rule 22-4(e)(2) allows a single judge to convene the court in banc. The attorneys general argued that the pertinent statute required a majority of the active judges of a court to approve an in banc hearing. The Ninth Circuit responded that a majority of the judges of the circuit had voted *in advance* that if any one judge requested an in banc review, they would vote to approve the review.

   Some members of the advisory committee agreed with the court's position on the issue but were of the view that there was a need for periodic reaffirmation of this provision by a majority of the active judges of the court, especially when the composition of the court changes.

   The advisory committee voted 4-2, with 2 abstentions, to permit the single judge provision to stand, with the proviso that the Judicial Conference be informed of the committee's concern that the procedure is valid only if it enjoys the continuing support of a majority of the court.

3. Local Rule 22-3(c) provides that a certificate of probable cause and a stay of execution will be granted automatically on appeal from a first habeas corpus petition. Federal Rule of Appellate Procedure 22, however, requires action by one judge to issue a certificate of probable cause. As a practical matter, there are five judges on the Ninth Circuit court who will issue a certificate in every case. The advisory committee voted 3-1 with 4 abstentions not to abrogate the provision.

   A motion was made to recognize that the court's procedure in effect constituted a standing order by a single judge to grant a certificate of probable cause and a stay of execution in every first petition in a death penalty case. Viewed in this light, the procedure was valid, subject to the qualification of continuing reaffirmation noted earlier. The motion passed by a vote of 5-0 with 3 abstentions.

4. Local Rule 22-1 applies the death penalty procedures to related civil proceedings. It was pointed out that the issue of the authority of a federal judge to grant a stay of execution when a habeas corpus petition is not pending before the judge was being considered by the Supreme Court in the McFarland case. Accordingly, the advisory committee voted unanimously to make no recommendation concerning the validity of the procedures as applied to non-habeas corpus cases.

The members agreed that the petition of the attorneys general had raised fundamental issues of first impression regarding the authority of the Judicial Conference to abrogate local rules and the procedures and standards for doing so. Several members expressed the need to focus first on the role and responsibilities of the committee and the Conference under the 1988 revisions to the Rules Enabling Act. After making that review, it could proceed to consider the merits of the arguments of the attorneys general.

One member stated that the matter was extraordinarily important from a process standpoint and would establish precedent for future petitions. The attorneys general's proposal was also said to invoke sensitive political and policy concerns regarding capital punishment.

Three members stated that there was a clear conflict between the Ninth Circuit rule and governing national law. Others pointed out that while there may be facial inconsistencies, the Ninth Circuit had drafted its rule to deal with the practical problem that some of its judges always vote against capital punishment.

Several members insisted that the committee needed additional information and further briefing in order to make an informed decision on the matter. They suggested that the attorneys general and the circuit be requested to prepare formal briefs on the issues and perhaps be invited to address the committee. On the other hand, two members saw no need for additional information and were prepared to vote immediately that parts of the Ninth Circuit local rule be abrogated.

Judge Wilson moved to invite both sides to submit additional information. He then accepted an amendment to his motion by Professor Baker that the committee's reporter provide a bench memorandum that would address all the issues of process and substance for consideration by the committee.

The motion, as amended, was approved by voice vote with one objection.

Professor Coquillette suggested that notices be sent to the five attorneys general and the Ninth Circuit by July 15 requesting additional briefing. Notices would also be sent to the chief judges of the circuits and the Solicitor General. Written input should be received from the attorneys general by September 15, and a response from the Ninth Circuit should be due by October 15. The reporter's bench memorandum for the committee could be sent to the Standing Committee by November 15, giving the members about two months to study the issues.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Jensen presented the report of the advisory committee, as set forth in his memorandum of May 17, 1994. (Agenda Item 9)

1. Rules for Judicial Conference Approval

FED. R. CRIM. P. 5 and 40

Judge Jensen stated that the proposed amendment to Rule 5 would carve out an exception to the rule eliminating the requirement that the Government follow the procedural requirements of the rule in cases where a defendant is charged with a violation of the Unlawful Flight to Avoid Prosecution statute. (18 U.S.C. § 1073) As a result of a public comment, the advisory committee decided to recommend adding a conforming change in Rule 40. The advisory committee decided that there was no need to seek public comment on the conforming change.

