

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

March 15, 1994

The Judicial Conference of the United States convened in Washington, D.C., on March 15, 1994, 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 Jon O. Newman
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

Judicial Conference of the United States

Sixth Circuit:

Chief Judge Gilbert S. Merritt
Chief Judge Thomas D. Lambros,
Northern District of Ohio

Seventh Circuit:

Chief Judge Richard A. Posner
Chief Judge Barbara B. Crabb,
Western District of Wisconsin

Eighth Circuit:

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

Ninth Circuit:

Chief Judge J. Clifford Wallace
Chief Judge Wm. Matthew Byrne, Jr.,
Central District of California

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Richard P. Matsch,
District of Colorado

Eleventh Circuit:¹

Judge William Terrell Hodges
Middle District of Florida

¹Chief Judge Gerald B. Tjoflat was unable to attend.

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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 Judges Levin H. Campbell, Douglas Ginsburg, Deanell Reece Tacha, and William W. Wilkins, Jr., and District Judges Maryanne Trump Barry, Robert C. Broomfield, Paul A. Magnuson, Alicemarie H. Stotler, and Rya W. Zobel attended the Conference session. Circuit Executives Steven Flanders, Toby Slawsky, 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.

Senators Joseph R. Biden, Jr., Charles E. Grassley, and Orrin G. Hatch, and Representative William J. Hughes spoke to the Conference on matters pending in Congress of interest to the judiciary. Solicitor General Drew S. Days III addressed the Conference on matters of mutual interest to the Department of Justice and the Conference.

L. Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director; William R. Burchill, Jr., General Counsel; Karen K. Siegel, Chief, Judicial Conference Secretariat; Robert E. Feidler, Legislative and Public Affairs Officer; 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, Richard Schickele, Supreme Court Staff Counsel, and Judicial Fellows Mark Brown, Rosann Greenspan, Margaret McCoin, and Harvey Rishikof.

REPORTS

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

EXECUTIVE COMMITTEE

STAFFING EQUALIZATION

Reacting to concerns initially expressed by a representative group of court unit managers about uneven staffing levels, the Executive Committee, in August 1993, requested that a plan be developed to address these disparities in support offices in the courts. On recommendation of the Judicial Resources Committee, the Executive Committee approved a staffing equalization plan to reduce or eliminate excess positions. The plan includes a target date of October 1, 1994, beyond which no central funding will be provided for positions over a target equalization percentage. The Committee also approved a recommendation of the Judicial Resources Committee that staffing equalization bonuses in amounts up to 15 percent of the employee's base pay, not to exceed \$7,500, be authorized for individuals employed in offices staffed over a target level who relocate to accept positions in offices staffed under a target level.

The Executive Committee approved for transmission to Congress, as requested, a "Report by the Judicial Conference of the United States to the Senate and House Appropriations Committees Concerning the Equalization of Staffing Levels Among the Various Federal Courts."

SUPPORTING PERSONNEL MATTERS

The Executive Committee took the following actions on human resources matters: (1) on recommendation of the Judicial Resources Committee, approved immediate implementation of a new bankruptcy clerks' work measurement formula for redistribution purposes only, without any increase in overall positions in fiscal year 1994 (see also "Bankruptcy Clerks' Work Measurement Formula," *infra* pp. 21-22); (2) agreed to allow full implementation of the district clerks' work measurement formula, also for

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redistribution purposes only, with the understanding that this will result in no additional positions or funding in fiscal year 1994; (3) adhered to the previous position of the Judicial Conference which authorized locality pay (JCUS-SEP 93, p. 50), and agreed that court unit executives would be eligible to receive locality pay provided the executive branch extended such pay to its own executives; and (4) endorsed a recommendation of the Judicial Resources Committee to place a temporary freeze on hiring or promoting law clerks at any grade higher than JSP-13 until the Judicial Resources Committee can make further recommendations on chambers staffing, except where a judge certifies in writing that he or she has made an oral or written commitment prior to February 21, 1994, to hire a law clerk who will report for duty in fiscal year 1994 (see also "Chambers Law Clerks," *infra* p. 22).

MISCELLANEOUS BANKRUPTCY FEES

In September 1992 (JCUS-SEP 92, pp. 64-65), the Judicial Conference amended the schedule of fees for bankruptcy courts, issued pursuant to 28 U.S.C. § 1930(b), to establish a \$30 administrative fee in bankruptcy cases for noticing services performed by the clerk in chapters 7 and 13 cases and to exclude those cases from the existing per notice fee. The \$30 fee is payable at the commencement of the case. To help ensure access to the bankruptcy courts, the Executive Committee approved on behalf of the Judicial Conference a Court Administration and Case Management Committee recommendation to amend the schedule of fees for bankruptcy courts to allow the payment of the \$30 administrative fee for noticing services to be made in installments in the same manner as installment payments for bankruptcy filing fees (28 U.S.C. § 1930 (a)). The first \$30 received shall be applied to the \$30 administrative fee.

RESOLUTION

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

The Judicial Conference of the United States, with great appreciation, respect, and also regret, notes the imminent departure of the

HONORABLE WILLIAM J. HUGHES

from the United States Congress, where he has served as a Member of the House of Representatives and as a member of the House Judiciary Committee. Since 1991, he has served as Chairman of the Subcommittee on Intellectual Property and Judicial Administration.

