EC030290

United States District Court
Eastern District of Missouri
319 U.S. Court House & Custom House
St. Louis, Missouri

John F. Nangle
Chief Judge

(314) 539-3603
FTS 262-3603

March 2, 1990

Mr. Robert E. Feidler
Legislative and Public Affairs Office
Administrative Office of the United States Courts
Washington, D.C. 20544

Re: Senate Bill 2027

Dear Bob:

I hesitate to burden you with too many facts at this time. However, I did want to share with you the comments of one of our most illustrious members of the District Bench, Oren Harris of Arkansas. Accordingly, I have enclosed a copy of his letter of February 28 which I just received concerning 2027.

Judge Harris was a very respected leader in the House of Representatives for 26 years, has been a member of our Judicial Conference and was a long time member of our Advisory Committee on Civil Rules as well as other committees. Although a Senior Judge, and a young 86 years old, he still carries a full load and outworks most of us "Junior" Judges. I did believe that his concerns regarding the Federal Rules of Civil Procedure were particularly important. I also thought that his views would be seriously considered by any Senator or Congressman who has knowledge of Judge Harris' remarkable background.

Sincerely,

John F. Nangle

JFN:bar
Encl.

CC: Members of the Executive Committee
Mr. L. Ralph Mecham
Ms. Karen K. Siegel

United States District Court
Eastern & Western Districts of Arkansas
P. O. Box 1733
El Dorado, Arkansas 71731

Oren Harris
Senior Judge

February 28, 1990

Honorable John F. Nangle, Chief Judge
United States District Court,
Eastern District
319 U.S. Court House & Custom House
St. Louis, MO 63101

Re: Senate Bill 2027
The Civil Justice Reform Act of 1990

Dear Jack:

First I want to thank you for calling to our attention the above-identified proposed reform act. I observe at the outset that it is designated as bipartisan in both the senate and house. Then it states that it is the result of a Brookings Institute Task Force (comprised of lawyers, law professors and "former judges") who had considerable input in the proposed legislation.

I find myself handicapped towards commenting on the proposal since it appears to be based on suggestions of certain forces that apparently propose to restructure and completely rewrite Civil Judicial Procedures and Rules.

Obviously I, together with many other judges, would be unalterably opposed because notwithstanding the statement of Senator Biden at the time of introduction of the proposed Civil Justice Reform Act of 1990, we cannot possibly know the effect of such a proposal in our judicial system.

Your executive committee in my judgment should establish an expert committee of judges with facilities made available to undertake a study of just how far-reaching the proposal could be. As an example, the purpose of the bill is to "promote the just, speedy and inexpensive determination of civil actions," which is what Rule 1 of the Federal Rules of Civil Procedure provides.

Then, began with what is referred to as Section 1. Short Title, under which the Congress find that--etc., etc., etc." There follows an excess of thirteen pages of what apparently would be to produce an act that would replace Rule 1 of the Civil Judicial Procedure and Rules.

Honorable John F. Nangle
February 28, 1990

page 2.

My further comment would be to suggest hat you and the other members of the committee have what appears to me an impossible task to undertake any kind of development that would be feasible to our Civil Judicial Procedure. I wish you the very best in your undertaking.

Sincerely yours,

Oren Harris

OH/v

cc: Honorable G. Thomas Eisele
Honorable H. Franklin Waters
Honorable J. Smith Henley
Honorable Richard S. Arnold

TESTIMONY OF THE JUDICIAL CONFERENCE OF THE UNITED STATES ON THE BILL S. 2027, THE "CIVIL JUSTICE REFORM ACT OF 1990"

Presented by The Honorable Aubrey E. Robinson, Jr.
Chief Judge, United States District Court
for the District of Columbia

INTRODUCTION

Mr. Chairman, Members of the Committee, I am Aubrey Robinson, Chief Judge of the United States District Court for the District of Columbia. I appear before you today to present testimony on behalf of the Judicial Conference of the United States, the policymaking body of the Judicial Branch. Given the preliminary nature of this hearing and the relatively short time we have had to prepare for it, my remarks will be general in nature but I believe will present an accurate view of the initial reaction of the Judiciary to S. 2027. I ask the Committee to afford other Conference witnesses the opportunity to appear at later hearings on the bill to further detail our suggestions and concerns.

