

**REPORT OF THE PROCEEDINGS OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES**

March 16, 1993

The Judicial Conference of the United States convened in Washington, D.C., on March 16, 1993, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Stephen G. Breyer  
Judge Francis J. Boyle,  
District of Rhode Island

Second Circuit:

Chief Judge Thomas J. Meskill  
Judge Charles L. Brieant,  
Southern District of New York

Third Circuit:

Chief Judge Dolores K. Sloviter  
Chief Judge John F. Gerry,  
District of New Jersey

Fourth Circuit:

Chief Judge Sam J. Ervin, III  
Judge W. Earl Britt,  
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz  
Chief Judge Morey L. Sear,  
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Gilbert S. Merritt  
Judge Edward H. Johnstone,  
Western District of Kentucky

**Seventh Circuit:**

Chief Judge William J. Bauer  
Chief Judge Barbara B. Crabb,  
Western District of Wisconsin

**Eighth Circuit:**

Chief Judge Richard S. Arnold  
Chief Judge Donald E. O'Brien,  
Northern District of Iowa

**Ninth Circuit:**

Chief Judge J. Clifford Wallace  
Chief Judge William D. Browning,  
District of Arizona

**Tenth Circuit:**

Chief Judge Monroe G. McKay  
Judge Richard P. Matsch,  
District of Colorado

**Eleventh Circuit:**

Chief Judge Gerald B. Tjoflat  
Judge Anthony A. Alaimo,  
Southern District of Georgia

**District of Columbia Circuit:**

Chief Judge Abner J. Mikva  
Chief Judge John Garrett Penn,  
District of Columbia

**Federal Circuit:**

Chief Judge Helen W. Nies

**Court of International Trade:**

Chief Judge Dominick L. DiCarlo

Circuit Judge William W. Wilkins, Jr. and District Judges Vincent L. Broderick, Gustave Diamond, Carolyn R. Dimmick, Lloyd D. George, Stanley Marcus, and Robert M. Parker attended the Conference session. Circuit Executives Vincent Flanagan, Steven Flanders, John P. Hehman, Samuel W. Phillips, Lydia Comberrel, James A. Higgins, Collins T. Fitzpatrick, June L. Boadwine, Gregory B. Walters, Eugene J. Murret, Norman E. Zoller, and Linda Finkelstein were also present.

Senator Orrin G. Hatch, Ranking Minority Member of the Committee on the Judiciary, spoke to the Conference on matters pending in the Senate of interest to the judiciary. Attorney General Janet Reno addressed the Conference on matters of mutual interest to the Department of Justice and the Conference. Chairman Valeri D. Zorkin of the Constitutional Court of the Russian Federation, spoke to the Conference. Also in attendance for a portion of the session were Yuri V. Kudriatsev, Vyacheslav A. Saveliev, Alexander I. Sychev, and Bakhtiyar R. Tuzmukhamedov.

L. Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did James E. Macklin, Jr., Deputy Director; William R. Burchill, Jr., General Counsel; Robert E. Feidler, Legislative and Public Affairs Officer; Karen K. Siegel, Chief, Judicial Conference Secretariat; Peter G. McCabe, Assistant Director for the Office of Judges Programs; Wendy Jennis, Deputy Chief, Judicial Conference Secretariat; and David A. Sellers, Public Information Officer. Judge William W. Schwarzer and Russell R. Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did Robb Jones, Administrative Assistant to the Chief Justice, and Judicial Fellows Margaret Farrell, Susan Kuzma, Marjorie McCoy, and Mark Rosenbaum.

## **REPORTS**

Mr. Mecham, Director of the Administrative Office, reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Schwarzer, Director of the Federal Judicial Center, brought the Conference up-to-date on Federal Judicial Center programs, and Judge Wilkins, Chairman of the United States Sentencing Commission, spoke regarding Commission activities.

## **ELECTION**

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Bankruptcy Judge Elizabeth L. Perris of the District of Oregon, vice Bankruptcy Judge Sidney Brooks, for a four-year term commencing March 28, 1993.

## **SENTENCING COMMISSION**

The Judicial Conference approved the following names for presentation to the President for appointment, subject to the advice and consent of the Senate, to fill Judge George MacKinnon's vacancy on the United States Sentencing Commission: Circuit Judge Roger L. Wollman (Eighth Circuit), and District Judges Maryanne Trump Barry (District of New Jersey), Avern Cohn (Eastern District of Michigan), John C. Coughenour (Western District of Washington), William B. Enright (Southern District of California), and Barbara J. Rothstein (Western District of Washington). See also "Miscellaneous Actions," *infra* pp. 6-7.

The Judicial Conference also approved a recommendation of the Committee on Criminal Law urging the President to appoint a federal judge as chair of the United States Sentencing Commission upon vacancy of that position. See also "Miscellaneous Actions," *infra* pp. 6-7.

## **COST-OF-LIVING ADJUSTMENT FOR FEDERAL JUDGES**

The Judicial Conference agreed that in light of the President's one year across-the-board freeze in federal salaries and Congress' elimination of the cost-of-living salary adjustment for its members in 1994, the judiciary will not request a cost-of-living adjustment in the salaries of federal judges for calendar year 1994.

## **EXECUTIVE COMMITTEE**

### **FISCAL YEAR 1992 HIRING FREEZE**

Because of deficiencies in the defender services appropriation in fiscal year 1992, the Executive Committee had placed certain funds in reserve, including funds in the personnel area, pending approval of a supplemental appropriation for FY 1992. This action resulted in a freeze on the hiring of new personnel in the courts. In late September, the Executive Committee confirmed its previous decision to lift the hiring freeze as of the date the supplemental appropriations bill was signed by the President (September 23, 1992). At the same time, in anticipation of a severe funding shortage for FY 1993, the Committee reimposed the hiring freeze effective October 1, 1992, until a FY 1993 spending plan was approved.