During his twenty years in Congress and, in particular, during his tenure as the Subcommittee Chairman, Congressman Hughes has tirelessly dedicated himself to improving the delivery of justice in this country. His leadership has been demonstrated in numerous judiciary-related initiatives in the areas of jurisdiction, finances, resources, organization, and survivors' protection. Most notable among these were his efforts to secure the amendments to the Judicial Survivors' Annuities Act, which provide for more equitable contribution rates for judicial officers, thus helping to ensure adequate care for the survivors of deceased judges; to obtain enactment of the Federal Courts Administration Act of 1992, which implemented numerous recommendations of the Judicial Conference of the United States, including authority for the Supreme Court to prescribe rules for appeal of interlocutory decisions and the abolition of the Temporary Emergency Court of Appeals; and to ensure sufficient resources for the federal judiciary to accomplish its mission, particularly through the Fiscal Year 1993 Supplemental Appropriations Bill which contained critical funding for juror fees and defender services. Chairman Hughes' advocacy on behalf of the federal judiciary was further evidenced by his defense of the integrity of the Rules Enabling Act, his opposition to the proliferation of mandatory minimum sentencing legislation, his resistance to the unrestrained expansion of federal court jurisdiction, and his support of legislation to promote expedited, but fair, habeas corpus reform.

Chairman Hughes has zealously displayed his steadfast faith in the judicial process as a protector of individual rights under the Constitution and a guarantor of equal justice for all. His departure later this year will mark the end of a long and distinguished career of public service in the United States

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Congress. His diligence and exceptional leadership have earned him the respect and admiration of all with whom he has served, and he will be sorely missed.

The Judicial Conference takes this occasion to pay tribute and express its most sincere appreciation for Chairman Hughes' many contributions to the administration of justice and his friendship to the federal judiciary.

MISCELLANEOUS ACTIONS

The Executive Committee:

- Approved the financial plans for the fiscal year 1994 Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors appropriations accounts;
- Agreed that previously-approved new bankruptcy and magistrate judgeships would be funded as soon as the judiciary's fiscal year 1994 appropriations act was signed by the President, notwithstanding the fact that a fiscal year 1994 financial plan would not be formally approved. The Committee also requested that, due to declining bankruptcy caseloads in some districts, the courts of appeals examine carefully new vacancies as they occur and determine that each judgeship is essential before replacement judges are sought;
- Declined to grant an exception to the prohibition on reimbursement of relocation expenses, requested by a court seeking to use its own funds, and approved a one-time exception to the relocation reimbursement policy, to allow reimbursement not to exceed \$5000 for relocation of a certified English-language court reporter hired by the District of Puerto Rico;
- Made a technical amendment to a legislative proposal, approved by the Judicial Conference in September 1993 (JCUS-SEP 93, p. 45), which would authorize the Administrative Office to prescribe fees for the development and administration of court interpreter certification examinations;
- Deferred until further notice implementation of a program which would allow judges of the courts of appeals to sit on other appellate

courts from time to time, on an exchange basis, for educational purposes;

- Approved distribution of a letter from the Chair of the Criminal Law Committee to all judges concerning the major provisions of pending crime legislation;
- Agreed to maintain the current reimbursement rate for judges' travel expenses and to review the rate next year;
- On recommendation of the Judicial Resources Committee, approved the pursuit of legislation which would grant to the judiciary the authority to determine the pay cycle for judicial officers and employees;
- Approved a jurisdictional statement of the newly-merged Committee on Security, Space and Facilities; and
- Authorized, subject to Congressional concurrence, the funding of three additional positions in the Court Security Office of the Administrative Office on a reimbursable basis from the judiciary's court security program.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on a number of human resources issues involving the Administrative Office, including the gender and racial diversity within the agency, as well as the following subjects of continuing concern: support for independent counsels and the District of Columbia Public Defender Service; the budgets of the judiciary and the Administrative Office, including funding for the Thurgood Marshall Federal Judiciary Building; Administrative Office organizational changes; the report of the National Academy of Public Administration on financial management within the agency; and a preliminary report on an Administrative Office study of the judiciary's relationships with the Congress. The Committee, which is charged with resolving complaints from the courts about the Administrative Office, noted that it had received no such complaints in over two years.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

LONG RANGE PLAN FOR AUTOMATION IN THE FEDERAL JUDICIARY

As required by 28 U.S.C. § 612, the Judicial Conference approved a fiscal year 1994 update to the *Long Range Plan For Automation in the Federal Judiciary*, which had been developed by the Director of the Administrative Office and endorsed by the Committee on Automation and Technology. The update is comprised of the "Information Resources Management (IRM) Strategic Plan for Automation in the Federal Judiciary" and Functional Strategy Statements for major functional areas of the automation program.

VOICE TELECOMMUNICATIONS PROGRAM

On recommendation of the Committee, the Conference approved two updated guidelines for the management of telecommunications services and equipment. The first, dealing with telephone lines, is a formula-based guideline that does not impose mandatory limits on the authority of courts to choose their telephone systems. In any given fiscal year, if the funding requested by the courts to maintain their current level of local telephone services is greater than the funding approved by the Executive Committee for local telephone services in that fiscal year's financial plan, the formula will be used to distribute the funds. Otherwise, the previous year's actual expenditures will be used as a guide to distribute the funds approved in the financial plan. For purposes of making this calculation, the formula (1.25 switched voice lines per court employee) may be applied on a court-wide basis, and a court may direct in advance the division of funds among its units.

The second guideline deals with non-recurring telecommunications expenses. Previously, three priorities had been established for the distribution of funds for telephone equipment. At this session, the Conference approved a fourth priority, so that the priorities for non-recurring telecommunications now read as follows:

- 1) First priority will be given to the purchase of additional telephone equipment to support new positions.