It may be helpful if I briefly review the actions taken by the Conference since introduction of S. 2027 a little over a month ago. Normally, Conference policy is set after referral of an issue to the appropriate committee for study and a report, followed by full Conference action at its semi-annual session. However, in recognition of the substantial impact this

legislation would have on the Federal courts, if enacted, the Executive Committee agreed to assume responsibility, by constituting a subcommittee consisting of its four district judge members to prepare the Judiciary position on S. 2027 and to prepare a recommendation for the full Judicial Conference of the United States.

The subcommittee consists of District Judges Robert Peckham of the Northern District of California, John Nangle of the Eastern District of Missouri, Sarah Barker of the Southern District of Indiana, and myself. Judge Peckham was named to chair the committee. I might add that Chairman Biden cited and quoted Judge Peckham extensively in his floor statement introducing S. 2027. It had been our hope that Judge Peckham and the other members of the committee could be here today, but my colleagues found themselves in the midst of lengthy trials which they could not leave on such short notice. However, the testimony I am about to give represents our joint views. I might also add that the regularly scheduled semi-annual meeting of the full Judicial Conference will take place next week. I can assure the Chairman that this legislation will be on our agenda for further review and discussion because it is clear that the comments of all our colleagues must be considered before a final Judicial Conference position can be established.

DISCUSSION OF THE LEGISLATION

Mr. Chairman, ~~what follows in my testimony is both high praise and a strong expression of concern~~.

The Judiciary applauds your interest in the subject of civil justice in the Federal courts. In your actions creating the task force to review civil justice and your subsequent introduction of a bill, you have reflected an understanding of the importance of the civil justice system, and you have reemphasized your commitment to the goal of greater justice. For ~~too~~ many years the civil portion of our dockets has ~~suffered~~, ~~mostly~~ for reasons ~~beyond~~ our control. The criminal ~~side~~ of our ~~docket, which is controlled by~~ the Speedy Trial Act, ~~and~~ is fueled by the growing drug caseload, has ~~grown and grown until~~, in many districts, the timely and ~~thoughtful handling~~ of civil cases ~~has been imperiled~~. There is no question that several of our Federal courts need more help -- the issue is how best to provide that help.

In discussions of this bill with my colleagues over the past week, two themes have emerged. The first is almost a truism -- we share your goal of enhancing and perfecting the delivery of civil justice. We can agree with many of the principles ~~your bill has set forth~~: early involvement by a judicial officer to control the pace and cost of cases; utilization of status conferences; setting of target dates for completion of various pretrial stages of a case; ~~staged~~ discovery; close supervision of

discovery; prompt decisions on discovery; the development and use of computerized systems to monitor the progress of cases; increased education of judges, magistrates, clerks of court and other court personnel; experimentation with alternative forms of dispute resolution; and case management generally. Indeed, most Federal district courts are now applying many of these principles and other creative and innovative case management principles and applying them successfully. Our evolving case management methods are the result of years of experimentation, study and review of what works, and we continue to struggle to progress and be innovative in our management techniques. The Federal judges of this country are ~~second to no one~~ strong in our desire and in our efforts and, ~~frankly,~~ our knowledge of what is needed to run our courts to maximize the efficient delivery of justice.

The second theme is that ~~which I referred to earlier when I indicated that~~ strong concerns have ~~also~~ arisen over the specific means your bill has chosen to arrive at our common goal. ~~What I say next is~~ not meant to be confrontational. But, rather, it represents my sincere and honest effort to share with this Committee the reaction of the ~~overwhelming~~ preponderance of Federal judges familiar with this bill. ~~Simply put, they don't like it.~~ They do not believe it will achieve its stated objectives, and they fear that it may actually have a negative effect on the handling of civil litigation. The proposed diminution of the role of magistrates ~~is insulting to them,~~ would

reverse improvements made in civil case management through the increased use of magistrates, and would result in a vastly greater need for more life-tenured judges.

