OWEN M. PANNER
UNITED STATES COURT HOUSE
PORTLAND, OREGON 97205-3078

May 25, 1990

Honorable Diana E. Murphy
670 US Courthouse
110 S. 4th Street
Minneapolis, MN 55401

Dear Diana:

Re: Judicial Improvemets Act of 1990 - S.2648

Your memo of May 23, 1990 is excellent. I agree that the FJA should present the points that you raise.

I think it is inevitable that Title I will be passed and I don't think in the long run it will make a lot of difference to any of us. It certainly won't help. We need Title II and we need to eliminate Section 140.

Enclosed is a copy of the letter I have written to Senator Biden on behalf of our court. I think it's unwise to make a major assault on the legislation.

Best personal wishes.

Very truly yours,

Owen M. Panner
Chief Judge

OMP/mh
Enclosure
cc: Hon. Diarmuid F. O'Scannlain
Hon. John F. Kilkenny
Hon. Otto R. Skopil
Hon. James A. Redden
Hon. Helen J. Frye
Hon. Malcolm Marsh
Hon. Robert E. Jones
Hon. Robert C. Belloni
Hon. James M. Burns
Hon. George E. Juba
Hon. Michael R. Hogan
Hon. William M. Dale
L. Ralph Mecham
Robert E. Feidler

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
UNITED STATES COURTHOUSE
PORTLAND, OREGON 97205

CHAMBERS OF
OWEN M. PANNER, CHIEF JUDGE

May 29, 1990

Honorable Joseph R. Biden
United States Senate
221 Senate Russell Office Building
Washington, D.C. 20510-0802

Dear Mr. Chairman:

Re: S. 2648

The judges in this district are most appreciative of your interest in the Judiciary. We are badly in need of two additional judges. The Judicial Conference Committee has recommended one additional permanent judge for Oregon, and one additional temporary judge. While this recommendation hasn't yet been approved by the Judicial Conference, we expect that it will be, based upon the statistics. We would strongly urge that S. 2648 be amended to include an additional temporary judge for Oregon.

The goals expressed in Title I of this Bill are good. We appreciate the modifications that have been made in consultation with knowledgeable judges.

Our judges will submit a plan as soon as reasonably possible. We agree that trial dates must be set as soon as possible. Cases should be tracked according to their needs. Conferences and court hearings should be held as soon as advisable but should not be held unnecessarily. Trials should be simplified and shortened. We can accomplish these results provided we have sufficient judges to maintain trial schedules.

However, we must be concerned about the future. Judges can only handle so much volume. The workload is constantly increasing. Congress needs to be aware of the impact its actions have on the litigation process. Sentencing guidelines, and mandatory minimum sentences cause more cases to go to trial

and bring more criminal cases from state courts to federal courts. R.I.C.O. brings more civil cases from state to federal court. Proposed lawyer voir dire will extend trial times. These are only a few examples of actions that are regularly occurring which require additional judicial time.

It has been my observation that most federal trial courts throughout the country have done a superlative job of scheduling and expeditiously trying cases, considering the pressures they are working under. We are handling almost three times as much volume on a per judge basis as federal trial judges did 30 years ago. I am not sure how much more can be expected.

We thank you for your continuing interest in the Judiciary.

Very truly yours,

Owen M. Panner
Chief Judge

OMP/mh
cc: Hon. Mark O. Hatfield
Hon. Robert Packwood
Hon. Les AuCoin
Hon. Peter DeFazio
Hon. Denny Smith
Hon. Robert F. Smith
Hon. Ronald Wyden
Hon. Diana Murphy
Members of the Executive Committee of the Federal Judges Association
L. Ralph Mecham
Robert E. Feidler
Thomas Railsback
Hon. Alfred T. Goodwin, Chief Judge
Hon. James A. Redden
Hon. Helen J. Frye
Hon. Malcolm F. Marsh
Hon. Robert E. Jones
Hon. Robert C. Belloni
Hon. James M. Burns
Hon. Michael R. Hogan
Hon. George E. Juba
Hon. William M. Dale

May 23, 1990

To: Executive Committee

From: Judge Diana E. Murphy

Re: Judicial Improvements Act of 1990 - S.2648

Late on May 17 Senator Biden introduced a revised bill on behalf of himself and Senator Thurmond. The new proposal, S.2648, is entitled Judicial Improvements Act of 1990. As introduced Title I encompasses the Civil Justice Reform Act of 1990 (former version was S.2027) and Title II provides for Federal Judgeships (77). AO staff is also working with the staff of the Judiciary Committee on a Title III which may include a repeal of section 140.