- 2) Second priority will be given to the purchase of telephone equipment to support office relocations and/or renovations, provided at least 20 percent of the telephone equipment is being relocated and the existing equipment is old electro-mechanical equipment installed prior to the divestiture of AT&T in 1984.
- 3) Third priority will be given to the replacement of existing telephone equipment that is not associated with moves and renovations.
- 4) Fourth priority will be given to the purchase of technologies (such as automated attendant/voice mail systems or telephone line-sharing technologies) that are projected to reduce the cost of telephone services to the court. Approval for these technologies will be granted on a case-by-case basis and will have to be supported by a cost-benefit analysis that clearly shows projected long-term savings to the judiciary. Resultant savings in local telephone services funds will be returned and used to offset potential local telephone services deficits in other courts.

These voice telecommunications guidelines will be published in the *Guide to Judiciary Policies and Procedures*.

AUTOMATION SUPPORT STAFF AND TRAINING CENTERS

The Committee on Automation and Technology considered a two-part resolution from the Seventh Circuit concerning (1) the staffing of courts utilizing locally-developed case management systems as compared with courts utilizing nationally-developed systems; and (2) a study of the use of, and justification for, out-of-court training centers. The Committee declined to take action on the resolution, believing that the first part duplicates existing Judicial Conference policy established in March 1992 (see JCUS-MAR 92, p. 27) and that the second part was already being done. After discussion, the Judicial Conference tabled the first part of the resolution dealing with support for automation systems not developed by the Administrative Office, and tasked the Committee with studying whether Conference policy regarding such systems is being carried out. The second part of the resolution concerning out-of-court training centers was withdrawn.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

TRUSTEE RETENTION OF PROFESSIONALS

Currently, 11 U.S.C. § 327(d) allows courts to authorize trustees to hire themselves or their firms as attorneys or accountants for an estate if it would be "in the best interest of the estate." Recognizing in this provision the possibility of a conflict of interest or a public perception of impropriety, the Bankruptcy Committee proposed an amendment to § 327(d) that would permit the bankruptcy court to authorize the trustee to act as an attorney or accountant for the estate in four specific instances and afford the trustee an opportunity for a hearing on such a motion. The Judicial Conference supported a legislative amendment along the lines of the Committee's proposal and agreed with the Committee that the proposal would be transmitted to Congress at an appropriate time.

CHIEF BANKRUPTCY JUDGES

The Bankruptcy Committee recommended the approval of guidelines for the district courts (1) setting the tenure of chief bankruptcy judges at seven years, with the possibility of reappointment for up to another seven years in special circumstances; and (2) subjecting chief bankruptcy judges to the same disqualifications on the basis of age as the chief district and circuit judges. The Conference tabled both parts of the recommendation.

IN FORMA PAUPERIS

The Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act for Fiscal Year 1994 (Public Law No. 103-121) requires the Judicial Conference to perform a study on the effect of waiving filing fees in chapter 7 cases for debtors who are unable to pay the fees even in installments. The Judicial Conference approved the Bankruptcy Committee's recommendation that the following districts participate in the pilot study: Southern District of Illinois, Eastern District of New York, District of Montana, Eastern District of Pennsylvania, Western District of Tennessee, and the District of Utah. The Conference further approved the following procedures for guidance to the pilot courts:

- 1) Use of a general indigency standard to be applied on a case-by-case basis to determine those debtors eligible for waiver of the filing fee;
- 2) Completion of a form by petitioners requesting *in forma pauperis* status, requiring that they certify that the information provided on the form is accurate and that they are unable to pay the filing fee in installments; and
- 3) Adoption of a procedure that would require the United States trustee to be given notice of and an opportunity to object to each application for *in forma pauperis* status.

In addition, the Conference authorized the creation of eight temporary positions to assist the pilot courts with processing *in forma pauperis* applications.

PLACES OF HOLDING BANKRUPTCY COURT/OFFICIAL DUTY STATIONS

The Judicial Conference has the authority under the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law No. 98-353) to determine the official duty stations of bankruptcy judges and places of holding bankruptcy court. After surveying chief judges of the courts of appeals, the district courts and the bankruptcy courts and after approval by the circuit councils, the Bankruptcy Committee recommended, and the Judicial Conference approved, changes in the following places of holding bankruptcy court:

<u>District</u>	<u>City</u>	<u>Change</u>
Maine	Augusta	Addition
North Carolina (Western)	Shelby	Addition
West Virginia (Northern)	Morgantown	Addition
Mississippi (Southern)	Vicksburg	Addition
Texas (Southern)	Laredo	Addition
Texas (Southern)	McAllen	Addition
Texas (Southern)	Victoria	Addition
Michigan (Western)	Marquette	Addition
Illinois (Central)	Monmouth	Addition
Illinois (Central)	Paris	Addition
Illinois (Central)	Galesburg	Deletion

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Indiana (Southern)	Evansville	Addition
Indiana (Southern)	New Albany	Deletion
Missouri (Western)	St. Joseph	Addition
Arizona	Bullhead City	Addition
Idaho	Twin Falls	Addition
Idaho	Jerome	Deletion
Washington (Western)	Kalama	Addition
Washington (Western)	Kelso	Deletion
Florida (Middle)	Ocala	Deletion
Georgia (Middle)	Americus	Deletion