In addition, there has been a strong reaction that the bill is extraordinarily intrusive into the internal workings of the Judicial Branch. ~~Whether~~ the gray areas of judicial independence and separation of powers would be breached by this bill must ~~await later~~ determination. Many thoughtful Federal judges are very, very uneasy about the signals this bill sends of legislative ~~interference~~ -- albeit well-meaning -- in the judicial arena and what it portends for the future. ~~Our concerns~~ reflect our ~~most heartfelt~~ fear for the future independence, vigor and integrity of the Federal judicial system.

THE PROBLEM AND SUGGESTED SOLUTIONS

Mr. Chairman, I and the entire country applaud your efforts and that of the Judiciary Committee in repeatedly tackling the seemingly endless problems caused in recent years by the scourge of drugs and crime. This committee has responded with major legislation designed to protect the public and yet assure defendants of their full constitutional rights. No one knows better than this Committee that those laws have had a tremendous impact on the resource needs of the entire justice system -- not just the criminal justice system. The impact on the Federal courts has been dramatic and threatens to change the

entire nature of the Federal judiciary. More and more Federal district courts are becoming virtually criminal courts -- to the detriment of the handling of civil cases.

With the imposition of the Speedy Trial Act, sentencing guidelines, mandatory minimum sentencing, and the series of anti-drug and anti-crime laws enacted since 1984, something had to give. It has been the civil justice system that has suffered the most. Any solution must look to the entire business of the courts, and not just civil cases in isolation.

There are answers. They are not ~~easy~~ answers. First and foremost, if this committee wants to take a meaningful step toward resolving the perceived crisis facing the Federal civil and ~~criminal~~ justice systems, you must process a proper omnibus judgeship bill. We need it now and we need it badly. In addition, the unprecedented number of judicial vacancies (63 currently) must be filled promptly.

The last judgeship bill was passed by Congress in 1984. We have submitted requests for additional judgeships in previous years and have now pending before the Congress our request for 76 additional Federal judgeships - 60 of them at the district court level. In reality, given the spurt of drug cases in the past year, the request substantially understates our real need. Tentative data we have provided this committee suggest that we

INSERT 2

X Again, we should welcome the opportunity to furnish detailed justification for a more precise number of additional judgeships and where they are most urgently needed.

actually have a need for almost 100 new judgeships. Of these, 13 would go to Texas districts which are currently inundated with drug, other criminal and asbestos cases. The Chief Judge of the Southern District of Texas estimates that, without prompt relief, by the end of this year there will be no civil cases heard in that district populated by approximately 5 million people. The situation is nearly as dramatic in several additional districts.

The other obvious solution -- and one which would save the Government millions of dollars -- is to modify or eliminate diversity jurisdiction from the Federal courts. The official position of the Judicial Conference is that diversity should be eliminated. ~~This is~~ probably not politically feasible. But ~~there~~ are many steps that fall short of full elimination which would have a dramatic, immediate, positive impact and upon which all reasonable parties should be expected to agree. By way of example, if you proposed that the floor amount in controversy to get a case based on diversity of citizenship into Federal court be set at $100,000, and that figure were indexed for inflation, you would eliminate thousands of cases (almost all of them contract cases) from the Federal system. These cases are based on State law and should be handled by State courts. Since very few personal injury cases would be affected by this formulation, it might be anticipated that the trial bar and those of my colleagues who genuinely enjoy the challenges associated with large diversity tort cases would join in this modification.

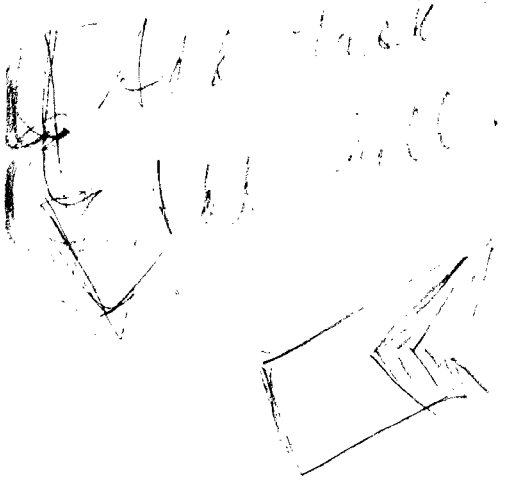
With the above two ~~"fixes"~~ proposals, and adequate funding for education, automation, and experimentation with different forms of case management developed and implemented by the Judiciary, we can meet the caseload challenges of the rest of this century.