The committee voted unanimously by voice vote to approve the amendments to Rules 5 and 40 and send them to the Judicial Conference for approval.

FED. R. CRIM. P. 43

Judge Jensen explained that the current rule allows *in absentia* sentencing if the defendant flees before verdict. The proposed amendment would authorize *in absentia* sentencing also where the defendant fails to appear for imposition of sentence. In addition, the rule would be amended to extend to organizational defendants.

Judge Easterbrook pointed out that the language of the rule included an incomplete sentence. He recommended: (1) adding the word "and" to line 31, after the word "both," and deleting the word "may" on line 32; and (2) substituting the word "permits" for the word "permit" on line 32.

Professor Hazard moved to approve the changes in Rule 43(b) and send them to the Conference. The committee approved the changes, including Judge Easterbrook's modifications, with one objection.

FED. R. CRIM. P. 46 and 49

Judge Jensen stated that the proposed amendments in the two rules were purely technical. The amendment to Rule 46(i)(1) would correct an erroneous cross-reference to the Bail Reform Act. The correct reference is to 18 U.S.C. § 3142, rather than 18 U.S.C. § 3144. The amendment to Rule 49(e) would delete a reference to a statute, dealing with a notice of a dangerous offender, which had been repealed. He stated that there was no need to seek public comment on either technical correction.

He added that the judiciary had asked the Congress to correct these mistakes through legislation. He recommended that the amendments be approved by the Judicial Conference conditioned upon the pending statute not being enacted.

The amendments were approved unanimously by the committee.

FED. R. CRIM. P. 53

Judge Jensen noted that the portion of the advisory committee's April meeting dealing with Rule 53, *i.e.,* cameras in the courtroom, had been televised on C-Span. He reported that the advisory committee had voted to seek Judicial Conference approval of the amendment, as published. The amendment would authorize cameras in the courtroom in criminal cases only under guidelines promulgated by the Conference.

He also recommended that the advisory committee be involved in drafting the Conference's guidelines. He emphasized the need for the advisory committee to work closely with the Court Administration and Case Management Committee, and he reported that he had appointed a subcommittee of the advisory committee to begin consideration of proposed guidelines.

Some participants expressed strong opposition to cameras in the courtroom as a matter of policy, asserting that they adversely influence courtroom behavior. They argued that while courtroom proceedings are the people's business and should be open, it did not follow that television cameras should be allowed in the courtroom. They also questioned the accuracy and depth of studies showing that cameras did not effect courtroom behavior.

One member argued, to the contrary, that he had had extensive and favorable experience with cameras in the state courts. He stated that the dangers cited by opponents of courtroom cameras had simply not occurred.

Another member recommended that the proposed amendment be deferred pending the final results of the Federal Judicial Center study on cameras in civil cases and action by the Court Administration and Case Management Committee.

Mr. Rabiej stated that it was his understanding that the Court Administration and Case Management Committee had just met and had decided to depart in some degree from the recommendations of the Federal Judicial Center. Judge Stotler said that it was important to find out what that committee had decided and requested that appropriate documents from the Court Administration and Case Management Committee be obtained promptly.

One member suggested that the central issue was whether to give the Judicial Conference the same authority over criminal cases that it had over civil cases. He argued that the Conference should be allowed to experiment with cameras in criminal cases, if it so chose. Judge Jensen added that this was precisely the position of the advisory committee, *i.e.,* that the flat prohibition on cameras in criminal cases should be removed and the Conference given authority to regulate cameras on the same basis in both civil and criminal cases.