The Bankruptcy Committee further recommended that thirteen locations currently designated as both places of holding bankruptcy court and official duty stations be deleted as places of holding court, since dual designation is unnecessary. The Judicial Conference approved these deletions, as follows, subject to the approval of the appropriate judicial councils:

<u>District</u>	<u>City</u>	<u>Change</u>
North Carolina (Middle)	Winston-Salem	Deletion
Texas (Eastern)	Beaumont	Deletion
Texas (Western)	Waco	Deletion
Tennessee (Eastern)	Greeneville	Deletion
Tennessee (Western)	Jackson	Deletion
Illinois (Southern)	Benton	Deletion
Arkansas (Western)	Fayetteville	Deletion
California (Central)	Santa Barbara	Deletion
Washington (Eastern)	Yakima	Deletion
Florida (Southern)	Fort Lauderdale	Deletion
Florida (Southern)	West Palm Beach	Deletion
Georgia (Northern)	Newnan	Deletion
Georgia (Northern)	Rome	Deletion

The Conference also approved the Committee's recommendation to transfer the official duty station of the bankruptcy judge in the Southern District of Indiana at Evansville to New Albany.

RECALL OF BANKRUPTCY JUDGES

Section 11 of the regulations governing the *ad hoc* recall of bankruptcy judges is currently inconsistent with 28 U.S.C. § 374 and with the Conference's regulations governing the extended recall of bankruptcy judges and the regulations for both extended and *ad hoc* recall of magistrate judges. The Judicial Conference approved the Bankruptcy Committee's recommendation that section 11 be amended to conform with the statute and the other Conference regulations. Thus, for purposes of computing any travel and *per diem* expenses incurred, the official duty station of a bankruptcy judge recalled on an *ad hoc* basis is the place where the judge maintains the actual abode in which the bankruptcy judge customarily lives.

LEGISLATION

The Judicial Conference approved a Committee recommendation that it restate to the Congress the Conference's opposition to legislation, such as that included in the proposed Bankruptcy Amendments Act of 1994 (S. 540, 103rd Congress), that would amend the federal rules of procedure without following the procedures prescribed in the Rules Enabling Act, 28 U.S.C. §§ 2071-2077. In addition, the Conference recommitted to the Bankruptcy Committee for further study a recommendation regarding the proposed creation of a national bankruptcy review commission.

COMMITTEE ON THE BUDGET

COURT REGISTRY INVESTMENT SYSTEM

The Court Registry Investment System (CRIS) pilot project, begun in 1988, involves fourteen district courts with registry deposits of \$588 million as of September 30, 1993. The Committee on the Budget, reporting that the CRIS system meets or exceeds all expectations, recommended the expansion of CRIS from a pilot project to a voluntary nationwide program. The Judicial Conference approved the recommendation.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report, it received 39 new written inquiries and issued 35 written advisory responses. The Chairman received and responded to 46 telephonic inquiries. In addition, individual Committee members responded to 61 inquiries from their colleagues.

ETHICS REFORM ACT REGULATIONS

On recommendation of the Committee, the Judicial Conference revised its Ethics Reform Act regulations on outside earned income. The revision eliminates reference to Administrative Office "Schedule C" employees in § 2(b)(12) of the regulations, since the agency no longer has employees in Schedule C status.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CAMERAS IN THE COURTROOM

The cameras in the courtroom pilot project, approved by the Judicial Conference in September 1990 (JCUS-SEP 90, pp. 103-104), permits photographing, recording, and broadcasting of civil proceedings in six district and two appellate courts. The project has been monitored and evaluated by the Federal Judicial Center, and was originally scheduled to terminate on June 30, 1994. The Judicial Conference approved a recommendation of the Court Administration and Case Management Committee that the experiment be extended to December 31, 1994, in order to provide the Committee with sufficient time to consider additional data regarding the effect of media coverage on jurors and witnesses. The Committee will report to the Judicial Conference in September 1994.

COMPUTER INTEGRATED COURTROOM SYSTEM

Computer integrated courtroom systems allow participants in a court proceeding "real-time" access to a transcript as it is being reported, enabling them to read testimony immediately after it is given. Such systems are substantially more expensive than other transcription methods because of the increased cost of the equipment and the reporter, who must be more highly skilled. In light of today's tight budgetary climate, on recommendation of the Committee on Court Administration and Case Management, the Judicial Conference disapproved the use of computer integrated courtroom system/real-time reporting systems as a method of recording proceedings in bankruptcy courts.

MISCELLANEOUS FEE SCHEDULE FOR COURT OF FEDERAL CLAIMS

The miscellaneous fee schedules for the district, bankruptcy and appellate courts provide a fee for usage of electronic access to court data and do not exempt federal agencies from such fees (JCUS-MAR 90, p. 21; JCUS-SEP 93, pp. 44-45). On recommendation of the Committee, the Judicial Conference approved a corresponding amendment to the miscellaneous fee schedule for the Court of Federal Claims promulgated under 28 U.S.C. § 1926.

VIDEO-CONFERENCING

The Judicial Conference approved a Committee recommendation to authorize the Middle District of Louisiana to conduct, at no cost to the judiciary, a one-year pilot project for video-conferencing prisoner civil rights and habeas corpus cases. The Conference also endorsed a Committee recommendation that a sunset date of September 30, 1995, be established for all video-conferencing pilot projects.

COURT INTERPRETING BY TELEPHONE

Based upon the successful results of a pilot program on the feasibility of interpreting by telephone, the Committee recommended that the Conference approve the use of basic telephone technology as a method of providing interpreting services in short proceedings such as pretrial hearings,

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initial appearances, arraignments, motions hearings, and probation and pretrial services interviews. A more advanced system, suitable for longer proceedings and trials, requires further development. The Judicial Conference approved the Committee's recommendation.