### **FISCAL YEAR 1993 SPENDING PLAN**

Since the last Conference session, the Executive Committee devoted the majority of its time to critical budgetary issues. The Committee was confronted with fashioning a fiscal year 1993 spending plan for the judiciary's "Salaries and Expenses" (court operations) account, which was funded by Congress at roughly \$120 million less than needed just to maintain end-of-year 1992 current services levels, taking into account anticipated revenues from fees. To accomplish its task,

the Committee solicited the views of all judicial officers in the system on how expenditures could be reduced. After considering suggestions received from judges and court administrators, and responses to options presented to members of the Judicial Conference and Conference committee chairs, the Committee made the necessary cuts as follows: \$22.5 million in automation systems and support; \$32.5 million in building alterations and other space-related expenses; \$35.8 million in furniture, equipment and other operating expenses; \$9 million in probation and pretrial services; \$3.6 million in travel; and \$15.4 million in personnel.

#### INDEPENDENT COUNSEL LEGISLATION

Draft legislation, "The Independent Counsel Reauthorization Act of 1993," would require the Administrative Office to provide administrative support and guidance to each independent counsel. The Executive Committee, on behalf of the Judicial Conference, resolved that the mission of the Administrative Office of the United States Courts and its component units is incompatible with responsibilities for, or activities in support of, prosecutorial functions of government, such as those of independent counsels. It further resolved that any such prosecutorial entity should not rely on the Administrative Office or any of its component parts for administrative functions, policy guidance, review, or any other ongoing or intermittent support.

#### RESOLUTION

On behalf of the Judicial Conference, the Executive Committee adopted the following resolution:

The Judicial Conference of the United States recognizes with appreciation, respect and admiration the

#### *HONORABLE WILLIAM D. BROWNING*

Member of the Committee on Court and Judicial Security from 1987 to 1990, and Chairman from 1990 to 1992.

Judge Browning in his service on the Committee has played a vital role in the administration of the federal court system while performing his judicial duties as Chief Judge of the United States District Court for the District of Arizona. He has earned our deep respect and sincere gratitude for his innumerable contributions as a Member and as Chairman of the Committee on Court and Judicial Security. We acknowledge with appreciation his commitment, leadership and dedicated service to the Judicial Conference and the federal judiciary.

## MISCELLANEOUS ACTIONS

### The Executive Committee:

- Deferred consideration for one year of a proposed merger between the Court and Judicial Security and Space and Facilities Committees;
- Deferred implementation for one year of a program allowing circuit judges to sit on other appellate courts from time to time, on an exchange basis, as a means of promoting education in court administration;
- Agreed to an early release of the report of the Committee to Review the Criminal Justice Act and the comments of the Defender Services Committee concerning this report, in light of exceptional circumstances;
- Rolled back the maximum amount authorized for reimbursement of judges' itemized travel expenses to \$250 per day;
- Approved an interim policy on payment of relocation expenses, necessitated by drastically reduced funding;
- Agreed to raise the fees for admission to practice in a district court from \$20.00 to \$50.00 and for duplicate admission certificates and certificates of good standing from \$5.00 to \$15.00, provided that legislation is enacted to permit the judiciary to retain the resulting increase in fees;
- Agreed to pursue legislation to allow the judiciary's contributions to the Civil Service Retirement Fund to be returned to the judiciary when bankruptcy and magistrate judges for whom the benefit is paid elect to transfer out of the Civil Service Retirement System;
- Authorized funds to be spent on a judges' office automation training program wherein a financial supplement for upgrading judges' hardware and software is not included;
- Agreed to withdraw the previously-approved request of the District of Connecticut for a temporary judgeship (see JCUS-SEP 92, p. 70);
- Raised no objections to a proposed memorandum to be sent by the chair of the Judicial Branch Committee to all chief judges asking them to initiate a program of courthouse visits for the newly-elected members of the 103rd Congress;
- Agreed that a model policy on searches and seizures proposed by the Committee on Criminal Law should be submitted to the Judicial Conference

for approval prior to its dissemination (see "Search and Seizure Policy," *infra* p. 13);

- Responding to Congressional interest in the enactment of statutory authority for the waiver of filing fees and costs in bankruptcy cases, determined that if necessary, a pilot *in forma pauperis* project would be the preferable approach, in that it would enable the impact of such a procedure to be assessed prior to embarking on a nationwide program;
- Discussed possible judicial officer appointments to the United States Sentencing Commission and agreed that the Sentencing Commission chair should be a judge (see also "Sentencing Commission," *supra* p. 4);
- Reviewed the jurisdictional statements of all Judicial Conference committees and agreed to finalize revisions in April 1993; and
- Authorized appointment of an additional magistrate judge position for San Diego, California and approved the position for accelerated funding in FY 1993 (see also "Changes in Magistrate Judge Positions," *infra* pp. 19-22).

## **COMMITTEE ON THE ADMINISTRATIVE OFFICE**

### **DISTRICT OF COLUMBIA PUBLIC DEFENDER SERVICE**

Under the District of Columbia Code (Title 1, Ch.27, § 1-2707), the Administrative Office is responsible for providing payroll and personnel support for the District of Columbia Public Defender Service, which is not a federal defender office and whose employees are employees of the District of Columbia, not the federal government. Providing this support is a burden on the Administrative Office, as it is done without compensation and requires adherence to the rules and regulations of the District of Columbia government, which are different from federal and judiciary practices. Therefore, the Judicial Conference approved a recommendation of the Committee on the Administrative Office that it seek legislation to assign administrative support for the District of Columbia Defender Service to the District of Columbia government. The Administrative Office will work with the D.C. Public Defender Service to ensure a smooth transition to a new personnel and payroll support system.

## **COMMITTEE ON AUTOMATION AND TECHNOLOGY**

### *LONG RANGE PLAN FOR AUTOMATION*

Section 612 of title 28 requires the Judicial Conference to approve and submit to Congress annually a long range plan (and revisions thereto) for meeting the automation needs of the judiciary. The plan is to be developed and revised

annually by the Director of the Administrative Office prior to Conference review. Pursuant to that statute, the Conference approved the fiscal year 1993 update to the *Long Range Plan for Automation in the Federal Judiciary*.

## COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

### CHANGES IN DUTY STATIONS

Pursuant to 28 U.S.C. § 152(b)(1), the Judicial Conference is responsible for determining the official duty stations of bankruptcy judges and their places of holding court, after consultation by the Director of the Administrative Office with the respective judicial councils. In light of the Bankruptcy Judgeship Act of 1992 (Public Law 102-361) which authorized 35 additional bankruptcy judgeships in 27 districts (new appointments are pending funding), the Conference agreed with the recommendations of the Bankruptcy Committee and the judicial councils as follows:

#### DUTY STATIONS OF NEW JUDGESHIPS

DISTRICT	NUMBER OF NEW JUDGESHIPS	OFFICIAL DUTY STATION(S)
Massachusetts	1	Worcester
New Hampshire	1	Manchester
Puerto Rico	1	Hato Rey
Connecticut	1	New Haven
New York, Southern	2	New York City (2)
Delaware	1	Wilmington
New Jersey	1	Trenton
Pennsylvania, Eastern	2	Philadelphia (2)
Maryland	1	Rockville
North Carolina, Middle	1	Winston-Salem
South Carolina	1	Columbia
Virginia, Eastern	1	Norfolk
Texas, Northern	1	Fort Worth
Texas, Western	1	Austin
Tennessee, Eastern	1	Greeneville
Tennessee, Middle	1	Nashville
Tennessee, Western	1	Jackson
Illinois, Southern	1	East St. Louis
Arizona	2	Phoenix (1), Tucson (1)
California, Central	2	Los Angeles (2)
Colorado	1	Denver
Alabama, Northern	1	Birmingham



Florida, Middle	4	Orlando (2), Tampa (1), Jacksonville (1)
Florida, Southern	2	Fort Lauderdale (1), West Palm Beach (1)
Georgia, Northern	2	Atlanta (2)
Georgia, Middle and Southern	1	Macon

CHANGES IN OFFICIAL DUTY STATIONS

DISTRICT	FORMER DUTY STATION	NEW DUTY STATION
Texas, Western	Austin	Waco
California, Central	Los Angeles	Santa Barbara
California, Central	Los Angeles	San Bernardino
California, Central	San Bernardino	Riverside (3)
California, Central	San Bernardino	Santa Ana
Florida, Middle	Orlando	Tampa
Georgia, Northern	Atlanta	Newnan
Georgia, Northern	Atlanta	Rome
Illinois, Southern	East St. Louis	Benton

RECALL OF RETIRED BANKRUPTCY JUDGES

Section 375 of title 28 provides for the five-year recall of retired bankruptcy and magistrate judges who meet age and service requirements. The Judicial Conference is authorized to promulgate regulations to implement the five-year recall program. In light of concerns regarding (a) the feasibility of the judicial councils certifying that "substantial service" will be performed by a retired judge for a five-year period; (b) the possibility of a windfall for the recalled judges in that they could earn full salary plus annuity enhancements without performing full-time service; and (c) the fact that the existing ad hoc program for temporary recall (for up to one year) and the three-year extended recall service regulations (JCUS-MAR 92, p. 16) call into question the need for a five-year recall program, the Judicial Conference resolved that no funding will be made available to implement the five-year recall provisions. See also "Recall of Retired Magistrate Judges," *infra* p. 19.

BANKRUPTCY CODE AMENDMENT

The Judicial Conference approved for transmission to Congress an amendment to 11 U.S.C. § 362(h) which provides for the recovery of damages for injuries due to willful violations of the automatic stay provided by law. The amendment would clarify that relief under this provision is not limited to persons and that sovereign immunity is not a defense to willful violations of the automatic stay.

## **COMMITTEE ON THE BUDGET**

The Committee on the Budget reported on budgetary matters including the fiscal year 1993 appropriation, the status of the fiscal year 1993 spending plan, and the fiscal year 1993 supplemental appropriation request; the 1994 and 1995 budget submissions; the status of budget decentralization; the Court Registry Investment System (CRIS); and the proposed establishment of a subcommittee on fiscal economy.

## **COMMITTEE ON CODES OF CONDUCT**

The Committee on Codes of Conduct reported that it approved for publication a final version of a "Compendium of Selected Opinions," which summarizes in a single document selected published and unpublished opinions rendered by the Committee, focusing primarily upon unpublished opinions from 1979 through 1992. It further reported that since its last report, it has issued 56 written advisory responses to written inquiries. The Chairman received and responded to 46 telephonic inquiries. In addition, individual Committee members responded to 107 inquiries from their colleagues.

## **COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT**

### **PLACES OF HOLDING COURT**

Upon the request of the Southern District of New York and the Judicial Council of the Second Circuit, and the recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to seek legislation to amend 28 U.S.C. § 112(a) to establish the Middletown-Walkill area of Orange County, New York, "or such nearby location as may be deemed appropriate," as a place of holding court in the Southern District of New York.

At the request of the Northern District of Indiana and the Judicial Council for the Seventh Circuit, the Judicial Conference approved the recommendation of the Committee that Congress amend 28 U.S.C. § 94(a)(3) as follows (language lined through to be omitted; shaded language to be added):

The ~~Hammond Western~~ Division comprises the counties of Benton, Carroll, Jasper, Lake, Newton, Porter, Tippecanoe, Warren, and White. Court for the ~~Hammond Western~~ Division shall be held at ~~Hammond and Lafayette~~ ~~or at a suitable site in Lake or Porter Counties.~~

## MISCELLANEOUS FEES - SEARCHES OF COURT RECORDS

The miscellaneous fee schedules of the bankruptcy and district courts each authorize a fee to be charged for a search of the records of the court; however, the provisions differ in that the district court requires a request for certification of the search before a fee may be charged. On recommendation of the Committee on Court Administration and Case Management, which found no basis for the differing search fee structures of the bankruptcy and district courts, the Judicial Conference approved an amendment of the search fee provision of the schedule of fees for the United States district courts which reads:

For every search of the records of the district court conducted by the clerk of the district court or a deputy clerk, \$15 per name or item searched.

In response to concerns, a survey of current practices of bankruptcy and district courts was conducted and confirmed widespread inconsistencies in the application of the search fee. In order to provide more specific guidance to clerks, the Conference approved proposed search fee guidelines which attempt to strike a balance between the public's right of access to the dockets and the need of clerks' offices for resources to carry out their support mission to judicial officers. These guidelines will be appended to the miscellaneous fee schedules.