The committee voted 7-6, with the chair breaking the tie, to send the proposed amendment to Rule 53 to the Judicial Conference for approval.

Judge Jensen added that the proposal should be accompanied by notes suggesting that the Advisory Committee on Criminal Rules wanted to be actively involved in drafting the Conference guidelines implementing the rule.

Mr. Perry moved to delete from the committee note paragraphs 2 and 4, which stated that the debate over cameras in the courtroom had subsided. He accepted an amendment to his motion from Judge Easterbrook to add a sentence to the third paragraph of the note to say that: "This gives the Judicial Conference equal authority over civil and criminal cases."

The committee approved without objection the amended motion to delete paragraphs 2 and 4 and add a sentence to paragraph 3 of the committee note.

2. Rules for Publication

FED. R. CRIM. P. 16

Judge Jensen stated that the advisory committee was proposing two amendments to Rule 16—one minor and one major. The first, initiated by the Department of Justice, would require reciprocal discovery for the government when the defendant makes a motion under Rule 12.2, based on a defense of mental condition.

The committee voted without objection to approve the proposed amendment for publication.

The second proposed amendment would require the government to disclose information about government witnesses to the defendant seven days before trial. Judge Jensen stated that the amendment had been approved by the advisory committee in the fall of 1993, but had been delayed at the express request of the attorney general. It had been deferred again in January 1994 at the request of the Department of Justice. At the April 1994 meeting of the advisory committee, the Department had asked once again that it be delayed for further consideration.

Judge Jensen pointed out that the advisory committee had made several changes in the proposed amendment since last presented to the Standing Committee. At the request of the Department of Justice, the advisory committee had eliminated the requirement that the government disclose the addresses of witnesses. Accordingly, only names and statements of government witnesses must be disclosed to the defendant before trial.

The rule also was changed by the advisory committee to give the court discretion to determine the amount of reciprocal disclosure the defendant must provide when there has been a partial refusal to disclose by the government.

Judge Jensen recognized that the amendment presented a facial conflict with the Jencks Act. He argued, though, that the rule was not really inconsistent with the legislation. The Act did not bar disclosure: it governed only the timing of disclosure. He pointed out that there had been a number of other changes in the criminal rules, many initiated by the Department of Justice, requiring disclosure of government witness information before trial, such as at suppression hearings and detention hearings.

Deputy Attorney General Gorelick stated that it was necessary to balance the fairness of court proceedings against the deep concern of the Department of Justice over danger to government witnesses. She pointed out that the danger had been increasing, and the government had been forced to withdraw charges in a growing number of cases because of the fear of injury or death to witnesses.

Ms. Gorelick stated that the attorney general was more committed to openness than any of her predecessors and wanted the opportunity to ensure enforcement of the highest standards of prosecution conduct—but through internal Executive Branch mechanisms, rather than court rules.

She argued that there were substantive problems with the rule as drafted, which would lead to a greatly enhanced incidence of litigation over discovery obligations. She pointed to the following:

1. The rule would require that names and statements of witnesses be disclosed seven days before trial, while in capital cases they have to turned over only three days before trial.

2. Plea bargaining efforts would be undermined by the proposal.

3. The rule, as drafted, would permit the United States attorney to refuse disclosure only for two designated reasons. It would not allow nondisclosure for other, valid reasons—such as economic hardship to witnesses or pressure on witnesses.

4. Sanctions for failure to comply would be left to the discretion of the court. The court, however, should not sanction government counsel unless the failure were intentional.

5. The rule was silent as to the timing of the defendant's reciprocal disclosure to the government. Yet it was inflexible in providing that the government must disclose witness information seven days before trial.

Ms. Gorelick emphasized that the proposed amendment was in conflict with the Jencks Act. Moreover, it would be inappropriate to rely on the supersession provision of the Rules Enabling Act to overrule the Jencks Act.