In his floor remarks, Senator Biden indicated a hearing on the bill would be held on June 12. At this time we need to address the revised bill and decide whether we wish to make a statement on June 12, and if so, the nature of the statement. S.2648 contains all of the changes anticipated in my last communication except that the periodic docket assessments by each district court must be done every two years; the revision enlarging that to three years was not made. I am sending a copy of the bill by mail.

Very few federal judges like this legislation, but we need to recognize the improvements in it which have been made. We also need to consider our by-laws; VI.C. provides that no action or position inconsistent with, or in opposition to, one taken by the Judicial Conference shall be publicized without a reasonable effort to reconcile any disagreement or inconsistency with the Conference. The Judicial Conference may well support the bill, particularly because of Titles II and III. Some of you may think our best course is to oppose the legislation in any form, but Tom Railsback counsels against this. He points out that we need to work with the sponsors on a whole variety of things critically important to us.

FJA has already contributed to the process which produced favorable revisions. We have talked with the committee staff. We have written to individual Senators. We have also been in communication with the special Judicial Conference committee, the AO, and the ABA special task force.

In this memo I will propose for your consideration some points which might be included in an FJA position statement on Title I.

1. The sponsors are to be commended for their interest in effective case management, but many judges continue to believe this area should best be addressed by the rules process.

2. We recognize the considerable improvements made in the legislation as revised and appreciate that the sponsors and staff have listened to our concerns and attempted to redress many of them. The legislation has been greatly improved by removing the prohibition against the use of magistrates, by eliminating many mandatory procedures and permitting districts to continue to do what works well in different localities, by shifting the tracking system to two demonstration districts, and by providing for review by district judge committees rather than the judicial councils.

3. The findings in section 102(2) and (3) put the responsibility for cost and delay in civil litigation on the court, litigants, and the litigants' attorneys. The role of Congress in determining the caseload and procedural requirements in the federal courts and their impact on costs and delay also needs to be recognized, however.

In the long run, effective management systems in the federal courts cannot succeed unless Congress is aware of the impact of its actions on the litigation process[1] and of its responsibility to contribute to solutions. Better communication and consultation is needed between Congress and the courts on an ongoing basis.

4. No one aspect of the work of the courts can be viewed or treated in isolation. The federal courts are a valuable resource, but they have finite limits.

5. Section 472 provides for the appointment of advisory groups; the study and compilation of reports on civil and criminal dockets and the causes of cost and delay; and recommendations for actions. This process will take considerable time and resources away from other work of the courts.

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[1] The Sentencing Guidelines and mandatory minimum sentencing statutes cause more criminal cases to go to trial; time-consuming sentencing hearings and victim restitution hearings; Speedy Trial Act; etc.

6. Section 473 requires each district plan to have a content which may call for impossible targets and mislead litigants, the bar, and the public.

a. The requirement that trial is to occur within 18 months without a special certification sends a message that cannot be fulfilled at the present time in many districts (the volume and length of criminal trials being the main reason). Eighteen months would more properly be viewed as a goal for disposition of each civil case.

b. For similar reasons, no firm trial dates are possible for civil cases in many districts. While it is well recognized that firm trial dates lead to settlement of cases, the bar learns when courts are taken over by criminal cases that the target trial dates are not firm regardless of the court's desires.

c. No meaningful target dates for deciding motions are possible at the outset of the case -- at that time there is no knowledge of the number or complexity of motions to be made in a case, or across the docket, or what type of trials or emergency hearings may be ongoing when the motions are brought.

7. Section 475 requires complete docket assessment in each district at least once every two years in consultation with the advisory group. This requires almost constant review and assessment with an involved procedure. This requirement should be, at the minimum, every three years.

8. The development of a plan, implementation of the plan, the review of the plan by the circuit committee and the Judicial Conference, the use of an advisory group and its appointment, and the ongoing recording and assessment required by the statute institutes a whole new area of procedure. This will necessarily take away from other work.

9. Judges need more time to think in order to render wise decisions and in the ongoing development of the law.

10. The statute is based on assumptions that it will produce benefits, but there is no hard information available on the cause and effect of the procedural requirements and no look at the total problems of the federal court.