## MISCELLANEOUS FEES - ELECTRONIC ACCESS TO COURT RECORDS

At its March 1990 session, the Judicial Conference amended the miscellaneous fee schedules for the district and bankruptcy courts to include charges for electronic access to court data, such as the Public Access to Court Electronic Records (PACER) system (JCUS-MAR 90, p. 21). Under the Judiciary Appropriations Act of 1991 (Public Law No. 101-515), fees for public access to federal court information available in electronic form are deposited to the Judiciary Automation Fund as reimbursement for expenses incurred in providing these services. Federal agencies have been exempt from all district and bankruptcy court fees, including fees for PACER, pursuant to an exception granted by the Judicial Conference in the schedule of fees prescribed under 28 U.S.C. §§ 1914 and 1930. However, because the judiciary can retain such fees to support PACER to the benefit of both the courts and PACER users, the Judicial Conference:

- 1) Amended the schedules promulgated under 28 U.S.C. §§ 1914 and 1930 to eliminate the exemption from fees for federal agencies for usage of electronic access to court data, effective October 1, 1993;
- 2) Delegated to the Director of the Administrative Office the authority to set a fee for these services not to exceed the amount previously established by the Judicial Conference after consultation with and reasonable notice to

affected parties and notice to the Executive Committee of the Judicial Conference;

- 3) Amended the schedules promulgated under 28 U.S.C §§ 1914 and 1930 to eliminate the exemption for federal agencies from the fee for reproducing any court record or paper and the fee for performing a search of court records where electronic access is available, in order to encourage the use of electronic access both from remote locations and from public access terminals in clerks' offices, effective October 1, 1993; and
- 4) Applied these actions to all federal agencies except those which receive funding from judiciary appropriations.

#### **COURT-ANNEXED ARBITRATION**

The Judicial Improvements and Access to Justice Act of 1988 (Public Law No. 100-702), which authorized the continuation of mandatory non-binding arbitration programs piloted by the Judicial Conference in ten district courts and permitted the designation of ten additional courts to adopt programs of voluntary non-binding arbitration, includes a sunset date of five years after enactment, which was on November 19, 1988. The Judicial Conference approved the recommendation of the Committee on Court Administration and Case Management that legislation be sought to continue authorization for the 20-district arbitration program beyond the 1993 sunset date.

The Committee also recommended that the Judicial Conference support legislation to permit, but not require, all district courts to utilize mandatory or voluntary arbitration programs. The Conference declined to approve this recommendation with respect to mandatory programs, but did agree to seek statutory authority for all federal district courts to have the discretion to utilize voluntary arbitration programs.

#### **VIDEO CONFERENCING PILOT PROGRAM**

The Judicial Conference approved a pilot program in the Eastern District of North Carolina for the use of video conferencing technology to conduct competency hearings between the court and the Federal Correctional Facility in Butner, North Carolina. The court, which requested approval for the pilot in its district, hopes that the use of a video conferencing system will improve security by alleviating the need to transport prisoners to the federal courthouse.

#### **COMMITTEE ON COURT AND JUDICIAL SECURITY**

The Committee on Court and Judicial Security reported that several of its members had made presentations on security issues at meetings of judicial officers and that such presentations are an important aspect of judicial security. The

Committee met with executives from the General Accounting Office and the United States Marshals Service on security-related matters.

## **COMMITTEE ON CRIMINAL LAW**

### **LONG RANGE PLANNING**

On recommendation of the Committee on Criminal Law, the Judicial Conference agreed to renew efforts to:

- 1) Reverse the trend of federal prosecution of what historically have been regarded as state crimes, while supporting other efforts to address those crimes at the state level;
- 2) Reverse the trend of enacting mandatory minimum prison sentences; and
- 3) Support incorporation by the United States Sentencing Commission of more flexibility in the sentencing guidelines.

### **SEARCH AND SEIZURE POLICY**

In response to a revision by the United States Parole Commission of its long-standing policy of supporting only "plain view" searches to one supporting a more rigorous search in certain circumstances, the Committee on Criminal Law proposed Model Search and Seizure Guidelines which would guide probation officers in applying for and conducting searches and seizures of persons on probation and supervised release. The Judicial Conference approved distribution of the Guidelines as suggested policy for probation officers.<sup>1</sup>

### **VIOLATIONS OF SUPERVISION**

Monograph 109, *Supervision of Federal Offenders*, published in loose-leaf form, did not contain a chapter on noncompliant behavior in the original version. On recommendation of the Committee on Criminal Law, the Judicial Conference approved publication of Chapter V, "Managing Noncompliant Behavior."

## **COMMITTEE ON DEFENDER SERVICES**

### **FEDERAL DEFENDER ORGANIZATION CASE ASSIGNMENTS**

The Judicial Conference adopted the following resolution proposed by the Committee on Defender Services:

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<sup>1</sup>The Parole Commission has adopted the search and seizure policy recommended by the Committee and subsequently approved by the Conference.

Recognizing that federal defender organizations consistently furnish high quality representation to Criminal Justice Act (CJA) defendants and, overall, provide a cost-efficient alternative to such representation furnished by CJA panel attorneys, the Judicial Conference urges districts and circuits to take steps which will increase the number of cases assigned to federal defender organizations.

In districts currently served by a defender organization these steps should include:

- 1) approval of additional assistant federal defender staff by the court of appeals in appropriate circumstances; and
- 2) review and adjustment of district appointment procedures.

Those districts not currently served by a defender organization are urged to give consideration to the feasibility of establishing a district federal defender organization or joining with an adjacent district to establish a federal defender organization to serve both districts. But see "Committee to Review the Criminal Justice Act," *infra* at 23.

#### CRIMINAL JUSTICE ACT COMPENSATION

The Committee on Defender Services reported on complaints from some panel attorneys regarding delays in the review of CJA vouchers for compensation of attorneys and experts. To address these concerns, the Judicial Conference endorsed a recommendation of the Committee on Defender Services that paragraphs 2.21, 3.07, 6.02, and 6.03 of the Guidelines for the Administration of the Criminal Justice Act ("CJA Guidelines") be amended to provide that, absent extraordinary circumstances, compensation vouchers should be acted upon within 30 days of submission. See also "Committee to Review the Criminal Justice Act," *infra* at 27.

