


June 8, 1990

MEMO TO: Abel Mattos
FROM: Lance Wilson 
SUBJECT: Biden Bill - Judicial Conference Plan

As we discussed, I have reviewed the Biden bill and the Judicial Conference delay reduction plan and have the following thoughts.

While the plans are similar in a number of areas, i.e. the creation of and reporting requirements of the advisory committee and the identification of reasons for delay, the plans do differ somewhat in that the Biden bill is more restrictive on the Courts and included some requirements which I believe may be unrealistic or at the least may be difficult to implement. I believe the following areas warrant further examination:

1. Definition of Delay - Both the Biden bill and the Judicial Conference plan require that the advisory committee identify the principle causes of cost and delay in civil litigation. Neither defines "delay". While I realize it is difficult to define delay, without national standards defining delay, a court could comply with the reporting requirements by merely indicating that the court did not have a delay problem. You can not measure speed and efficiency and determine if a problem exists with out standards to use as a comparison. Someone should be charged with developing nationwide standards similar to those developed by the American Bar Association about four years ago.

2. Differential treatment of specific cases - § 473(a)(1) of the Biden bill requires that the plan includes "systematic, differential treatment of civil cases" depending on the complexity of the case. While this sounds good on paper, I question how cases will actually be treated differently - how does one determine up front how complex or how much time the case is going to take? While this may be a realistic component of a civil delay reduction plan, it should be up to each advisory committee to determine if specific civil cases should be treated differently than others and how. I see no need for this to be in the legislation.

3. 18 Month Requirement - The Biden bill requires that firm trial dates be set within 18 months of the filing date while the Judicial Conference plan does not specify time limits. While time limits are required, I question if this should be in the legislation. I do not think time standards should be imposed until an assessment of the dockets, the definition of "delay" and the specific plans to reduce delay are defined.

4. Accountability of judicial officer - § 473(a)(7) requires semiannual public reports of the age of specific matters pending before each judicial officer. While I see a need for judicial officers to be held accountable for the status of their caseload, until automation is fully implemented nationwide, I believe it would be cumbersome for clerk's to have to report the required information.

I agree that much of the Biden bill has been modified to greatly reduce the adverse impact on the courts and there is broad discretion in much of the bill. I will be pleased to discuss these thoughts at your convenience.