She reported that since the last meeting of the Standing Committee, the Department of Justice had conducted a survey of all United States attorney offices to determine their disclosure practices. The vast majority routinely provide discovery well in advance of trial. Although some offices may not be making appropriate disclosure, the Department would address their procedures through internal guidelines. The Department was working to develop uniformity in prosecution policies and was receiving positive feedback from judges regarding their efforts to ensure compliance by prosecutors.

In summary, Ms. Gorelick argued against publishing the proposed amendment to Rule 16 for public comment so the Department could obtain further information and manage problems internally. She added that if the rule went forward there would be a very strong reaction from the prosecution community, which was very much opposed to the proposed amendment. The Congress, moreover, would not be expected to approve the rule.

Some members of the committee agreed with Ms. Gorelick that there were no significant problems in their districts and that prosecutors were responsible in providing discovery to the defendant. Others argued, however, that there were in fact problems caused by prosecutors and that the rule was necessary to ensure fundamental fairness.

Some members suggested that the rule should be published for public comment, but that a more convincing explanation was needed to deal with the problem of the amendment's apparent conflict with the Jencks Act.

Four members stated that the proposal was in direct conflict with the Jencks Act and could only become law by reliance on the supersession clause. Three members suggested that the supersession clause itself was probably unconstitutional. One member stated that the conflict with the Jencks Act should be highlighted in the document distributed to bench and bar. The public should be invited specifically to comment on both the conflict and the supersession clause and its constitutionality. One member argued, however, that the committee should not publish a rule whose legality it questioned, just to obtain public views.

The committee voted 7-2 to approve the proposed amendment for publication. It voted 8-1 to approve the committee note.

FED. R. CRIM. P. 32

Judge Jensen explained that the proposed amendment to the rule, giving a court authority to order forfeiture before judgment, had been approved by the advisory committee at the request of the Department of Justice.

The committee voted unanimously to approve the proposed amendment for publication.

3. Other Rules Issues

FED. R. CRIM. P. 10 and 43

The proposed amendments would allow video conferencing of arraignments and other pretrial sessions. Judge Diamond, chairman of the Defender Services Committee of the Judicial Conference, had responded during the public comment period requesting the advisory committee to defer approval of the amendments pending completion of a pilot program testing video conference.

Judge Jensen reported that the advisory committee had decided, at Judge Diamond's request, not to seek Judicial Conference approval of the amendments at this time.

FED. R. CRIM. P. 16

Judge Jensen stated that the Judicial Conference's March 1993 report on the federal defender program had recommended that an amendment be considered to Rule 16 to provide copies of certain discoverable materials to the defense and allocate discovery costs between the government and the defendant. He reported that the advisory committee had decided that the proposal should be handled by statute, rather than rule. Accordingly, the advisory committee did not approve a proposed change in the rule.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Professor Resnick presented the report of the advisory committee, as set forth in Judge Mannes's memorandum of May 16, 1994. (Agenda Item 6)

1. Rules for Judicial Conference Approval

Professor Resnick pointed out that the proposed amendments to Rules 8018 and 9029—the bankruptcy version of the proposed uniform rule on local rules of court—had been adopted by the committee earlier in the meeting, during its discussion of Federal Rule of Appellate Procedure 47.

2. Rules for Publication

Professor Resnick stated that the advisory committee was seeking authority to publish amendments to 12 rules.

FED. R. BANKR. P. 1006

The rule presently authorizes filing fees to be paid in installments. The amendment would allow the Judicial Conference's administrative fee also to be paid in installments.

FED. R. BANKR. P. 1007

The amendment would provide that a debtor would not have to file new schedules and statements when a case is converted from any chapter of the Bankruptcy Code to any other chapter.

FED. R. BANKR. P. 1019

Subdivision (7) would be abrogated to conform the rule with proposed changes in Rule 3002.