CONCLUSION

We applaud the sponsors of S. 2027 for their demonstrated sincerity and sensitivity to the demands placed on our civil justice system. We caution that the solutions adopted be of a nature that will not impose even greater costs and burdens on the courts.

We do not come before you today saying we have all the answers or that we couldn't do a better job. The implementation of various forms of case management and the education of our judges and support personnel in this area have proven invaluable. We will continue full speed ahead in devising better mechanisms to handle civil cases within the omnipresent constraints of time and budget. We take pride in what we have done and believe that the closing of nearly one million cases in the Federal curts last year and the opening of over a million new cases reflects that the Judiciary has, at least in some small way, learned the lessons of case administration. Please let us continue to work out our problems. If you provide us with sufficient resources,

of manpower and money, we can deliver the civil justice system you demand.



K. Siegel

JW

Judges Bristle at Biden's Civil Reform Plan

Package Ignores Criminal Caseload, Jurists Charge

BY ANN PELHAM

The lawsuit against New York Air was filed in December 1985, just two months after the airline refused to let a disgruntled passenger off a plane that had been sitting on the runway at National Airport for more than three hours. By June 1987, after extensive discovery, both sides had moved for summary judgment.

But not until Jan. 31, 1989, more than a year and a half later—and three years after the lawsuit was filed—did U.S. District Judge John Garrett Penn issue his opinion siding with defendant New York Air—which by then had gone out of business.

Such a long delay, now usually known only to frustrated litigants afraid to speak out, would be made public as part of a civil judicial reform package now on a fast track through the Senate.

Sponsor Joseph Biden Jr.(D-Del.), chairman of the Senate Judiciary Committee, has already lined up support from key legislators as well as almost every interest group that would be affected, from insurance companies to plaintiffs lawyers to civil-rights activists.

They all agree that civil litigation takes too long and costs too much—and that judges must take tighter control of their cases.

"We're saying to the judges that they've got to be managers—and they can use any tool that they can get everybody [in the district] to agree on," says Bill Wagner of Tampa, Fla.'s Wagner, Cunningham, Vaughan & McLaughlin and the former president of the Association of

SEE CIVIL, PAGE 18

Bill Wagner: Judges must learn to manage caseloads efficiently.

Judges Greet Court Reform Proposal With Dismay, Anger

CIVIL FROM PAGE 1

Trial Lawyers of America (ATLA).

But the powerful push for the proposal has left the federal judges reeling. With many districts swamped under a heavy criminal caseload because of tougher drug laws and stepped-up drug prosecutions, a drive for civil reform seems to many judges poorly timed, at best.

"They're out of touch with the real world," says one judge bitterly. "We were never consulted at all."

Late List

Under Biden's proposal, each district would have to develop its own plan to limit discovery and set firm trial dates, with simple cases on a faster track than complex ones. Four times a year, the courts would publish a list of motions pending for more than 30 days—with the names of the tardy judges alongside. *(See the accompanying box, "Highlights of S. 2027.")*

"There's got to be some order to this system," says Mark Gitenstein of the D.C. office of Chicago's Mayer, Brown & Platt, a former Judiciary staff director for Biden who headed a task force that studied the problem at the senator's behest. "Right now the lawyers are running [the system], not the judges."

But judges point out that districts particularly hard hit by drug cases, like those along the southern border and in large urban areas, have been forced to put civil cases at the back of the line, with a wait of three years for a simple case not uncommon.

"If I don't get more judges in the next two to three years [to help with drug cases], we'll just have to say adios to civil

RUSS CURTIS

Judge Robert Peckham supports some case-management concepts.

cases," predicts Chief Judge Lucius Bunton of the U.S. District Court for the Western District of Texas.

The increase in prosecutions has left few areas untouched. Diana Murphy, a federal district judge in Minnesota and president of the Federal Judges Association, says she had to recess a civil jury trial in November to handle a criminal case.