GOVERNMENT PRINTING OFFICE REQUIREMENTS

Legislation proposed by the executive branch would eliminate the statutorily-established monopoly on executive agency printing held by the Government Printing Office (GPO), which operates under the oversight of the Joint Committee on Printing of the United States Congress. In order to allow the judiciary to take full advantage of the competitive marketplace, the Judicial Conference approved the Committee's recommendation that it seek to have the judiciary included in, and endorse, legislation eliminating the requirement that all government printing be performed by the GPO.

CIVIL JURY FEES

In light of concerns for preserving adequate funding for juror fees, the Judicial Conference referred back to the Court Administration and Case Management Committee, for consideration on the merits, a proposal to address shortfalls in jury appropriations. The proposal would require parties demanding jury trials to pay the jury fees, if they can afford to do so.

COMMITTEE ON CRIMINAL LAW

PRETRIAL SERVICES FORM

The Judicial Conference approved the recommendation of the Committee on Criminal Law to revise the Pretrial Services Notice to Defendant Form.

COMMITTEE ON DEFENDER SERVICES

COST-CONTAINMENT INITIATIVE

On recommendation of the Committee on Defender Services, the Judicial Conference agreed to encourage chief judges of the district courts to

establish district Criminal Justice Act (CJA) committees, consisting of representatives of all agencies and private attorneys involved in the federal criminal justice system. These committees are to propose changes in local rules and practices designed to reduce CJA and other criminal justice costs.

PANEL ATTORNEY COMPENSATION

The Judicial Conference has previously approved an hourly rate of \$75 per hour for the in-court and out-of-court time of panel attorneys in 88 districts. See, *e.g.*, JCUS-MAR 91, p. 18. However, due to lack of funding, increases have been implemented in only 16 districts. Panel attorneys in the remaining districts are paid \$60 per hour for in-court time and \$40 per hour for out-of-court time. To provide these panel attorneys some relief, the Judicial Conference endorsed a Defender Services Committee recommendation that the Administrative Office be authorized to seek approval from the Congressional appropriations committees to use \$2,000,000 from the fiscal year 1994 defender services appropriation to increase the out-of-court hourly compensation of panel attorneys to \$42 in court locations where the Conference has approved a \$75 per hour rate, but where panel attorneys are currently being paid \$40 per out-of-court hour.

DEFENDER ORGANIZATION FUNDING REQUESTS

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, p. 16), the Committee reviewed and approved funding requests for fiscal year 1994 for the Federal Public Defender Organizations in the amount of \$101,466,500; Community Defender Organizations in the amount of \$27,152,000; and Death Penalty Resource Centers in the amount of \$19,239,568.

CRIMINAL JUSTICE ACT GUIDELINES

The Defender Services has been delegated authority to adopt and modify on behalf of the Judicial Conference non-controversial changes to the *Criminal Justice Act Guidelines* (JCUS-SEP 89, p. 16). Pursuant to that authority, the Committee amended CJA guideline 2.27(C) to encourage interim reimbursement of expenses when counsel's costs of duplicating discovery materials exceed \$500.

COMMITTEE ON FEDERAL-STATE JURISDICTION

EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)

Following the recommendation of the Committee on Federal-State Jurisdiction, the Judicial Conference agreed that, in lieu of its September 1990 position on removal of cases under ERISA (JCUS-SEP 90, p. 82), it would propose and transmit to Congress an amendment to 28 U.S.C. § 1445 which adds a new subsection as follows:

- (d) A civil action in any State court may not be removed to any district court of the United States solely on the basis of concurrent federal jurisdiction over a claim under section 1132(a)(1)(B) of Title 29.

GUAM COMMONWEALTH ACT

H.R. 1521 (103rd Congress) would grant commonwealth status to Guam and would provide for a judicial system in Guam, setting forth the proposed judicial relationship between the courts of the United States and the local courts of Guam. Adopting the recommendation of the Ninth Circuit Pacific Islands Committee, the Committee recommended that Article III status for the district judge(s) of Guam be provided, in the event that Congress approves commonwealth status for Guam. The Judicial Conference endorsed this recommendation.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of January 21, 1994, it had received 2,493 financial disclosure reports and certifications for the calendar year 1992, including 1,093 reports and certifications from justices and Article III judges, 289 from bankruptcy judges, 397 from magistrate judges, and 714 from judicial employees.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 1993, through December 31, 1993, it recommended and the Chief Justice approved 97 intercircuit assignments, undertaken by 74 Article III justices and judges.

INTERCIRCUIT ASSIGNMENT GUIDELINES

The Committee, upon review of the guidelines and operating procedures under which it assists and advises the Chief Justice in discharging his statutory responsibilities for intercircuit assignments, determined that the fundamental principles contained in the guidelines remain sound. However, the Committee recommended and the Chief Justice approved, amendments to increase the flexibility of the transfer of judges to courts with heavy caseloads.

COMMITTEE ON THE JUDICIAL BRANCH

JUDICIAL COMPENSATION

The Judicial Conference voted to substitute for its previous policy the following:

It is the policy of the Judicial Conference of the United States:

- that the real compensation of an Article III judge must not be diminished;
- that cost of living adjustments are necessary to achieve that objective; and
- that, in the view of this Conference, such adjustments should take place automatically and annually.