FED. R. BANKR. P. 2002

A number of changes, mostly technical, were being requested by the advisory committee. Two changes were not technical. Paragraph (f)(8) would be amended to eliminate the need for the clerk of court to mail copies of the summary of a chapter 7 trustee's final account to all creditors. Paragraph (h) would be changed in several minor respects. It would permit a court in a chapter 7 case, once the deadline for filing a proof of claim had passed, to order that notices be mailed only to those creditors who have filed a proof of claim.

FED. R. BANKR. P. 2015

The amendment would clarify that in a chapter 12 case or chapter 13 case the debtor would not have to file an inventory of the debtor's property unless the court so orders.

FED. R. BANKR. P. 3002

Paragraph (c)(6) would be abrogated and a new paragraph (d) added to make the rule conform with section 726 of the Bankruptcy Code.

Under section 726, there are instances in which a creditor who has filed a tardy proof of claim may share in distributions. The way Rule 3002 is presently drafted, however, is inconsistent with the statute. It does not allow tardily filed claims to share in the distribution. The proposed language of the amendment is somewhat awkward, but it tracks the statutory language.

FED. R. BANKR. P. 3016

The advisory committee would abrogate subdivision (a) because it could have the effect of extending the debtor's exclusive period to file a chapter 11 plan without court approval. Section 1121(d) of the Bankruptcy Code requires court approval.

FED. R. BANKR. P. 4004

Subdivision (c) would be amended to delay the debtor's discharge in a chapter 7 case if there were a pending motion to extend the time for filing a complaint objecting to discharge or if the debtor had not paid the filing fees in full.

FED. R. BANKR. P. 7004

The rule would be amended to conform with recent changes in FED. R. CIV. P. 4.

FED. R. BANKR. P. 9006

The rule would be amended to conform to the proposed changes in Rule 3002, the abrogation of Rule 2002(a)(4), and the renumbering of Rule 2002(a)(8).

The committee unanimously approved these rules for publication.

FED. R. BANKR. P. 5005 and 8008

The two rules would be amended to authorize local court rules to allow papers to be filed, signed, or verified by electronic means. Rule 5005(a) would govern electronic filing of papers in bankruptcy cases and proceedings. Rule 8008(a) would govern bankruptcy appeals and the bankruptcy appellate panels. The amendments are parallel to proposed Federal Rule of Appellate Procedure 25(a)(2)(D) and Federal Rule of Civil Procedure 5(e).

Professor Mooney stated that the Advisory Committee on Appellate Rules had considered the issue of electronic filing, but it had not considered the specific language of the proposed amendments. She and Judge Logan, however, were confident that the appellate committee would approve the language proposed by the Advisory Committee on Bankruptcy Rules.

Dean Cooper said that he would prefer a slightly restyled rule, as follows:

> "A court by local rule may permit a document to be filed, signed, or verified by electronic means, which must be consistent with any technical standards established by the Judicial Conference of the United States. An electronic filing under this rule has the same effect as a written filing."

Professor Resnick replied that there was a difference in meaning between the proposed bankruptcy rule and Dean Cooper's language regarding a "written paper" vis a vis a "written filing." He recommended that Bankruptcy Rule 5005 be published exactly as is.

Judge Easterbrook moved to publish: (1) Bankruptcy Rule 5005 as drafted by the Advisory Committee on Bankruptcy Rules, (2) Appellate Rule 25 in the same style as the proposed bankruptcy rule, and (3) Civil Rule 5(e) as drafted by Dean Cooper. The committee approved the motion unanimously.

REPORT OF THE ADVISORY COMMITTEE ON THE RULES OF EVIDENCE

Judge Winter presented the report of the advisory committee, as set forth in his memorandum of May 18, 1994. (Agenda Item 7)

1. Rule for Judicial Conference approval

Judge Winter reported that the advisory committee's proposed redraft of Rule 412, dealing with the relevance of past behavior in sex offense cases, had been approved by the Judicial Conference in September 1993. The Court, however, had withheld approval of those portions of the proposal that would extend the rule's reach to civil cases.