In order to assist courts in minimizing any delays, and to facilitate the development of more accurate projections regarding defender services appropriations expenditures, the Judicial Conference agreed to urge the circuit judicial councils to prepare periodic reports listing all CJA compensation vouchers which have been under review before judicial officers for more than 90 days. See also "Committee to Review the Criminal Justice Act," *infra* at 27.

## **COMMITTEE ON FEDERAL-STATE JURISDICTION**

The Committee on Federal-State Jurisdiction reported that it is examining several issues affecting the federal courts and their importance in developing a long range plan for the federal judiciary. Such issues include: federalization of traditional state crimes and civil causes of action; collateral review of state court decisions; matters regarding courts of appeals including federal appellate court jurisdiction, determining appealability, and the determination as to which courts to send appeals; the role of non-Article III judges; intercircuit conflicts; and the lack of resources for state courts.

## **COMMITTEE ON FINANCIAL DISCLOSURE**

The Committee on Financial Disclosure reported that as of January 1993, it had received 2,354 financial disclosure reports and certifications for the calendar year 1991, including 1,036 reports and certifications from justices and Article III judges, 278 from bankruptcy judges, 386 from magistrate judges, and 654 from judicial employees.

## **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

The Committee on Intercircuit Assignments reported that during the period July 1, 1992, through December 31, 1992, 115 intercircuit assignments were recommended by the Committee and approved by the Chief Justice to be undertaken by 78 justices and Article III judges.

## **COMMITTEE ON THE JUDICIAL BRANCH**

### **JUDICIAL SURVIVORS' ANNUITIES SYSTEM**

Recent legislative improvements to the Judicial Survivors' Annuities System (JSAS) created an anomalous distinction with regard to JSAS contributions, between a disabled judge who retires on grounds of permanent disability under 28 U.S.C. § 372(a) and one who retires under 28 U.S.C. § 371(b) but is prevented by disability from carrying the requisite workload in a given year. Since this distinction appears to serve no policy objective, the Judicial Conference agreed to seek to include in any legislation making technical corrections to the Federal Courts Administration Act of 1992 (Public Law No. 102-572), the requisite amendments to permit all Article III judges who retire from regular active service under 28 U.S.C. §§ 371(b) or 372(a), and all judges of the Court of Federal Claims who retire from office under 28 U.S.C. § 178, to contribute to JSAS at the rate of 2.2 percent of salary or annuity.

In order to afford equal treatment under JSAS to deferred annuitants, the Judicial Conference agreed to seek a technical correction to the Federal Courts Administration Act of 1992 to provide a refund of JSAS contributions made by any judicial official who dies, following retirement, without eligible survivors or before JSAS benefits have vested.

#### JUDICIAL RETIREMENT

The Judicial Conference agreed to seek to include in any legislation making technical corrections to the Federal Courts Administration Act of 1992, or in any other general "judicial improvements" legislation, the requisite amendments to equalize the disability retirement benefits of territorial district judges with those of bankruptcy judges, magistrate judges, and judges of the Court of Federal Claims, and to provide annual cost-of-living adjustments in the annuities paid to all retired territorial district judges.

#### COMMITTEE ON JUDICIAL RESOURCES

##### ADDITIONAL JUDGESHIPS

In response to a request from the Ninth Circuit Court of Appeals for ten additional judgeships, the Judicial Conference determined that, without regard to the merits, it would defer consideration of the request until September 1993, because of the potential impact on the federal judicial system of an expansion of that magnitude. The Conference decided that the question of whether to limit the size of the federal judiciary should be examined, and it referred this question to the Long Range Planning Committee, in consultation with other committees as appropriate, for study and report to the September 1993 Judicial Conference.

##### CHAMBERS STAFF FOR MAGISTRATE AND BANKRUPTCY JUDGES

In September 1991, the Judicial Conference authorized a circuit or district judge to employ one additional law clerk in lieu of an authorized secretary, or vice versa (JCUS-SEP 91, p. 66). A bankruptcy or magistrate judge is currently allowed to employ one secretary and one law clerk (with the proviso that the ratio of law clerks to magistrate judges authorized in any district may not exceed one law clerk per full-time magistrate judge position). On the recommendation of the Committee on Judicial Resources, the Judicial Conference approved an amendment to its guidelines to permit bankruptcy and magistrate judges the flexibility to hire an additional law clerk in lieu of an authorized secretary, or vice versa. A magistrate judge may select this option only with the consent of the chief judge of the district.



## SAVED GRADE AND SAVED PAY

Previously, the Judicial Conference had revised the saved grade and saved pay policy to include secretaries who accept a lower-graded position in the court following the death of the judge for whom they worked (JCUS-MAR 92, p. 25). At this session, the Conference approved the recommendation of the Judicial Resources Committee to extend the saved grade and saved pay policy to provide coverage to a judge's secretary where the secretary takes a lower-graded position with the judiciary for reasons outside the secretary's control, such as the resignation or retirement of the judge, the reduction of the judge's staff complement as a result of taking senior status or stepping down from the office of chief judge, or the completion of the term of a bankruptcy or magistrate judge who is not reappointed.

## MODEL ADVERSE ACTION PROCEDURE

Section 3602(a) of title 18 specifies in part that a district court may, for cause, remove a probation officer. While there is no requirement that procedures be established in order to remove a probation officer, the "for cause" phrase suggests that a probation officer is entitled to notice and an opportunity to be heard before being discharged. In order to provide guidance on appropriate notice and hearing rights, the Judicial Conference, on recommendation of the Committee on Judicial Resources, approved the distribution of a model adverse action procedure for the removal of a probation officer.

