COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Minutes of the Meeting of January 9-10, 1997
Tucson, Arizona

The winter meeting of the Judicial Conference Committee on Rules of Practice and Procedure was held in Tucson, Arizona on Thursday and Friday, January 9-10, 1997. All committee members were present:

Judge Alicemarie H. Stotler, Chair
Judge Frank W. Bullock, Jr.
Judge Frank H. Easterbrook
Deputy Attorney General Jamie Gorelick
Professor Geoffrey C. Hazard, Jr.
Judge Phyllis A. Kravitch
Gene W. Lafitte, Esquire
Judge James A. Parker
Alan W. Perry, Esquire
Sol Schreiber, Esquire
Judge Morey L. Sear
Alan C. Sundberg, Esquire
Chief Justice E. Norman Veasey
Judge William R. Wilson

Supporting the committee were Professor Daniel R. Coquillette, reporter to the committee, Peter G. McCabe, secretary to the committee, John K. Rabiej, chief of the Rules Committee Support Office of the Administrative Office of the United States Courts, and Mark D. Shapiro, senior attorney in the rules office.

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 Adrian G. Duplantier, Chair
Professor Alan N. Resnick, Reporter
Advisory Committee on Civil Rules -
Judge Paul V. Niemeyer, Chair
Professor Edward H. Cooper, Reporter
Advisory Committee on Criminal Rules -
Judge D. Lowell Jensen, Chair
Professor David A. Schlueter, Reporter
Advisory Committee on Evidence Rules -
Judge Fern M. Smith, Chair
Professor Daniel J. Capra, Reporter

Also participating in the meeting were: Joseph F. Spaniol, Jr. and Bryan A. Garner, consultants to the committee; Mary P. Squiers, project director of the local rules project; and William B. Eldridge, Director of the Research Division of the Federal Judicial Center.

INTRODUCTORY REMARKS

Judge Stotler pointed out that Judge Ellis' term on the committee had expired. She had invited him to participate in the meeting, but he was unable to attend. She thanked him for several years of distinguished service, both as a member of the standing committee and as its liaison to the Advisory Committee on Bankruptcy Rules. She also noted that the Chief Justice had reappointed Justice Veasey, Judge Parker, Judge Wilson, and Professor Hazard to second terms on the committee and had extended her own service as chair for an additional two years.

Judge Stotler reported that the Ninth Circuit was continuing to operate under interim court rules that superseded local Rule 22, governing procedures in death penalty cases. She added that the court of appeals was in the process of drafting a new local rule or rules that would also take account of the provisions of the 1996 antiterrorism statute.

Judge Stotler stated that she had spoken with former committee member John Frank regarding S. 370, proposed legislation in the last Congress that would have mandated that there be a majority of practicing lawyers on each of the rules committees. She said that he had indicated that the bill was no longer needed and had so informed Senator Heflin.

The chair reported that a copy of the committee's September 1996 report to the Judicial Conference had been included in the agenda books, together with the special report that describes new rules or amendments that have generated substantial controversy. She added that these reports would also be provided to the advisory committees.

Judge Stotler reported that all rule recommendations submitted by the committee to the Judicial Conference at its September 1996 session had been approved by the Conference, except for the proposed amendments to FED.R.CIV.P. 48, relating to 12-person civil juries. She added that the amendments approved by the Conference to the bankruptcy, civil, criminal, and evidence rules had been forwarded by the Administrative Office to the Supreme Court. The Court would have until May 1, 1997 to consider them, and they could take effect on December 1, 1997.

INTERNAL COMMITTEE PROCEDURES

On the motion of Mr. Perry, the committee voted without objection to hold an executive session to consider internal committee procedures regarding the sharing of communications among members, relations with the bar and the public, and relations with other committees of the Judicial Conference.

APPROVAL OF THE MINUTES OF THE LAST MEETING

The committee voted without objection to approve as written the minutes of the last meeting, held on June 19-20, 1996.

REPORT OF THE ADMINISTRATIVE OFFICE

Mr. Rabiej presented the report of the Administrative Office (AO), as set out in his memoranda of December 4, 1996. (Agenda Item 4)

Administrative Improvements

Mr. Rabiej reported that the rules office had researched its records and had prepared docket sheets setting set forth the status of all suggested amendments considered by the civil and criminal advisory committees during the past four years. He noted that the docket sheets contain the source, status, and disposition of each suggestion. He added that whenever a new suggestion is received, the staff searches the earlier records to see whether the subject matter has been considered before by the committee. He noted that similar docket sheets would be produced for the appellate, bankruptcy, and evidence committees.

