

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

WASHINGTON, D.C. 20544

KAREN K. SIEGEL
CHIEF
OFFICE OF THE
JUDICIAL CONFERENCE SECRETARIAT

March 9, 1990

MEMORANDUM TO THE CHAIRMAN AND MEMBERS OF THE EXECUTIVE COMMITTEE

SUBJECT: "The Biden Bill"

Bob Feidler has drafted the attached list of principles on S.2027 which the Executive Committee might consider presenting to the Judicial Conference on Tuesday. Judge Peckham has asked that I provide you with the draft so that you might discuss it at today's 4:00 p.m. teleconference.

Karen

Karen K. Siegel

cc: Honorable Wayne D. Brazil

Wayne D. Brazil

DATE: March 9, 1990
FROM: *RF* Robert E. Feidler
SUBJECT: Principles List
TO: Honorable Robert Peckham

Per your suggestion I have slightly rewritten and consolidated the principles list. As revised it was given to Karen Siegel for dissemination.

Judge Peckham and
Robinson, and
Magistrate Brazil:
Please discard your
earlier draft.
Karen

P2 Leg... 1... 2026

JUDICIAL CONFERENCE GUIDANCE REGARDING S. 2027

The Conference adopts the following principles to be of assistance to the Executive Committee in representing the views of the Judicial Conference concerning S. 2027 "The Civil Justice Reform Act of 1990." They are not meant to be exclusive.

1. Any major reform in the handling of civil cases in the Federal courts should be based upon empirical evidence that a problem exists and the reasons for that problem. Evidence should be produced to demonstrate that any Nationwide initiatives undertaken to improve case management would have a record of working.

2. A 3-year case management demonstration program conducted in several pilot courts should precede any nationally-mandated program and the results of the program should be reported to Congress.

3. A standard as to when a district has a backlog (together with exceptions, such as when there are judicial vacancies or other temporary anomalies have arisen that are not expected to represent a long term problem) should be developed.

4. Model civil justice expense and delay reduction plans should not be required for a district court which does not have a significant civil case backlog, although even such a court might find such a plan useful and might elect to implement such a plan on its own.

5. Contents of delay and expense reduction plans should not be mandated by legislation.

6. Districts which have a civil backlog shall be given greater flexibility in meeting the standards of the criminal Speedy Trial Act.

7. Setting of deadlines early in a case and the monitoring of those deadlines has been demonstrated to be an essential ingredient of good case management. Over the past decade Magistrates have gained extensive experience in the management of civil litigation and the Conference endorses their utilization in this manner. It rejects the limitations on the role of Magistrates found in S. 2027.

8. Early and realistic trial dates should be encouraged.

9. The Conference endorses:

- greater resources of personnel and automation to enhance case management.
- greater training of all personnel in case management techniques.

- further experimentation with ADR to meet the needs determined by each district but reject the necessity of having all procedures available in every court.
- utilization of advisory committees related to civil case management procedures. *representing a cross-section of the*
- development of a manual for litigation management prepared at the direction of the Conference. The manual shall include a model set of local rules for case management but it need not necessarily be adopted by the local districts.
- internal distribution within each circuit of case management statistics on each judge with the authority reposed within circuit councils to release this data to the public periodically.
- the holding of discovery conferences in suitable cases with an emphasis on limiting discovery to reduce delay and expense and the use of phased discovery when appropriate.
- reduction of the time frame to provide service of process and certain other time frames in the case, especially those related to discovery.
- generally giving the judge more power to run a case efficiently including the power to assess attorney's fees against a party if the party's counsel has not made a good faith effort to resolve a matter prior to filing a motion on the matter.
- judicial involvement in efforts to settle litigation including the power to require parties with settlement authority to be in attendance.

10. The Conference rejects elements of S. 2027 which are deemed intrusive in the internal operation of the Judicial branch and its operations.