## SEVERANCE PAY POLICY

The Administrative Office of the United States Courts Personnel Act of 1990 (Public Law No.101-474) amended 5 U.S.C. § 5595 to require the judiciary to recognize an employee's years of service by providing severance pay upon the employee's separation from court employment as a result of job abolishment. Although the statute allows little discretion in the development or implementation of a severance pay policy, in the limited areas where discretion is allowed, the Judicial Resources Committee recommended the adoption of procedures embodied in existing regulations applicable to executive branch agencies. The Judicial Conference endorsed the Committee's recommendation.

## DUAL COMPENSATION RESTRICTIONS

Under 5 U.S.C. § 5532, civil service retirees and some military retirees who are reemployed in the federal civil service generally are not paid both their full retirement annuities and the full salaries their positions would normally command. As authorized by December 1991 amendments to the Federal Employees Pay Comparability Act of 1990 (Public Law No. 101-509), the Judicial Resources Committee recommended, and the Judicial Conference approved, procedures for

the Director of the Administrative Office to make exceptions to the dual compensation restrictions for reemployed annuitants in exceptional circumstances involving recruitment or retention of a uniquely qualified individual.

#### **EMPLOYEE RELOCATION REIMBURSEMENT POLICY**

In September 1991, the Judicial Conference approved a limitation of the reimbursement of employee relocation expenses to positions at JSP-12 and above, and for heads of offices and divisions (JCUS-SEP 91, p. 66). At this session, the Conference endorsed the Judicial Resources Committee's recommendation that the current employee relocation reimbursement policy be revised to authorize the Director of the Administrative Office to grant exceptions to the policy in cases involving the opening or closing of divisional offices, and in cases where the expansion or contraction of operations at a court site causes a change in the number of personnel required to staff that office. The court seeking the exception must demonstrate that it would be a prudent and cost-effective business practice to grant the exception. But see "Miscellaneous Actions," *supra* pp. 6-7.

#### **ADDITIONAL COURT REPORTERS**

The Judicial Conference approved three additional temporary court reporter positions for funding in the fiscal year 1993: one each for the Southern District of Florida, the Western District of Texas, and the District of Idaho.

#### **SECOND CHIEF DEPUTY CLERK BANKRUPTCY CLERK'S OFFICE - CENTRAL DISTRICT OF CALIFORNIA**

Due to the size, rate of growth, and geographic distribution of the bankruptcy clerk's office in the Central District of California, the Judicial Conference approved the establishment of a second chief deputy clerk position (JSP-16) in that office.

#### **LONG RANGE PLANNING COMMITTEE**

The Long Range Planning Committee reported that it had completed work on a draft mission statement for the federal courts. The Committee received updates or reports about several studies regarding long range planning issues, including surveys of state and federal judges, a report from the Committee on Court Administration and Case Management on matters involving federal court structure and governance, and a retrospective analysis of the effect of federal legislation on the workload of the United States courts.

## COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

### RECALL OF RETIRED MAGISTRATE JUDGES

In March 1992, the Judicial Conference approved regulations for extended service recall for bankruptcy judges pursuant to 28 U.S.C. § 155(b) (JCUS-MAR 92, p. 16). At this session, on recommendation of the Committee on the Administration of the Magistrate Judges System, the Conference adopted Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges. Under the regulations, extended service recall would be available to magistrate judges retiring at full annuity and would be for a fixed period of more than one but not more than three years.

Because of the existence of extended and ad hoc recall programs and in light of concerns that it would not be feasible to draft regulations concerning the certification of substantial service for a five-year period, the Magistrate Judges Committee recommended, and the Judicial Conference agreed, that no funding would be made available to implement the five-year recall provisions of 28 U.S.C. § 375 with respect to magistrate judges. See also "Recall of Retired Bankruptcy Judges," *supra* p. 9.

### TEMPORARY EMERGENCY ASSIGNMENT OF MAGISTRATE JUDGES

Under 28 U.S.C. § 636(f), a magistrate judge may be temporarily assigned to another judicial district in emergency situations upon the concurrence of the chief judges of the districts involved. The magistrate judge may perform any of the duties specified in §§ 636(a) and (b); however, through apparent inadvertence, when the civil consent provisions in § 636(c) were enacted, § 636(f) was not amended to authorize a temporarily assigned magistrate judge to handle civil consent cases. In order to provide greater flexibility to a court confronted with an emergency situation, the Judicial Conference approved the Magistrate Judges Committee's recommendation that a technical amendment to 28 U.S.C. § 636(f) be sought to authorize a temporarily-assigned magistrate judge to perform duties specified in § 636(c).

### CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate judge positions. Unless otherwise indicated, these changes are to be effective when appropriated funds are available.

SECOND CIRCUIT

New York, Northern

Converted the part-time magistrate judge position at Watertown to full-time status.

THIRD CIRCUIT

New Jersey

1. Made no change in the location, salary, or arrangements of the part-time magistrate judge position at Asbury Park; and
2. Made no change in the location, salary, or arrangements of the part-time magistrate judge position at Atlantic City.

Pennsylvania, Western

1. Increased the salary of the part-time magistrate judge position at Johnstown from \$3,000 per annum to \$50,000 per annum; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

FIFTH CIRCUIT

Texas, Northern

1. Authorized an additional full-time magistrate judge position at Dallas; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Texas, Eastern

Converted the part-time magistrate judge position at Sherman to full-time status.

SIXTH CIRCUIT

Tennessee, Eastern

Authorized the full-time magistrate judge at Greeneville, Tennessee, to serve in the adjoining Western District of North Carolina in accordance with 28 U.S.C. § 631(a).

Tennessee, Middle

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

SEVENTH CIRCUIT

Illinois, Southern

Converted the part-time magistrate judge position at East St. Louis to full-time status.

EIGHTH CIRCUIT

Arkansas, Western

Retained the part-time magistrate judge position at Harrison at the current salary level of \$5,160 per annum.

NINTH CIRCUIT

California, Southern

1. Authorized an additional full-time magistrate judge position at San Diego;<sup>2</sup> and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

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<sup>2</sup>This new full-time magistrate judge position is in addition to the new full-time magistrate judge position at San Diego authorized on December 14, 1992, by the Executive Committee and designated for accelerated funding effective June 1, 1993 (see "Miscellaneous Actions," *supra* pp. 6-7).