Mr. Rabiej stated that the project to automate the records of the rules office ("FREDS") was nearly complete. The staff had been using the system for seven months. It was now fully operational, subject to some final quality control adjustments.

He noted that more than 200 comments had been received in response to the proposed amendments to FED.R.CIV.P. 23. He also reported that efforts were continuing to improve the distribution of proposed rule amendments and to stimulate additional public comments. The proposed amendments to the rules had been posted on the Internet, and the AO had received more than 3,000 "hits" in response to this initiative. The names of additional legal publishers had been added to the distribution lists, and rules materials were being distributed to members of local court rules committees with the assistance of the clerks of court and circuit executives.

Legislative Matters

Mr. Rabiej reported that the judiciary had succeeded in persuading Congress to amend the Suits in Admiralty Act to eliminate the provision in 46 U.S.C. § 742 that requires a party to "forthwith serve" process on the United States in admiralty cases. The provision had been inconsistent with FED.R.CIV.P. 4(m), which requires service of process within 120 days.

Mr. Rabiej noted that, in the closing days of the preceding Congress, Senator Kohl had considered attaching to the Federal Court Improvements legislation proposed amendments to FED.R.CIV.P. 26(c) that would require a court to make a finding in each instance before it issues a

protective order. The Senator later decided not to pursue the amendments, on the understanding that the Senate Judiciary Committee would hold hearings on protective orders in the new Congress.

Finally, Mr. Rabiej reported that the proposed Child Pornography Prevention Act of 1996 had included a proposed amendment to FED.R.CRIM.P. 32 that would have required a judge to notify a defendant, both verbally and in writing, of enhanced penalties for a later conviction of the same offense. He noted that Senator Hatch has agreed to remove the provision from the legislation.

REPORT OF THE FEDERAL JUDICIAL CENTER

Mr. Eldridge provided an update on the Federal Judicial Center's publications, its educational programs, and its research projects, elaborating upon the list set out in the agenda book. (Agenda Item 5) He alluded specifically to the Center's on-going work regarding death penalty cases, juries, scientific evidence, computer-generated evidence, discovery, case management, pro se cases, and sentencing.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Logan presented the report of the advisory committee, as set forth in his memorandum and attachments of December 5, 1996. (Agenda Item 9)

He reported that the advisory committee had not held a fall meeting because its substantive proposals—and a complete stylistic revision of the appellate rules—had been circulated for an extended period of public comment. He stated that the committee would consider these proposals at its spring meeting and would present the standing committee with appropriate recommendations in June 1997. He added that the number of public comments addressing the restyled rules had been relatively light, but they were very supportive of the committee's efforts and complimentary of the published product.

Judge Logan further reported that the advisory committee had completed the self-evaluation of its mission and functions, as requested by Judge Hodges, chairman of the Executive Committee of the Judicial Conference. The advisory committee had recommended that it continue in existence.

FORM 4

Judge Logan explained that the standing committee had authorized publication of a proposed revised FORM 4 at its June 1996 meeting, subject to the advisory committee making further improvements in the language of the form before publication. The impetus to change

FORM 4 (affidavit to accompany a motion for leave to appeal in forma pauperis) had come from: (1) a request by the clerk of the Supreme Court to include additional financial information, and (2) recent legislation affecting appeals in forma pauperis by prisoners. He added that Mr. Garner had participated substantially in improving the language of the form, and the proposed revisions had been circulated for public comment in August 1996.

FED.R.APP.P. 5.1

Judge Logan stated that an issue regarding Rule 5.1 had arisen after the advisory committee's last meeting. The Federal Courts Improvement Act of 1996 had, among other things, eliminated the alternative option of an appeal to a district judge in a case tried before a magistrate judge on consent of the parties. Under the newly-revised statute, appeals from final judgments in magistrate judge cases may now be taken only to the respective courts of appeals. As a result, FED.R.APP.P. 5.1, which governs appeals by permission from a district judge to the court of appeals—following an appeal from a magistrate judge to the district judge— needed to be eliminated.

Judge Logan noted that the Advisory Committee on Civil Rules was in the process of proposing amendments to the civil rules that would conform them to the 1996 statutory amendments and eliminate references to the optional appeal route. Moreover, the civil advisory committee was recommending that these purely conforming amendments be approved by the Judicial Conference on an expedited basis, without a period of public comment. Accordingly, the proposed changes in the civil rules would take effect on December 1, 1997, rather than December 1, 1998. The issue, thus, was whether the standing committee, in approving expedited consideration of the conforming amendments to the civil rules, should also proceed on an expedited basis with the abrogation of FED.R.APP.P. 5.1.