The Chief Justice had written to the chair of the Executive Committee of the Conference stating that some members of the Court were concerned that the proposed amendment might violate the Rules Enabling Act by abridging, enlarging, or modifying substantive rights in civil cases. The amendment might also be inconsistent with *Meritor Savings Bank v. Vinson*, encroaching on the rights of defendants in civil sexual harassment cases. The Chief Justice's letter suggested that the Judicial Conference or the Standing Committee might wish to revisit the rule in light of the Court's concerns.

Judge Winter reported that the advisory committee at its May meeting had examined these issues. It had found no violation of the Rules Enabling Act and no overruling of the *Meritor* decision. Accordingly, it voted to resubmit the original proposal for Judicial Conference approval.

He also suggested that Judicial Conference action might be unnecessary because the Congress was expected to enact the provision approved by the Judicial Conference in September 1993 as part of the pending omnibus criminal legislation. Under the circumstances, he stated that the advisory committee could wait on resubmission of the proposal.

The committee voted to table further action on Rule 412 until its January 1995 meeting.

2. Rules for Publication

Judge Winter reported that the advisory committee was continuing its review of the entire body of the Federal Rules of Evidence. It had made a tentative decision *not* to offer amendments to 25 of the rules. In deciding not to amend these rules, the advisory committee was concerned that it had had very little input from the bench, bar, and public—either to amend or not to amend the 25 rules.

He pointed out that the Judicial Conference's procedures governing the rules committees did not address decisions *not* to amend rules. The advisory committee believed, though, that its tentative decision not to amend certain rules should be subject to the same procedure for public comment as its tentative decisions to propose amendments.

The committee voted unanimously to approve publication of the tentative decision of the advisory committee not to amend 25 rules of evidence. It voted further to publish the report of the advisory committee as it appeared in Agenda Item 7A, without providing in the report the full title of each rule.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Higginbotham presented the report of the advisory committee, as set forth in his memorandum of May 25, 1994. (Agenda Item 8)

1. Rules for Judicial Conference Approval

FED. R. CIV. P. 50, 52, and 59

Judge Higginbotham reported that since the Standing Committee had approved the amendments to Rule 83 earlier in the meeting and had rejected the amendments to Rule 84, the only remaining civil rules item was the package of amendments to Rules 50, 52, and 59.

He stated that the advisory committee had received virtually no responses from the public to the proposed amendments when they were published. They would establish a consistent period in which to file post-trial motions, running 10 days from the entry of judgment . At the request of the Advisory Committee on Bankruptcy Rules, a reference to Rule 6 had been added to the committee notes to each of the three rules.

The committee approved the proposed amendments to three rules.

2. Information Items

Judge Higginbotham reported that the advisory committee had been asked to amend Rule 47 to allow attorneys to conduct voir dire in civil cases. He stated that, even though the Judicial Conference had traditionally been opposed to requiring attorney voir dire, the matter needed to be reexamined in light of recent Supreme Court decisions limiting attorney discretion on peremptory challenges. He added that the advisory committee would consider a possible amendment permitting attorneys to supplement the court's own voir dire.

Judge Jensen stated that lawyer participation may be even more important in criminal cases. Accordingly, the Advisory Committee on Criminal Rules would examine FED. R. CRIM. P. 24 at its next meeting.

Judge Higginbotham reported that the civil advisory committee had pulled back its proposed amendments to Rule 23, dealing with class actions. The committee was continuing to study the legal and practical issues surrounding class actions. It was soliciting the views of experienced lawyers and had requested the Federal Judicial Center to conduct a national study of the use of class actions.

Judge Higginbotham reported that legislative consideration of Rule 26(c) and protective orders was continuing. Concern had been expressed in the Congress regarding abuse of protective orders, especially where issues of public health and safety might be involved. He stated that he had tried to explain to Senators and their staff that important privacy interests were at stake and that discovery normally took place among the parties outside the courthouse. Unfortunately, the proposed legislation in the Senate would require courts to make express judicial findings that public health and safety would not be adversely affected before issuing a protective order.