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TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

The Judicial Conference approved the recommendations of the Judicial Branch Committee and amended the "Travel Regulations for Justices and Judges" chapter of the *Guide to Judiciary Policies and Procedures* as follows:

- 1) to provide that judges who do not incur a lodging expense will receive the meals and incidental expense rate applicable to the temporary duty point;
- 2) to encourage judges to use discount airfares such as supersaver and senior citizen fares when the use of discount fares would achieve overall savings to the judiciary; and
- 3) to refer to the use of a government-sponsored credit card, rather than to a specific company.

GARNISHMENT REGULATIONS

The Hatch Act Reform Amendments of 1993 (Public Law No. 103-94) subject the pay of all federal employees to legal process in the same manner as private sector employees. Previously, federal employees' pay could be garnished only to satisfy obligations for alimony or child support. On recommendation of the Judicial Branch and Judicial Resources Committees, the Judicial Conference approved in principle regulations for garnishment of the pay of officers and employees of the federal judiciary which would implement the Act. The regulations will be published in the *Guide to Judiciary Policies and Procedures*.

COMMITTEE ON JUDICIAL RESOURCES

BANKRUPTCY CLERKS' WORK MEASUREMENT FORMULA

After a comprehensive study of the staffing needs of the bankruptcy clerks, the Judicial Resources Committee approved a new bankruptcy clerks' work measurement formula. To enable the formula to be utilized in the equalization efforts (see "Staffing Equalization," *supra* p. 4), the Committee sought and obtained approval of the Executive Committee for its immediate

implementation (in fiscal year 1994) for redistribution purposes only (see "Supporting Personnel Matters," *supra* pp. 4-5). The Judicial Conference approved full implementation of the new formula in fiscal year 1995, with allocation levels based on availability of funds.

BANKRUPTCY APPELLATE PANEL

The Judicial Conference approved a recommendation of the Judicial Resources Committee to increase the grade of the clerk of the Ninth Circuit's Bankruptcy Appellate Panel (BAP) to JSP-15. This puts the clerk of the BAP on par with the clerks of the "small" courts.

CHAMBERS LAW CLERKS

Prompted by the Economy Subcommittee of the Budget Committee and concerns about the grades of career law clerks, the Judicial Resources Committee has initiated a study of law clerk grades and related chambers staffing issues. In the interim, the Committee recommended that a temporary freeze be placed on hiring and promoting chambers law clerks at any grade higher than JSP-13 pending the results of the study, which are expected to be presented to the Conference in September 1994. The Executive Committee approved the Judicial Resources Committee's recommendation for a temporary freeze on promotions (effective at the time of its decision) and on hiring (effective for commitments made prior to February 21, 1994, for law clerks coming on duty in fiscal year 1994) above the JSP-13 level (see "Supporting Personnel Matters," *supra* pp. 4-5). The Judicial Conference endorsed the Executive and Judicial Resources Committees' actions and supported the Judicial Resources Committee's determination to review total chambers staffing complements.

COMMITTEE ON LONG RANGE PLANNING

COMMITTEE ACTIVITIES

The Committee on Long Range Planning reported that it is continuing work on the development of a comprehensive long range plan for the federal court system. It has reorganized into two subcommittees, each reviewing a number of topics, and it anticipates that a draft long range plan will be completed and circulated for comment by August 1994.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

RECALL OF RETIRED MAGISTRATE JUDGES

The Committee on the Administration of the Magistrate Judges System recommended that the introductory statement and section 12(b) of the "Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges" and the introductory statement and section 7 of the "Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of Retired United States Magistrate Judges" be amended to include the statutory requirement that the chief judge of the district court involved consent to the recall of a retired magistrate judge. The Conference agreed to the amendments.

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 Judicial Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

SECOND CIRCUIT

New York, Eastern

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

New York, Southern

- 1) Authorized an additional full-time magistrate judge position at New York City;

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

New York, Western

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

THIRD CIRCUIT

New Jersey

- 1) Increased the salary of the part-time magistrate judge position at Asbury Park from \$30,960 per annum to \$51,600 per annum, and redesignated the official location of the position as Fort Monmouth or Fort Dix; 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

Increased the salary of the part-time magistrate judge position at Abilene from \$10,320 per annum to \$30,960 per annum.

SIXTH CIRCUIT

Kentucky, Western

Authorized the full-time magistrate judges at Louisville, Paducah and Bowling Green, the part-time magistrate judge at Owensboro and the deputy clerk/magistrate judge at Louisville, in the Western District of Kentucky, to serve in the adjoining Middle District of Tennessee in accordance with 28 U.S.C. § 631(a).

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Ohio, Northern

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

SEVENTH CIRCUIT

Illinois, Central

- 1) Authorized an additional full-time magistrate judge position at Danville or Champaign-Urbana;
- 2) Discontinued the part-time magistrate judge position at Rock Island upon the appointment of the full-time magistrate judge at Danville or Champaign-Urbana; and
- 3) Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Indiana, Northern

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

Indiana, Southern

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

Wisconsin, Eastern

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

EIGHTH CIRCUIT

Iowa, Northern

Authorized the full-time magistrate judge at Cedar Rapids and the part-time magistrate judge at Sioux City, in the Northern District of Iowa, to serve in the adjoining Southern District of Iowa in accordance with 28 U.S.C. § 631(a).

Iowa, Southern

Authorized the full-time magistrate judges at Des Moines and the part-time magistrate judges at Council Bluffs and Burlington, in the Southern District of Iowa, to serve in the adjoining Northern District of Iowa in accordance with 28 U.S.C. § 631(a).