EC members + Wayne Krugel

Macklin
Siegel
Feidler
Scott

Peckham - Presentation to JCL

JCL oppose 2017 proposal from
 about description - analysis -
 inform jud. of position
 disseminate by bar groups,
 FLSA, etc., our position
 and ask for their position
 circuit judges councils take
 action
 EC began discussions w/
 Hill people
 reaffirmation of commitment
 to case law

~~Robinson~~ - briefed EC on 3/6 hearing

Feidler - Comm markup around 1 May
 hearing around Apr. 17-20
 3/13 10:00 am meeting with Hill

Robinson

Robinson - briefing on 3/13
 Hill on 3/13

EC get directive to handle by JCUS

Nangle - want input from JCUS
committed to narrow judge judges

Pickham - analyzed to all judges, ask
for input

Robinson - use judge reps to coordinate

Nangle - fear not getting message to
Biden strength of opposition

Robinson - 2 judges have been instructed
to inform Congress
get cjs to funnel to a judge JCUS
rip

Barber - get substantial position
discuss "holding" strategy

DT reps at 7:30 AM

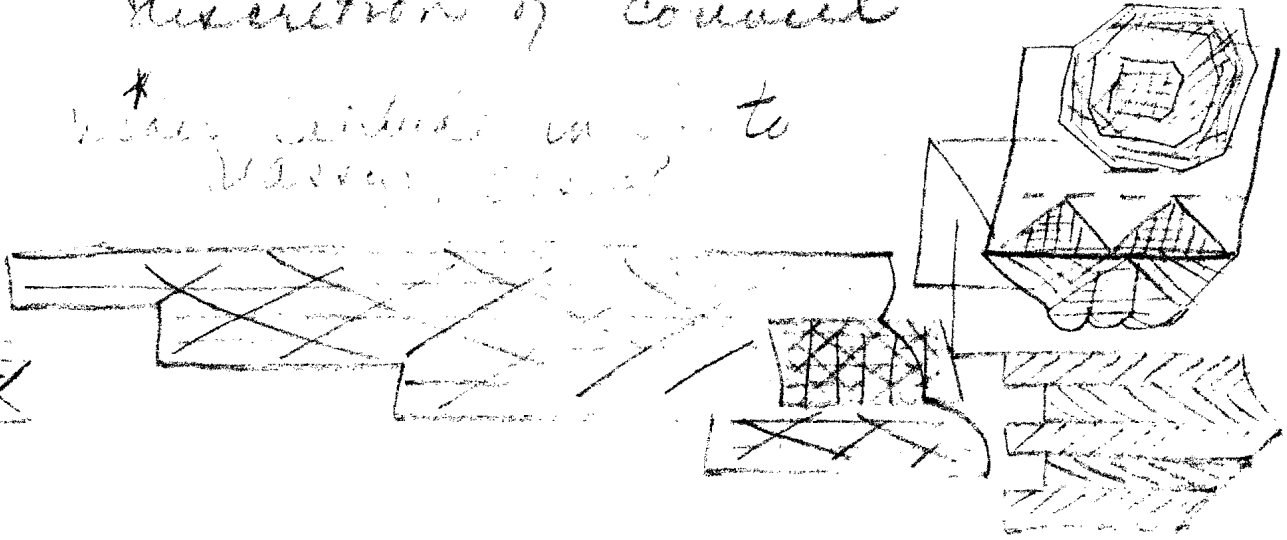
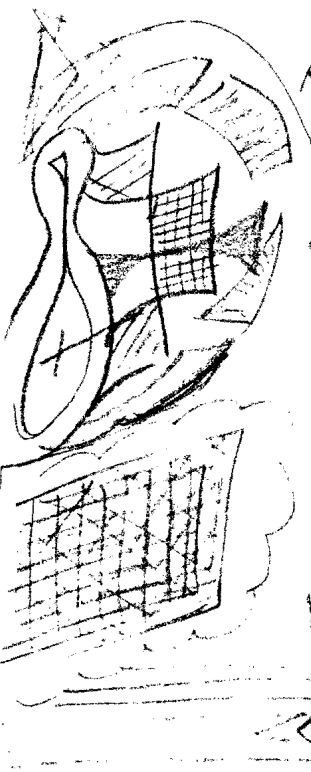
1. disseminate wd to cjs
2. mobilize consensus
3. cjs contact bar associations
members of Congress