REPORT OF THE SUBCOMMITTEE ON STYLE

Judge Pratt reported that the style subcommittee had been reorganized as a result of Judge Stotler's becoming chair of the Standing Committee and the end of Professor Wright's term on the committee. He stated that the subcommittee now consisted of himself, Judge Parker, Professor Hazard, and Mr. Spaniol, with Bryan Garner as a consultant. The subcommittee would continue to welcome assistance from former members and from the reporters and staff.

Judge Pratt reported that the subcommittee had completed its work on a preliminary style redraft of the civil rules and had presented it to the Advisory Committee on Civil Rules. Judge Higginbotham stated that the advisory committee had begun a detailed review of the document in January 1994 and was continuing its work on style revision.

Judge Pratt stated that Bryan Garner had made considerable progress in redrafting the appellate rules in improved style. The redraft would be reviewed by the style subcommittee

shortly and then presented to the Advisory Committee on Appellate Rules. He added that no timetable had been set for redrafting the criminal rules.

Judge Pratt stressed that it was important to inject style considerations as early as possible in the rules amendment process. He noted that Mr. Garner had prepared guidelines for drafting court rules, reflecting the decisions and conventions of the style subcommittee. They had been given to each of the advisory committees, and the reporters were using it. The guidelines were being published by the Administrative Office for use in many other settings, and they were a valuable contribution that could improve the readability of rules and statutes, and writing generally. He also pointed out that Mr. Garner would continue to be available to assist the advisory committees.

He suggested that in the future the style subcommittee would submit its comments on proposed amendments during the public comment period. Its views would be included in the Gap Report, like other comments.

REPORT OF THE LONG RANGE PLANNING SUBCOMMITTEE

Professor Baker presented the report of the subcommittee. (Agenda Item 10)

He reported that the Standing Committee had authorized the planning subcommittee to conduct a self-study of the mission and procedures of the rules committee. As part of the study, the subcommittee had distributed a questionnaire soliciting information from individuals and organizations on the way that rules are made. The responses were included in the agenda report, and a bibliography of rules literature had been prepared.

Professor Baker stated that the subcommittee intended to have a final report submitted to the Standing Committee for consideration at its January 1995 meeting. There would likely be four parts to the report: (1) a description of current rulemaking procedures; (2) criticisms and concerns; (3) a discussion and responses to the criticisms; and (4) possible recommendations and alternatives. He agreed to make the materials available to the advisory committees.

REPORT OF THE LOCAL RULES PROJECT

Professor Coquillette stated that the six reporters had met and agreed upon a standard format for preparing advisory committee reports to the Standing Committee. They had also discussed style issues and were working towards a standard pagination system for the agenda books.

He reported that the local rules project had completed a uniform numbering system for local civil rules that was being implemented in many district courts. It was also proceeding to

propose a uniform numbering system for local criminal rules. Judge Stotler stated that Judge Jensen and she had a letter prepared to distribute to all district courts regarding the study of local criminal rules.

Professor Coquillette reported that the Advisory Committee on Bankruptcy Rules was preparing a numbering system for the local bankruptcy rules.

Professor Coquillette also reported that he had been asked by the Standing Committee to examine all the local rules dealing with attorney admission and conduct.

NEXT MEETING OF THE COMMITTEE

The next meeting of the committee, to be held in San Diego, was scheduled for Thursday and Friday, January 12-13, 1995, with a working dinner on Wednesday night, January 11.

Judge Stotler held the dates for the June 1995 meeting of the committee in abeyance.

[She later fixed the meeting, for July 5-7, 1995 in Washington, D.C.]

Judge Stotler concluded the meeting by thanking the reporters for their excellent and timely work. She also thanked the consultants and the staff of the Administrative Office for their invaluable contributions.

Respectfully submitted,

Peter G. McCabe
Secretary