NINTH CIRCUIT

California, Central

Authorized an additional full-time magistrate judge position at Los Angeles.

Washington, Western

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

Guam

Authorized a part-time magistrate judge position at Agana at an annual salary of \$20,640, contingent upon the enactment of an amendment to the Federal Magistrates Act that would include the District of Guam within the magistrate judges system.

TENTH CIRCUIT

Colorado

Authorized the part-time magistrate judge at Durango in the District of Colorado to serve in the adjoining District of New Mexico in accordance with 28 U.S.C. § 631(a).

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New Mexico

Authorized the part-time magistrate judge at Farmington in the District of New Mexico to serve in the adjoining District of Colorado in accordance with 28 U.S.C. § 631(a).

Oklahoma, Northern

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

ELEVENTH CIRCUIT

Georgia, Northern

- 1) Converted the part-time magistrate judge position at Gainesville 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.

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

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

The Committee to Review Circuit Council Conduct and Disability Orders (Review Committee) reported that it had studied those recommendations addressed to the judicial branch by the National Commission on Judicial Discipline and Removal. The National Commission was commissioned by Congress in the Judicial Improvements Act of 1990 (Public Law No. 101-650) to study the issues involved in the tenure of an Article III judge (including discipline and removal), to evaluate the advisability of proposing alternatives to current arrangements, and to make its report to Congress, the Chief Justice, and the President.

The Review Committee submitted to the Judicial Conference its recommendations in response to those of the National Commission which were within its jurisdiction. The Conference took the following actions:

- 1) a) Declined to endorse modification of the "Illustrative Rules Governing Complaints of Judicial Misconduct and Disability" (Illustrative Rules) to provide that copies of complaints be sent to the various relevant chief judges only **at the discretion** of the chief judge of the circuit; and
- b) Endorsed modification of the Illustrative Rules so as to permit a judicial council to provide for access by judiciary researchers to confidential materials, except insofar as the council may determine that any disclosure of particular materials would be contrary to the interests of justice or that particular materials constitute purely internal communications outside the official record of a complaint, in order to perform research concerning the implementation of the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c) (the Act), expressly authorized by the Judicial Conference or the Review Committee and under appropriate requirements for shielding the confidentiality of such materials.
- 2) Agreed to urge all circuits and courts covered by the Act to submit to the West Publishing Company, for publication in *Federal Reporter 3d*, and to Lexis all orders issued pursuant to § 372(c) that are deemed by the issuing circuit or court to have significant precedential value or to offer significant guidance to other circuits and courts covered by the Act.
- 3) Directed the Review Committee, in consultation with the Administrative Office, to reevaluate what data is required to be reported under 28 U.S.C. § 604(h) and to formulate and approve specific changes improving the accuracy and usefulness of the data reported.
- 4) Approved the need for reporting of formal orders issued by judicial councils pursuant to 28 U.S.C. § 332 that relate to judicial misconduct and disability (including delay), and directed the Review Committee, in consultation with the Administrative Office, to formulate and approve a system for the reporting of these orders.

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- 5) **Endorsed modification of the Illustrative Rules to give effect to the substance of the Commission's recommendation that the Act's confidentiality provisions not be thought to bar chief judges from seeking staff assistance or consulting with other judges in the process of complaint disposition.**
- 6)
 - a) **Agreed to urge each circuit council that has not already done so to publish its rules under the Act in United States Code Annotated;**
 - b) **Agreed to urge that a reference to the Act and the circuit council's rules implementing the Act be included in the local rules of each district court; and**
 - c) **Agreed to urge each circuit council to consider other ways by which to increase awareness of and education about the Act among lawyers, judges, court personnel, and members of the public.**
- 7) **Agreed to recommend to the individual circuits and courts covered by the Act that they consider whether and what committee(s) or other structures or approaches, at the district or circuit level, might best serve the purpose of assuring that justified complaints are brought to the attention of the judiciary without fear of retaliation.**
- 8) **Charged the Review Committee with the responsibility of considering whether and to what extent to alter the language of the commentary to Illustrative Rule 1 relative to the Commission's recommendation regarding delay.**
- 9) **Endorsed modification of the Illustrative Rules so as to give effect to the substance of the Commission's recommendation to include as an additional ground for chief judge dismissal that allegations have been shown to be plainly untrue or incapable of being established through investigation.**
- 10) **Endorsed modification of the Illustrative Rules to give effect to the substance of the Commission's recommendation "that the Illustrative Rules be amended to permit chief judges and judicial councils to invoke a rule of necessity authorizing them to continue to act on multiple-judge complaints that otherwise would require multiple disqualifications".**

- 11) Endorsed modification of the Illustrative Rules to provide (a) that if a chief judge or circuit council dismisses, solely for lack of jurisdiction under § 372(c), non-frivolous allegations of criminal conduct by a federal judge, the order of dismissal shall inform the complainant that the dismissal does not prevent the complainant from bringing such allegations to the attention of appropriate federal or state criminal authorities; and (b) that where the chief judge or circuit council dismisses, solely for lack of jurisdiction, allegations of criminal conduct that were originally referred to the circuit by a Congressional committee or member of Congress, the chief judge or circuit council shall notify the Congressional committee or member that the judiciary has concluded that it lacks jurisdiction under § 372(c).
- 12) Approved in principle the promulgation of a uniform policy on the limitations a judicial council should impose on a judge who is personally implicated in the criminal process, and directed the Review Committee, or another committee of the Conference, to draft such a policy for subsequent approval by the Conference.
- 13) Endorsed in principle the Commission's recommendation that there be "informal meetings of high-level representatives of the three branches of the federal government to promote oversight and understanding of judicial discipline, disability, and impeachment" and charged the Review Committee with the responsibility to study further and recommend the best way to implement the Commission's recommendation.
- 14) Endorsed, in principle, the recommendations of the National Commission:
 - a) that Illustrative Rule 17(a), providing for the public availability of sanitized chief judges' orders dismissing or concluding complaints, be uniformly adopted and adhered to by all circuits and courts covered by the Act;
 - b) that the provisions of the Illustrative Rules regarding confidentiality be adopted and adhered to by all circuits and courts covered by the Act;
 - c) that chief judges' orders dismissing or concluding complaints set forth the allegations of the complaint and the reasons for the disposition as required by Illustrative Rule 4(f);