adopt analysis

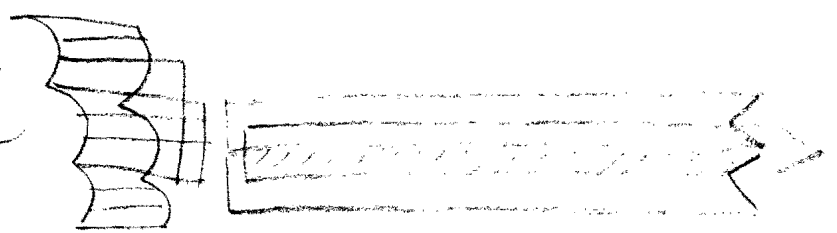
Statement of general principles of case note

Barker - dislikes ad. Comm + public dissemination at discretion of Council

* minor details in the to



Peckham - reaffirm the programs



Campbell - more and more down if judges have flexibility

Peckham - individual case off a limited basis made in individual case

Sub. on the Sedition
bill

Peckham
Robinson
Naugle
Barker
Clark

McKam
Eugel
Feidler
Scott

Robinson

1st year been: Council unanimously passed
resolution - negative impact on
Integration in Fed CB; derogation of
Rules Enabling Act; failed to
address the 1st Criminal
Justice; supports progress but
oppose an institution

Study pursuant to Rules
Enabling Act

Peckham -

Peckham - 1st year said ... and ...
judges ... to ...
K - judges ...

Some degree of ... reaction

SP.A

Final Trial Judges list comp. bill
Let Secretaries to support

Peckham has into it. His Aimee,
plus Law, Trial, Gen'l Prac, FS ~~68~~

Compromise resolution circulating -
Ed D. Gov. - encourage dialogue
Ed wants further study

adopt JUS position? Peckham
doesn't see wisdom in
Tolpman's

Peckham :

latest Fidler/Scott draft was to

no mandatory features

cannot use this type of ^{word} ⁱⁿ ^{draft}
summary ⁱⁿ ^{draft}

should tie into Rules 16 & 23,
local law

JUS will ⁱⁿ ^{draft} use
mandatory ⁱⁿ ^{draft}

in discuss draft - redraft to be
up in 1 week.

Fidler - Bill doing - about demonstration project

It appears to all districts -
canal from many
triballs

Will settlement ~~and~~ include
mandates

Nangle - any add'l comments?

Aetna main problem [Middlebrook]

poll d. ja?

oppose

not opposed 95%

1 per cent 5% you

DAI? FJA? FJ* similar to TCI

concepts ok, but shouldn't prepare
bill

"They shouldn't be involved
in running our house."

Farber - drafts internal only? Yes, but
getting close when talking
principles.

Principles have circulated. Reaction?
How want a draft.

Apr 6 draft doesn't incorporate
principles - Y cables noted
(b) (6) Part 2 - real from
analyses

Clark - have to have some specific
bill

Reckham - elements: all ^{non-}constructive
features

As far as (b) on p. 3-5?
part 2 - (b) - (2) not
contribution

100% opposes review mechanism at

Reckham - wants committee may won't buy
bill that looks like hidden

Farmer - authorization for automation
council

1/10/78

1/10/78

1/10/78

16
17/2/2017

frankenstein's premature to replace alternative
at this time

to not give ground

SCC should compromise
until it is possible

Nuclei won't sign off - doesn't want
to say anything + to Friday

Max
May

circulate manuscript version

4:30 Monday or 4:30 Tuesday

Rubble patch - assemble

556-2442

415 550-2520