Judge Logan pointed out that, independently, the Advisory Committee on Appellate Rules had published a proposal in August 1996 that would eliminate FED.R.APP.P. 5.1 and revise FED.R.APP.P. 5 to govern all present and future categories of discretionary appeals. Therefore, in accordance with normal Rules Enabling Act procedures, FED.R.APP.P. 5.1 would be eliminated in any event on December 1, 1998.

Following a brief discussion among the members, Judge Logan agreed that there was no compelling reason to proceed with elimination of FED.R.APP.P. 5.1 on an expedited basis.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Duplantier and Professor Resnick presented the report of the advisory committee, as set forth in Judge Duplantier's memorandum and attachments of December 2, 1996. (Agenda Item 11)

Judge Duplantier noted that the advisory committee had no action items to present to the standing committee.

Professor Resnick reported that the advisory committee had approved proposed amendments to 14 bankruptcy rules over the course of three meetings in 1995 and 1996, subject to further review by its own style subcommittee and by the style subcommittee of the standing committee. He added that the advisory committee might approve additional amendments at its March 1997 meeting. These latter amendments had been considered by the standing committee's style subcommittee and would be reviewed by the advisory committee's style subcommittee within the next few weeks. He expected that all the various proposed amendments would be presented as a single package for consideration at the June 1997 meeting of the standing committee.

Professor Resnick reported that subcommittees of the advisory committee were exploring issues related to Rule 2014 (disclosure requirements for professionals who wish to be retained), Rule 2004 (examinations of debtors and other entities), and Rules 9013 and 9014 (motions and litigation practice).

Judge Stotler suggested that the advisory committee consider fixing an effective date for the pending amendments to the Official Bankruptcy Forms that would accommodate the needs of clerks of court and lawyers in obtaining, stocking, and using the new forms. Professor Resnick agreed to bring the matter to the attention of the advisory committee.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Niemeyer presented the report of the advisory committee, as set forth in his memorandum and attachments of December 6, 1996. (Agenda Item 10) He stated that the report would be presented in three parts: (1) an action item seeking Judicial Conference approval of proposed amendments to the rules and forms, (2) an executive session at the request of the Court Administration and Case Management Committee, and (3) some information items.

Amendments for Judicial Conference Approval

Judge Niemeyer reported that until recently 28 U.S.C. § 636 had provided two alternative paths for an appeal from a judgment in a civil case tried before a magistrate judge on consent of the parties—either to the court of appeals or to a judge of the district court. The Federal Courts Improvement Act of 1996, though, eliminated the option of an appeal to a district judge.

The civil rules have not been revised to reflect the statutory change. Thus, they continue to authorize the abrogated appeal method. Specifically: (1) portions of FED.R.CIV.P. 73 continue

to refer to the abrogated statute; (2) FED.R.CIV.P. 74, 75, and 76 prescribe procedures governing the abrogated option; and (3) portions of FORMS 33 and 34 also implement the abrogated option.

To conform the rules to the 1996 statutory change, the advisory committee was recommending: (1) amendments to FED.R.CIV.P. 73, (2) elimination of certain language in FORMS 33 and 34, and (3) abrogation of FED.R.CIV.P. 74, 75, and 76.

Judge Niemeyer emphasized that the advisory committee had limited its proposed changes to purely technical amendments conforming the rules to the revised statute. Therefore, it recommended—in accordance with the Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure—that the amendments be forwarded for approval by the Conference without providing for a period of public comment.

The committee voted unanimously to approve the proposed changes and to send them to the Judicial Conference without public comment.

Executive Session

At the express request of the Court Administration and Case Management Committee, the committee voted to meet in executive session to consider that committee's proposed report to the Judicial Conference on the Civil Justice Reform Act.

Informational Items

Judge Niemeyer reported that the advisory committee had three major items on its immediate agenda: (1) a conference in March sponsored by the American Bar Association to consider the RAND report on the Civil Justice Reform Act, (2) proposed amendments to FED.R.CIV.P. 23, governing class actions, and (3) a comprehensive study of the discovery rules under the direction of a special subcommittee chaired by Judge David F. Levi.