"Since then, it's been one criminal trial after the next, and the lawyers and parties in the civil case are still out there dangling," says Murphy, who is polling the association's executive committee about whether to take a position on the bill. Personally, she was upset by the proposal.

"I didn't know whether to laugh or cry—I was so depressed when I read it," says Murphy. "Senator Biden is obviously an experienced, able senator, but this indicates such a lack of understanding of what life is like in the federal courts today."

Judicial Concern

Even judges less affected by drug prosecutions are concerned about the Biden approach. They say Congress is once again impinging on the judiciary's independence and trying to micro-manage the courts.

"We have no problem with the concept of case management," says Chief Judge Robert Peckham of the U.S. District Court for the Northern District of California and an advocate of case-tracking and other tools to advance the docket. "The problem is with the detail of the bill."

Judges must already comply with the deadlines for criminal trials set by the Speedy Trial Act, which took effect in 1979, and with the Federal Sentencing Guidelines, which the Supreme Court upheld in early 1989. Congress has also included mandatory minimum sentences in many recently passed drug provisions.

Adding to the judges' consternation is Biden's rush to move civil reform. The first committee hearing is set for March 6, a full week before the mid-March meeting of the Judicial Conference, the governing body of the judiciary and usually the voice of that branch on legislation.

The importance of the bill, though, prompted the group's leaders to pick a witness to represent judges at the hearing—even though there hasn't been time to agree on an official position. Chief Judge Aubrey Robinson Jr. of the U.S. District Court for the District of Columbia will testify March 6.

Whatever Robinson says, it will be clear from the outset that the judges are not speaking with one voice on this issue. Judge Richard Enslen of the Western District of Michigan is flying in from Kalamazoo to testify in favor of the legislation.

Some judges contend that the quickly scheduled hearing snubs a group set up by Congress to recommend court reforms. The Federal Courts Study Committee, a panel of legislators, judges, and others, is due to make its final report April 2.

SEE CIVIL, PAGE 19

Judge Diana Murphy: Biden's bill reveals "lack of understanding."

CIVIL FROM PAGE 18

But the realists among the judges swallow their pride, frustration—and even anger—in hopes of winning a seat at the negotiating table.

"It is a very detailed bill that affects quite a number of procedures," says Chief Judge Charles Clark of the U.S. Court of Appeals for the 5th Circuit and chairman of the Judicial Conference's Executive Committee. In order to craft a quick response, Clark appointed the conference's first ad hoc committee, headed by Judge Peckham. "We hope the judiciary can make some constructive comments."

The judges, though, start out at a disadvantage. Biden has been working for two years to get diverse interests to back civil reform.

In 1988, he set up, under the auspices of the Brookings Institution and his own Foundation for Change, a 36-person task force that met six times and issued a report, "Justice for All," in late 1989. Most of that proposal is now incorporated in the legislation, which has the enthusiastic support of Sen. Strom Thurmond (R-S.C.), ranking minority member of the Judiciary panel.

Even the judiciary's complaints were anticipated; Biden included on the task force four former federal judges now in the private sector.

"I'm sure it's causing some consternation among my former colleagues," offers task force member Frank McFadden, a former chief federal judge in Alabama and now general counsel of Blount Inc. "Federal judges don't like to be told what to do by anybody."

And that can include colleagues who offer advice. Confidential tallies are already kept of which judges have had motions pending for more than 60 days, so chief judges know which members of their districts are slow.

But most chief judges are reluctant to chastise a fellow judge either for slow decision-making or for a poorly organized docket.

If they do nag a colleague, the criticism can be ignored. Federal judges are appointed for life, and a chief judge has no power over other judges—other than to withhold new assignments from a judge with a serious backlog. This "sanction" simply means more work for other judges who have managed to keep their dockets current.

But reluctance on the part of judges to police each other has left an opening for Congress—and Biden is rushing to fill it.

Head Start

Key House members appear to be more cautious, and traditionally the judges have received a sympathetic reception from Rep. Robert Kastenmeier (D-Wis.), who chairs the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice. But Kastenmeier, Judiciary Committee Chairman Jack Brooks (D-Texas), ranking minority member Hamilton Fish Jr. (R-N.Y.), and others have introduced the Biden bill in the House.