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- d) that Illustrative Rule 4(b), which provides that a chief judge may make a limited inquiry into the allegations of a complaint, be adopted and adhered to by all circuits and courts covered by the Act; and
- e) that the Administrative Office routinely provide the House Committee on the Judiciary with all final orders and accompanying memoranda required by the Act to be publicly available.

The Conference noted that all circuits and courts covered by the Act already have in place, or are in the process of adopting, the practices enumerated in subsections a through d above. The Conference further noted that it is the present practice of the Administrative Office to provide the House Committee on the Judiciary with all final orders and accompanying memoranda required by the Act to be publicly available. Accordingly, national uniformity already has been established, or the recommendations of the National Commission otherwise complied with, as to each of these matters. Further action by the Conference is therefore unnecessary.

The Judicial Conference also charged the Review Committee with preparing the modified Illustrative Rules and/or commentary referred to in items 1(b), 5, 9, 10, and 11 above.

In addition, the Review Committee recommended that a committee of the Conference (1) monitor the efforts of the respective circuits and courts in studying judicial misconduct involving bias based on race, sex, sexual orientation, religion, or ethnic or national origin, including sexual harassment, and the extent to which the Act and other existing mechanisms and programs, including judicial education, are adequate to deal with it; and (2) consider and recommend such changes in policies, procedures, and programs as are warranted. Conference review of this recommendation was deferred pending consideration by the Committee on Court Administration and Case Management, which is monitoring gender bias studies underway in the courts.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

OFFERS OF JUDGMENT

In September 1993, the Judicial Conference agreed to support in principle the substance of proposed legislation, the "Civil Justice Reform Act of 1993" (S. 585, 103d Congress), dealing with offers of judgment (JCUS-SEP 93, p. 43). The proposal would provide limited attorney fee remedies where a party rejects an offer that proves to be more favorable to it than the eventual judgment. On recommendation of the Committee on Rules of Practice and Procedure that the endorsement in principle of the offer of judgment proposal in S. 585 is premature, the Judicial Conference withdrew its previous position and agreed to take no position on the legislation at this time.

COMMITTEE ON SECURITY, SPACE AND FACILITIES

UNITED STATES COURTS DESIGN GUIDE

The Judicial Conference approved a Committee on Security, Space and Facilities recommendation that certain technical, editorial, and substantive changes be made to the *United States Courts Design Guide*. These changes involve reduced lighting and acoustical standards in some areas of courthouses, narrative that more clearly addresses and encourages the use of existing court facilities unless functional space requirements of the courts cannot be met, and changes in library space standards requested by circuit librarians. Other changes, proposed by the Independent Courts Building Program Panel, reduce requirements for doors that require locks, revise language in order to reduce the costs of constructing parking for service vehicles, and more specifically define the aesthetic design of federal courthouses to avoid exceeding the *Design Guide* standards. In addition, technical changes submitted by the General Services Administration (GSA) were made.

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JUDICIARY PARKING POLICIES

On recommendation of the Committee, which was concerned about cost containment, the Judicial Conference approved the following revision to the judiciary's parking policies (new language is shaded):

Category B-2-b: Parking for employees who work unusual hours.

Parking spaces may be provided for those employees who routinely work unusual hours, particularly late at night or at other times when normal street activity has dissipated and security comes into question *only if a court reprograms funds from its operating budget to pay for the spaces or an employee chooses to reimburse the judiciary for the space pursuant to Section D of the judiciary parking policies.* This category does not include employees on flexitime or overtime schedules. Staff who work after the close of the normal business day should utilize spaces by other assigned space holders once those individuals leave for the day. Security or GSA policies may determine accessibility of spaces after the close of the normal work day. Nonetheless, any space request for this priority category must include a narrative statement explaining why staff cannot move their vehicles into government assigned spaces once other assigned space holders have left for the business day.

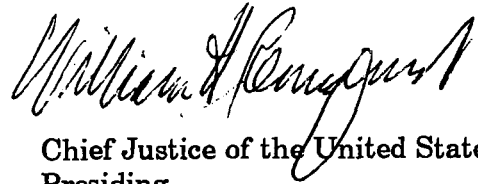
The Judicial Conference agreed to apply the amended policy prospectively only, *i.e.*, to all requests based on unusual working hours received subsequent to its approval. The parking policies will be published in the *Guide to Judiciary Policies and Procedures*.

FUNDING

All of the foregoing recommendations which require the expenditure of funds for implementation were approved by the Judicial 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.

A handwritten signature in black ink, appearing to read "William H. Rehnquist". The signature is written in a cursive style with a large, sweeping initial "W".

Chief Justice of the United States
Presiding

May 23, 1994