Judge Niemeyer emphasized that the advisory committee was very sensitive to the views of the bar on these important and controversial topics, and it would proceed with caution and discretion. He added that the Supreme Court had recently granted certiorari in two important class action cases, and the advisory committee would consider the Court's opinions in these cases before acting on matters that are now before the committee.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Jensen presented the report of the advisory committee, as set forth in his memorandum and attachments of December 4, 1996. (Agenda Item 6)

Amendments for Judicial Conference Approval

FED.R.CRIM.P. 58

Judge Jensen pointed out that the Federal Courts Improvement Act of 1996 became law after the advisory committee had met in October. The legislation amended the Federal Magistrates Act: (1) to eliminate the requirement that a defendant consent to trial before a magistrate judge in certain designated categories of misdemeanor cases, and (2) to allow the defendant's consent in the remaining categories of misdemeanor cases to be made either in writing or orally.

Judge Jensen reported that Judge Philip M. Pro, chairman of the Magistrate Judges Committee of the Judicial Conference, had written to him recommending that FED.R.CRIM.P. 58—which requires written consent by the defendant in all misdemeanor cases—be amended to conform to the new statute. In response, the advisory committee—with the help of the AO—had prepared suggested conforming language and sent it to Judge Pro. Judge Pro and the advisory committee then approved the language by mail.

Judge Jensen advised that the proposed amendments merely conform FED.R.CRIM.P. 58 to the provisions of the Federal Courts Improvement Act. He recommended that they be approved by the standing committee without public comment and be forwarded for approval by the Judicial Conference.

Judge Parker pointed out a typographic error in subdivision 3(A) of the draft, which Judge Jensen agreed to correct.

Ms. Gorelick stated that she would abstain on the matter since the Department of Justice had some constitutional concerns regarding the statutory provision itself. She added that the rule was not needed since the statute itself would be controlling.

Judge Sear advised that the caption of the subdivision 3(A) was inappropriate. The caption referred to "trial" before a magistrate judge, while the text of the rule addressed only the "plea" before a magistrate judge. Judge Jensen pointed out that the error exists in the current rule.

Judge Easterbrook moved to correct the caption of the subdivision by changing "trial" to "plea." The motion was approved without objection.

The committee voted to approve the proposed amendments to FED.R.CRIM.P. 58, as revised, by a vote of 7 to 1, with one abstention. It then voted without objection to forward the proposed amendments to the Judicial Conference for approval without publication.

Informational Items

Judge Jensen reported that the advisory committee was in the process of considering a number of possible amendments to the criminal rules that would take account of the impact of the sentencing guidelines. He noted, as one example, that the committee had before it a proposal from the Criminal Law Committee addressing sentencing appeal waivers. He added that the committee would coordinate its efforts in guideline matters with the Sentencing Commission.

Judge Jensen stated that the advisory committee at its last meeting had discussed the pending proposal in the Congress for a victims' rights amendment to the Constitution. It concluded that such an amendment could have an adverse impact on certain procedural and administrative aspects of criminal proceedings.

Mr. Rabiej pointed out that the Criminal Law Committee had been delegated the lead responsibility for developing the Judicial Conference's position on the proposed constitutional amendment. It would act in coordination with the Federal-State Jurisdiction Committee and other committees of the Conference.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Smith presented the report of the advisory committee, as set forth in her memorandum and attachments of December 1, 1996. (Agenda Item 7)

Resolution for Judicial Conference Approval

Judge Smith reported that recent legislation had directed the Judicial Conference to report to Congress on whether the Federal Rules of Evidence should be amended to provide a privilege for victims of sexual assault and their therapists or counselors. She noted that the advisory committee had considered a 1995 report on the matter by the Department of Justice, and it had voted unanimously not to amend the evidence rules to include such a privilege.

The committee had two reasons for its decision. First, FED.R.EVID. 501 is a general privilege rule, specifying that privileges should be established by the common law. And there is clear indication that the common law is, in fact, developing a privilege for licensed counselors. The Supreme Court, for example, had recognized a privilege in *Jaffee v. Redmond,* 166 S.Ct. 812 (1996). The committee believed that the case law should be allowed to continue to develop in this area.

Second, it would be inadvisable to carve out one particular privilege in the Federal Rules of Evidence. That change would undercut the thrust of Rule 501. The committee believed that either all privileges should be listed in the rules or none should be listed. Moreover, the specific

evidentiary privilege proposed for therapists and counselors was not particularly important in the context of federal court litigation.