As for the Senate Judiciary panel, staff members insist that senators are open to suggestions from the judges and plan a second hearing if necessary.

"No one's interested in ramrodding it through," says one staff member.

But the bill has a head start because well-placed members of the task force stand ready to endorse what is essentially their product.

"It is important to retain access to the courts—we need the judiciary so badly to hear the kinds of cases we bring," says Marcia Greenberger, a member of the task force and executive director of the National Women's Law Center, which focuses primarily on discrimination cases. "People we represent don't have any other remedy or forum."

Another member of the task force, Jamie Gorelick of D.C.'s Miller, Cassidy, Larroca & Lewin, says that having a case that doesn't move forward is "demoralizing and distorting to the process." She adds, "If you don't have a trial date on the schedule, there's nothing lighting a fire under the parties to encourage settlement."

Supporters emphasize that the legislation gives each district a chance to develop its own approach. Only if a district does not come up with a management plan is a "backup" plan imposed.

"This does not say you shall try every case in *X* number of days," says Gitenstein, the former Biden aide. "If we had given them much more flexibility, the proposal would have been mealy-mouthed." Many in the group wanted more specificity, with set limits on the length of discovery applied nationwide, says Gitenstein.

Many federal districts already have in place time limits and other case-management concepts suggested in the Biden bill. In the Middle District of Georgia, for example, local rules limit discovery to four months, notes Judge Robert Hall.

But court administrators in Washington have traditionally done little central record-keeping of these local management rules, which makes it harder for judges to use that as evidence to fight the proposal.

Statistics kept by the Administrative Office of the U.S. Courts show 14 months as the median time for a case to get to trial once a response is filed. When settlements and other dispositions are also included, the median drops to nine months.

But those reasonably positive statistics mask the problem, according to many on the task force.

"For some complex cases, involving toxics or airline crashes, 14 months is not enough," says Wagner, the former ATLA president. "Yet when I have a personal-injury case involving two cars, I ought to be able to get to trial in six months."

Stephen Middlebrook, vice president of Aetna Life and Casualty, points to "huge backlogs and tremendous delays," which cause his industry to spend more money on litigation than it does on actual claims—once medical-malpractice cases are excluded. "The process is not tightly controlled, and it has run amok."

Some judges agree with Middlebrook and are ready to accept the Biden bill without protest.

"We have made it horribly expensive to litigate," says U.S. District Judge Carl Rubin of the Southern District of Ohio. Although he gripes about additional paperwork, Rubin concludes, "What the hell, let's try it. If it doesn't work, it can be changed."

Supporters for the bill are likely to share Rubin's philosophy favoring a current docket. "It's not hard to keep things moving if you get tough," Rubin says. "The lawyers may not like you, but in 19 years, I'd say I've not granted 25 continuances."

Among the "rocket docket" set is Chief Judge Bunton, in Western Texas. He even offered to take over lagging civil cases from slower colleagues—and got 45 or 50. "I got rid of them," says Bunton, who recently finished a contract dispute trial in three days—by going until 10 p.m. one night and till midnight another.

"You shorten trials if you have longer days," says Bunton. "I've never had a case go into the third week in 10 years on the bench."

But for every judge who keeps a rocket docket, there seems to be a colleague at the other end of the spectrum. Judge Penn's 18-month review of relatively simple summary-judgment motions in the New York Air case was but one of many times he was slow to make a decision.

This time, the delay did not go unnoticed upstairs in the courthouse, where a panel of the U.S. Court of Appeals for the D.C. Circuit last month heard oral argument in the appeal by the passenger, James Abourezk, a former Democratic senator from South Dakota. He claimed false imprisonment and sought damages, a novel argument never before raised in the District in an airline dispute.

The appeals court upheld Penn's ruling against Abourezk. But the three judges acted at what amounted to breakneck speed, issuing the opinion in properly printed form just two weeks after the Feb. 2 oral argument. (A more typical lag time between argument and opinion is two months.)