Oregon

1. Converted the part-time magistrate judge position at Medford to full-time status; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Washington, Eastern

Authorized the full-time magistrate judge at Spokane, Washington, to serve in the adjoining District of Idaho in accordance with 28 U.S.C. § 631(a).

TENTH CIRCUIT

Kansas

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

**COMMITTEE TO REVIEW CIRCUIT COUNCIL  
CONDUCT AND DISABILITY ORDERS**

The Committee to Review Circuit Council Conduct and Disability Orders reported that legislation was enacted providing the Judicial Conference with a review role over the disposition of conduct and disability complaints involving judges of the United States Court of Veterans Appeals (Veterans Health Care Act of 1992, Public Law No. 102-585). The enactment seems to meet satisfactorily the conditions set by the Conference in March 1992 for acceptance of such responsibility (JCUS-MAR 92, p. 34), in that it does not impose on the Conference any other administrative functions affecting this Article I court.

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

**BANKRUPTCY RULES**

The Judicial Conference approved proposed changes to Official Forms 1, 4, 6E, 7, 9, 9E(Alt.), 9F(Alt.), and 10 submitted by the Committee on Rules of Practice and Procedure. These changes are technical and conforming in nature.

## **COMMITTEE ON SPACE AND FACILITIES**

The Committee on Space and Facilities is in the process of reviewing the judiciary's furniture and furnishings policies and the existing parking policies. The Committee reported that as of January 1993, 67 long range facilities plans have been completed, pursuant to the directive of the Judicial Conference (JCUS-MAR 88, p. 39). It is anticipated that all remaining plans will be completed within 14 months.

## **COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT**

The Judicial Improvements Act of 1990 (Public Law No. 101-650) required the Judicial Conference to conduct a comprehensive analysis of the Criminal Justice Act program and make a report to Congress. In 1991, the Chief Justice established the nine-member Committee to Review the Criminal Justice Act (CJA Review Committee), which made an interim report to the Judicial Conference in September 1992 (JCUS-SEP 92, p.84). At that time, the Conference requested the Defender Services Committee to undertake a detailed review of the interim report and report back to the Conference in January 1993.

After consideration of both the final report of the CJA Review Committee and the Defender Services Committee's comments on that report, the Judicial Conference took the actions outlined below regarding seven major recommendations;<sup>3</sup>

The Conference supported the following recommendations of the CJA Review Committee:

- 1) A federal defender organization should be established in all districts, or combination of districts, where such an organization would be cost-effective, where more than a specified number of appointments is made each year, or where the interests of effective representation otherwise require establishment of such an office (see also "Federal Defender Organization Case Assignments," *supra* pp. 13-14); and
- 2) An experimental program should be developed in which certain defendants would be offered a limited choice in the selection of counsel to be appointed to represent them.

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<sup>3</sup> On March 22, 1993, the work of the CJA Review Committee having been completed, the Executive Committee voted to discharge the Committee.

The Conference rejected the following recommendations of the CJA Review Committee:

- 1) Funds appropriated to provide for services under the CJA should not be available to support other activities within the judicial branch;
- 2) Appropriation requests to support the Criminal Justice Act should be presented directly to Congress;
- 3) There should be established within the judicial branch a Center for Federal Criminal Defense Services;
- 4) There should be established within each circuit one or more boards whose responsibility would be to supervise the CJA program and appointment and compensation of federal public and community defenders and panel attorneys within each district in the circuit; and
- 5) Voucher approval and other panel attorney responsibilities should be vested in a local administrator.

Subsequent to the Judicial Conference session, the Chief Justice appointed a committee of Conference members to review the remainder of the CJA Review Committee report and comments by the Defender Services Committee. The *Report on the Federal Defender Program* drafted by this committee was approved by the Conference through a mail ballot concluded on March 29, 1993, and was transmitted to the Congress on March 31. In this report, the Conference made the following recommendations (in addition to the two noted above):

- It is essential that the Congress provide full funding of the Criminal Justice Act to ensure that the protection guaranteed by the Sixth Amendment of the United States Constitution continues to be provided to the people of the United States into the 21st Century. Funding should be provided at a level sufficient to:
  - ensure adequate funding of the existing federal defender organizations and death penalty resource program;
  - pay fair and reasonable compensation to panel attorneys;
  - establish a federal defender organization in each district where such organization is feasible;
  - provide adequate administrative support for the CJA program;
  - enable the Administrative Office to provide low-cost training programs for all CJA panel attorneys, in conjunction with the Federal Judicial Center, the Sentencing Commission, and others; and
  - implement procedures to ensure that counsel is provided to eligible persons as early in the initiation of proceedings as possible.



- The CJA appropriation should remain as a separate account within the judiciary's budget and should continue to be presented to the Congress through the Judicial Conference of the United States.
- Congress should provide sufficient funds in the CJA appropriation to enable the Administrative Office to develop additional statistical and financial information to document and evaluate fully the cost, quality, and effectiveness of the CJA program.
- Recognizing that federal defender organizations consistently furnish high quality representation to CJA defendants and provide a cost-efficient alternative to representation by CJA panel attorneys, the courts should take steps to increase the number of cases assigned to federal defender organizations.

In districts currently served by a defender organization, these steps should include:

- 1) approval of additional assistant federal defender staff in appropriate circumstances; and
  - 2) review and adjustment of district appointment procedures.
- The Administrative Office should conduct a study to determine: (1) the measures currently in place to obtain reimbursement of funds expended on behalf of defendants who are financially able to retain private counsel; and (2) what additional efforts should be employed to ensure that CJA funds remain available to intended beneficiaries.
  - The Congress should authorize the judiciary to receive a fair share of the total assets forfeited to the government by criminal defendants. At a minimum, the CJA appropriation should be reimbursed from the Department of Justice's assets forfeiture fund for those costs associated with providing CJA representation for defendants whose assets have been seized by the Department.
  - The judicial districts should be left free to choose either a Federal Public Defender Organization or a Community Defender Organization to provide defense services in the district, as the CJA now provides. The circuits should be encouraged to involve volunteer lawyer committees in the selection or reappointment of the federal public defender, as the CJA Guidelines now provide.

