

*K. Siegel*

## AMERICAN BAR ASSOCIATION

## Section of Litigation

750 North Lake Shore Drive  
Chicago, Illinois 60611  
(312) 988-5662

## Reply to:

727 East 26th Street  
Austin, Texas 78705

Telephone: (512) 471-6319  
Telecopier: (512) 478-3202

April 24, 1990 DICTATED BUT NOT READ

## To:

Paul Bschorr  
Ted Tetzlaff  
Louise LaMothe  
Jamie Gorelick  
Loren Kieve  
Sid Leech  
Judah Best  
Ron Olson  
Cindy Crouse

From: Michael E. Tigar

## Re: S 2027

This is a followup to my earlier memorandum about my conversation with Chief Judge Charles Clark. I think that the objectives of the Biden bill are laudable, and reflect our concern with the difficulties in getting cases to trial and with controlling such things as discovery abuse in the civil process. The federal judges have a number of objections, but their most cogent one seems to be this: The bill mandates procedures for the federal courts by statute in areas traditionally reserved for the rule-making process. I believe that the federal rules of civil procedure, at least as originally conceived, reflected a worthwhile partnership among judges, lawyers, and academics to shape federal practice. Every instance of congressional meddling with the rules has resulted in confusion and difficulty. I am persuaded that the objectives of the Biden bill should be met through a rule-making process in which the three groups that produce the civil rules would participate.

I believe the legislation should create a rule-making body along the lines of the existing committees. In addition, that body would report to the Supreme Court under the same procedure now used for the other procedural rules. The bill could--and in my view should--be quite detailed in its direction to the committee to come up with procedures for managing the flow of litigation eliminating the perceived abuses. In this way, the legislation would not

*Spur 5/17/90*

CHAIR  
Michael E. Tigar  
727 E. 26th Street  
Austin, TX 78705  
ABA/net: ABA9007  
512/471-6319

CHAIR-ELECT  
Paul J. Bschorr  
1155 Avenue of the Americas  
New York, NY 10016  
212/819-8604

VCL-CHAIR  
Theodore R. Tetzlaff  
One ABA Plaza, Ste. 4200  
Chicago, IL 60611  
312/222-9150

SECRETARY  
Jamie S. Gorelick  
2555 M St., NW, Ste. 500  
Washington, DC 20037  
ABA/net: ABA9001  
202/293-6400

BUDGET OFFICER  
David L. Werner  
800 National City Center Building  
Cleveland, OH 44114  
216/621-0150

SECTION DELEGATES TO  
HOUSE OF DELEGATES  
Judah Best  
Washington, DC  
Ronald L. Olson  
Los Angeles, CA

IMMEDIATE PAST SECTION CHAIR  
Judah Best  
Washington, DC

COUNCIL MEMBERS  
Scott J. Atlas (1990)  
Houston, TX

Hon. John C. Coughenour (1991)  
Seattle, WA

Paul H. Davis (1992)  
San Francisco, CA

Lawrence J. Fox (1991)  
Philadelphia, PA

Patricia M. Hynes (1992)  
New York, NY

Barry F. McNeil (1992)  
Dallas, TX

Dianne M. Nast (1990)  
Philadelphia, PA

William C. Paul (1990)  
Barstow, OK

John F.X. Pelosi (1991)  
New York, NY

Nancy Schaefer (1990)  
Chicago, IL

Charles M. Shaffer, Jr. (1991)  
Atlanta, GA

Jean MacLean Snyder (1992)  
Chicago, IL

Mark H. Touhey III (1991)  
Washington, DC

Edward M. Waller, Jr. (1992)  
Tampa, FL

FORMER CHAIRS  
John R. Tomlinson  
Seattle, WA

Benjamin R. Civiletti  
Washington, DC

GOVERNMENTAL  
REPRESENTATIVE  
Kenneth W. Starr  
Washington, DC

YOUNG LAWYERS DIVISION  
REPRESENTATIVE  
Allen W. Kimbrough  
Dallas, TX

ADJUNCT YLD  
REPRESENTATIVE  
Christopher J. Griffin  
Tampa, FL

LAW STUDENT DIVISION  
REPRESENTATIVE  
Cassandra Lewis  
Columbus, OH

ABA BOARD FOR DISCIPLINE  
LIAISON  
Donald M. Haskell  
Chicago, IL

STAFF  
Director  
Cynthia C. Crouse  
ABA/net: ABAS97  
312/988-5663

Committee Administrator  
Sandy de Gruy  
ABA/Net: ABAS97

Memo: S 2027  
April 24, 1990  
Page 2

wholly abandon the choice of priorities to the rule-making body, but could make a strong congressional statement about the need for reform. However, the details of reform should, in this as in other fields, be left to those most immediately concerned.

Please let me have your thoughts on this, so that we can begin to reach accord with the judges.

For your information, I attach a copy of the Judicial Administration Division position. I trust that the Division will be reconsidering, and that we can move toward some sort of consensus.

MET/jjp  
VIA FAX.  
bcc: Hon. Hayden W. Head, Jr.  
Hon. George P. Kazen  
Hon. Charles Clark