The near record turnaround seemed intentional—and designed to underscore Penn's tardiness. □

Highlights of S. 2027, Proposed Federal Civil Reforms

- Each District Court would have to develop a case-management plan within a year. The chief judge would appoint a committee to draft the plan, with representatives from the bench, the bar, and the public. The plan would become part of the local rules.
- If a district failed to enact a plan, a model plan, to be developed by the Judicial Conference and the Federal Judicial Center, would be imposed.
- Each plan would have to include a system for tracking cases, with three or more tracks separating simple cases from complex ones. Designation would be based on number of parties, number of claims and defenses raised, difficulty of legal issues, and complexity of subject matter.
- Initial track assignment would be handled by the clerk of the court or a designated staffer. Lawyers for parties could suggest a different track; disputes would be resolved by the judge within 30 days.
- For each track, the plan would suggest presumptive time limits for completion of discovery. Judges would also be required to set early, firm trial dates.
- An initial conference, presided over by a judge, not a magistrate, would be required within 45 days of the first responsive pleading. At that time, the judge would set a discovery schedule, dates for filing of and hearings on pretrial motions, and, except for complex cases, the trial date (for a specific day, week, or month). The judge would also have to determine then whether to involve a magistrate in the case and, if so, the magistrate's tasks.
- Each District Court would have to offer litigants alternative dispute resolution, including mediation, arbitration, a mini-jury trial or a summary jury trial, and early neutral evaluation.
- Each District Court would also be required to take an inventory of its case backlog and to develop a plan for reducing the backlog.
- Each District Court would be required to issue a quarterly report on each judge's caseload. The report would list all motions pending before each judge for more than 30 days, with the age of motions marked in 30-day increments. The report would also list, for each judge, the number of written opinions issued, the number of bench trials, and the number of jury trials.

United States District Court
for the District of Columbia
Washington, DC 20001

Aubrey E. Robinson, Jr.
Chief Judge

March 1, 1990

MEMORANDUM TO ALL: UNITED STATES JUDGES
UNITED STATES MAGISTRATES

SUBJECT: Legislative Contacts

As Chairman of the Legislative Group of the Judicial Conference, two issues have come to my attention about which there may be some confusion: first, how best to have your ideas that might require Congressional action considered by the Conference, and, second, how to best conduct communications with the Congress.

The Judicial Conference has a well-developed committee system for receiving ideas, formulating Judiciary policy and then presenting this to the Congress. The committee system and the subsequent deliberation by the Conference are designed to ensure that policy comments of the Judicial Branch represent the fully considered views of the Judiciary. By memorandum of January 30, 1990, Director L. Ralph Mecham sent you a list of members and the jurisdiction of each of the Judicial Conference committees. I urge you to take full advantage of the Conference processes better to enable your ideas to be received and considered in the formulation of Judicial Conference policy.

In your contacts with a Member of Congress or Congressional staff on an issue relating to the Judiciary you should feel free to give your best counsel. In formulating your advice, you might wish to consider what, if any, position the Judicial Conference has taken on the issue and whether the Conference or one of its committees is presently "working" the issue. To determine this you can contact either Karen Siegel, in the Office of the Judicial Conference Secretariat, or Bob Feidler, the Legislative and Public Affairs Officer. Both are located at the Administrative Office and would be pleased to be of assistance both on the substantive issue and also with helpful hints on how to best deal with a particular inquiry.

It has also proven helpful to the Legislative Group and Mr. Feidler for judges and other court personnel to notify us of these contacts and the result. To the extent that you are able to pass along this information it is appreciated and often enables us to get a clearer picture of how issues and concerns are developing.

Again, I urge all judicial personnel to utilize the established Conference mechanisms for developing judicial policy and presenting it to the Congress. When you receive Congressional inquiries, respond promptly and forthrightly, but do take the time to determine if there is an extant judiciary policy on the issue and to learn the complete context of the question and how to best answer these inquiries.

Aubrey E. Robinson, Jr.

cc: Circuit Executives
Federal Public and Community Defenders
District Court Executives
Clerks, United States Courts
Chief Probation Officers
Chief Pretrial Services Officers
Senior Staff Attorneys
Librarians