Judge Smith recommended that the committee make the following recommendation to the Judicial Conference:

> The Federal Rules of Evidence should not be amended to include a privilege for confidential communications from sexual assault victims to their therapists or counselors. An amendment is not necessary to guarantee that the confidentiality of these communications will be fairly and adequately protected in federal court proceedings.
>
> Federal Rules of Evidence 501 provides that privileges "shall be governed by the principles of the common law as they may be interpreted in the light of reason and experience." The Rule gives the federal courts the primary responsibility for developing evidentiary privileges. Recently the Supreme Court, operating under the common law approach mandated by Rule 501, recognized the existence of a privilege under federal law for confidential statements made in psychological therapy sessions. The Court specifically held that this privilege protected confidential statements made to a licensed clinical social worker in a therapy session. *Jaffee v. Redmond,* 116 S.Ct. 812 (1966). The *Jaffee* Court further held that the privilege was absolute rather than qualified.
>
> While the exact contours of the privilege recognized in *Jaffee* remain to be developed, the Court's generous view of the therapeutic privilege can be adequately applied to protect confidential communications from sexual assault victims to licensed therapists of counselors. In light of the recency of *Jaffee*, and the well-entrenched common law approach to privileges set forth in the Federal Rules, the Committee concludes that legislative intervention at this time is neither necessary nor advisable. There is every reason to believe that confidential communications from victims of sexual assault to licensed therapists and counselors are and will be adequately protected by the common law approach mandated by Rule 501. At the very least, the federal courts should be given the chance to apply and develop the *Jaffee* principle before legislative intervention is considered.
>
> Most importantly, it is not advisable to single out a sexual assault counselor privilege for legislative enactment. Amending the Federal Rules to include a sexual assault counselor privilege would create an anomaly: that very specific privilege would be the only codified privilege in the Federal Rules of Evidence. All of the other federally-recognized privileges would be grounded in the common law. The Committee believes that such an inconsistent, patchwork approach to federal privilege law is unnecessary and unwarranted, especially given the infrequency of cases

involving sexual assault in the federal courts. Granting special legislative treatment to one of the least-invoked privileges in the federal courts is likely to result in confusion for both Bench and Bar.

For these reasons, the Committee recommends that the Federal Rules of Evidence not be amended to include a specific privilege for confidential communications from sexual assault victims to their therapists or counselors.

The committee voted unanimously to approve the resolution and submit it for approval by the Judicial Conference.

Informational Items

Professor Capra reported that the advisory committee was giving further consideration to Rule 103, regarding the renewal of *in limine* motions at trial. It was also examining: (1) the structure and interrelationship of Rule 404(b) (prior acts) and Rule 609 (impeachment), (2) Rule 703 (bases of opinion testimony by experts) and its possible use as a "backdoor" hearsay exception, (3) Rule 706 (court appointed experts) and the funding of expert witnesses, and (4) Rule 803(b)(6) (hearsay exception for records of regularly conducted activity) and the need for qualified witnesses for business records.

Professor Capra stated that the advisory committee would also conduct a complete review to identify whether any of the evidence rules or committee notes are outdated, inaccurate, or misleading. He noted that the Congress had enacted the rules by statute after having made a number of changes in the rules approved by the Supreme Court. As part of its review, the advisory committee would consider whether an updated set of notes would be appropriate. The committee would also review all statutes outside the Federal Rules of Evidence regulating the admissibility of evidence in the federal courts.

Professor Capra said that the advisory committee had decided not to pursue a number of other matters, including: privileges, the residual exception to the hearsay rule, and whether the evidence rules should be applied to sentencing proceedings.

ATTORNEY CONDUCT RULES

Professor Coquillette presented an interim report on the study of attorney conduct rules. (Agenda Item 8) He noted that several participants in the June 1996 special study conference on attorney conduct had recommended that the committee consider preparing a model local court rule on attorney conduct similar to that drafted by the Court Administration Committee in 1978. That model rule specifies that a district court will apply the rules of conduct adopted by the highest court of the state in which the court sits, unless the court has adopted an explicit rule superseding the pertinent state rule.

Professor Coquillette stated that other participants had suggested that most attorney conduct matters be left entirely to state law, but that consideration might be given to adopting a few uniform, national rules to govern a limited core of attorney conduct issues

He advised that he would report back to the committee on these matters at its June 1997 meeting. In addition, he would report on the results of ongoing research that he and the Federal Judicial Center were conducting regarding: (1) experience in the districts that had adopted the 1978 model rule, (2) the frequency with which federal district courts deal with attorney discipline matters themselves, rather than referring them to state authorities, (3) attorney conduct issues specific to the bankruptcy courts, and (4) reported cases dealing with attorney conduct in the courts of appeals.