- The CJA should be amended to eliminate the requirement in 18 U.S.C. § 3006A(g)(1) that a district have at least 200 CJA appointments annually in order to qualify for a Federal Public Defender Organization or a Community Defender Organization. See also JCUS-SEP 92, p. 66.
- National recruiting and equal employment opportunity programs for the defender system should continue to be encouraged and facilitated. The Defender Services Committee should continue to review employment policies and make appropriate recommendations to the Judicial Conference regarding EEO program development, implementation, and compliance.
- The Defender Services Committee should develop an EEO program for the panel attorney program.
- The Administrative Office, working with representatives of federal defender organizations, should develop evaluation procedures to monitor attorney and staff performance in these organizations.
- The Administrative Office, working with representatives of federal defender organizations should develop standards and evaluation procedures regarding the management of defender organizations. Standards and procedures should also be developed for the management of panel attorney operations.
- The Defender Services Committee should study whether specific procedures and clearly defined standards should be developed regarding the reappointment and removal of federal public defenders.
- There is no need to amend the CJA with regard to the salaries of federal public defenders and their staffs. The Congress, however, should fund the CJA appropriation at a level sufficient to adjust the salaries of the personnel of federal defender offices to a level equal to comparable positions in the United States attorneys' offices.
- The Congress should provide full funding for the death penalty resource center program.
- Only minimal eligibility standards for panel attorneys should be promulgated nationally. Individual district plans should take into account the prevailing local conditions most likely to produce qualified panel members.
- Congress should fund the CJA appropriation at a level sufficient to allow the Administrative Office to provide low-cost training programs for CJA panel attorneys, in conjunction with the Federal Judicial Center, the Sentencing Commission, the federal defenders, and others.

- In those districts where the establishment of a federal defender organization would not be cost-effective, where there are too few CJA appointments, or where the interests of effective representation do not require the establishment of such an organization, the courts should establish a panel attorney support office.
- The courts should develop performance standards for panel attorneys and monitor their performance.
- The Congress should provide sufficient funds in the CJA appropriation to allow the Judicial Conference to set compensation rates for CJA panel attorneys at a level that includes reasonable office overhead and fair compensation, plus appropriate cost-of-living adjustments.
- 18 U.S.C. § 3006A(d)(2) should be amended to authorize the Judicial Conference to establish and modify all dollar limitations on compensation under the CJA.
- The CJA Guidelines should be amended to require compensation for the time spent by CJA panel attorneys in necessary and reasonable travel.
- The CJA should be amended to authorize payment, at reduced hourly rates, of compensation to paralegals and law students who assist panel attorneys in CJA representations.
- The CJA Guidelines should be amended to provide that, absent extraordinary circumstances, judges should act on vouchers for compensation of panel attorneys and other service providers in CJA cases within 30 days of submission. See also "Criminal Justice Act Compensation," *supra* p. 14.
- The judicial councils of the circuits should prepare periodic reports listing all CJA compensation vouchers that have been under review for more than 90 days. The chief judge of the circuit, or the chief judge's designee, should intervene and take appropriate action if a voucher has not been acted upon within 90 days of submission. See also "Criminal Justice Act Compensation," *supra* p. 14.
- Until such time as the Congress appropriates sufficient funds to allow the payment of compensation rates to CJA attorneys that cover reasonable office overhead, panel attorneys should be reimbursed or indemnified for civil malpractice and related actions arising from their CJA services.

- Congress should fund the CJA appropriation at a level sufficient to allow districts to implement procedures that ensure that representation is provided to eligible persons as early in the initiation of proceedings as possible.
- 18 U.S.C. § 4285 should be amended to give the presiding judge in a case discretion in appropriate circumstances to order that funds be provided to CJA eligible persons for travel to and from court proceedings and related consultations and for subsistence during court and related proceedings.
- A proposal that would have required the prosecution to provide copies of discoverable materials to the defense and allocate the costs of duplication should be referred to the Committee on Rules of Practice and Procedure, for consideration in accordance with the Rules Enabling Act.
- The Defender Services Committee should study the advisability of legislation to transfer payment of the reimbursement of defense fact witnesses from the Department of Justice to the CJA appropriation.
- The judiciary should arrange for a comprehensive, impartial review of the CJA program every seven years.

#### **AD HOC COMMITTEE ON GENDER-BASED VIOLENCE**

The Judicial Conference adopted the following resolution:

After considering the report and recommendations of the Ad Hoc Committee on Gender-Based Violence, and as a result of the dialogue the Ad Hoc Committee has undertaken with the sponsors of the proposed Violence Against Women Act of 1991 (S. 15, 102d Congress) since the Judicial Conference adopted its resolution about the proposed 1991 Act (JCUS-SEP 91, pp 57-58), the Conference takes no position on specific provisions of the proposed Violence Against Women Act of 1993 (S.11, 103d Congress). The Conference reiterates its concerns expressed in its prior resolution and its general concerns about the trend toward federalization of state law crimes and causes of action.

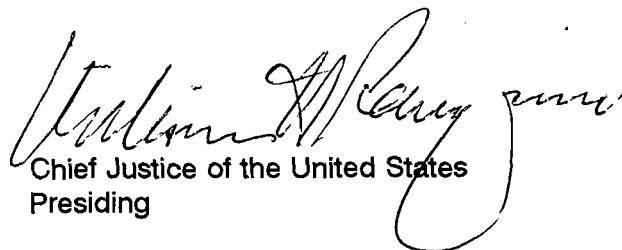
At the same time, the Conference believes that the provision of Title V of S. 11, encouraging circuit judicial councils to conduct studies with respect to gender bias in their respective circuits, has great merit and the Conference endorses that specific provision.

## **FUNDING**

All of the foregoing recommendations which require the expenditure of funds for implementation were approved by the Conference subject to the availability of funds, and subject to whatever priorities the Conference might establish for the use of available resources.

## **RELEASE OF CONFERENCE ACTION**

The Conference authorized the immediate release of matters considered at this session where necessary for legislative or administrative action.



Chief Justice of the United States  
Presiding

June 14, 1993