REPORT OF THE STYLE SUBCOMMITTEE

Judge Parker reported that the style subcommittee was devoting its efforts to reviewing the style of proposed new rules and proposed amendments to the rules. The subcommittee had instituted new procedures that call for the respective advisory committee reporters to send their drafts of proposed changes to the AO's Rules Committee Support Office at least 30 days in advance of the committee meeting at which they will be considered.

The AO immediately faxes the proposals to the standing committee's style subcommittee. Mr. Garner edits the language first, and within 10 days he submits his recommendations to the AO. They are then faxed by the AO to the other subcommittee members, who in turn submit their suggestions to the subcommittee chairman. The chairman conducts a telephone conference of the subcommittee members, if necessary, and the subcommittee's recommendations are submitted to the advisory committee in time for consideration at its meeting.

Judge Parker stated that the new procedures appeared to be working well, and he welcomed any suggestions for further refinements and improvements. He pointed out that the key to the success of the new procedures appeared to be the ability of the reporters to meet the very demanding schedule imposed on them.

One of the reporters noted that he is called upon by his advisory committee as a regular matter to submit a number of alternate drafts of proposals to be considered at committee meetings. Under the new procedures, the style subcommittee must now restyle each of the several alternative drafts in advance of the advisory committee meeting, all within a very tight deadline. He expressed concern that the new procedure might impose additional, and perhaps unnecessary, workload burdens for the style subcommittee.

Another reporter responded that the five advisory committees meet at different times during the year. Some committees in fact meet well in advance of the standing committee meeting, and they have substantial time after their meetings to refine the language of their

proposals before submitting them to the standing committee. On the other hand, some advisory committees meet closer in time to the standing committee meetings, and they simply have no time following their meetings to refine their proposals.

It was the consensus of the committee that the new style procedures appeared to be working well and should continue to be followed.

UNIFORM NUMBERING OF LOCAL COURT RULES

Professor Squiers noted that the federal rules had been amended effective December 1, 1995, to require that local court rules "conform to any numbering system prescribed by the Judicial Conference." In March 1996 the Conference resolved that local numbering systems should correspond with the numbering system of the federal rules. It gave the courts until April 1997 to make any necessary changes in their local rules.

Professor Squiers reported that the Local Rules Project had contacted 65 courts regarding the renumbering of their rules. It had also received numerous telephone calls from court personnel seeking advice. She stated that many courts had completed their renumbering—some even before the federal rule had been amended—and the remaining courts had informed her that they would meet the Conference's April 1997 deadline.

LONG RANGE PLANNING

Judge Stotler reported that she had designated herself as chair to serve as the committee's liaison to the Judicial Conference's new long range planning liaison network. She stated that she would inform the liaison network that the rules committees were in the process of carrying out all four recommendations contained in the *Long Range Plan for the Federal Courts.* (Agenda Item 12) In addition, she would inform them that the rules committees' other long range planning initiatives included: (1) restyling the rules, (2) studying the impact of automation and technology on the rules, and (3) eliminating outdated rules and references.

Judge Niemeyer stated that the Advisory Committee on Civil Rules had formed a policy and agenda subcommittee that would study such matters as relations with Congress and standards for making changes in the rules.

TECHNOLOGY

Judge Easterbrook stated that he had participated in a luncheon meeting with the reporters to discuss automation and technology issues. They had touched upon such matters as local electronic document filing experiments, electronic service of process, appropriate technical standards, and looming legal issues raised by teleconferencing. He reported that the technology

subcommittee would continue to look at these matters and would monitor relevant activities of the Court Administration and Case Management Committee and the Committee on Automation and Technology. In short, the subcommittee would consider the implication of the rules on technology and the implication of technology on the rules. In so doing, it could serve as a useful bridge: (1) between the committee and the technology, (2) between the rules committees and the Court Administration and Case Management and Automation and Technology committees, and (3) among the advisory committees.

BIBLIOGRAPHY OF RULES MATERIALS

Professor Squiers reported that she and her staff had updated the bibliography of rules materials, focusing their efforts on empirical matters.

FUTURE COMMITTEE MEETINGS

Judge Stotler reported that the next meeting of the committee would be held on Wednesday through Friday, June 18-20, 1997, in Washington, D.C.

She further reported that the winter 1997 meeting will be held on Thursday and Friday, January 8-9, 1998. A location for the meeting would be selected at a later date.

Respectfully submitted,

Peter G. McCabe
Secretary