

tentative list of consensus items from FCSC Report

1. amend 28 USC 601 to authorize Chief Justice to appoint Director and Deputy Director of the A.O. [from p. 150 of Report, point (1)]
2. recommendation on ADR (first bullet point only, with regard to ability of all federal courts to adopt local rules establishing ADR mechanisms) [from p. 83]
3. delegate to the Supreme Court pursuant to the Rules Enabling Act, what defines an appealable final order under 28 USC 1291 [from p. 95 (4)].
4. require the FJC to study the number and frequency of intercircuit conflicts and report back within 9 months [from p. 125, point 1]
5. bankruptcy technical amendments, with respect to judge's findings in "non core" proceedings becoming final unless a party objects within 30 days, and appeals issues [from p. 76-77 (b. and c.)]
6. authorize small circuits to create multi-circuit bankruptcy appellate panels [from p. 74]
7. amend retirement program for judges of the Claims Court consistent with the program for judges of the Tax Court [from p. 155 e.]
8. amend the CJA to require that the federal defender be chosen by an independent board or commission within the district, rather than by a judge [from p. 157 a.]
9. combine the Federal Circuit and International Trade Court budgets [from p. 162 c.]
10. amend 28 USC 133 to authorize temporary judge status for active judges selected to assume full-time office of national federal judicial administration [from p. 149.]
11. amend the Magistrates Act to allow parties to be reminded about the magistrate option with the parties consent [from p. 79 (a)]
12. continue the Parole Commission for "old law" prisoners, [from p. 64.]

13. broaden federal court pendent party jurisdiction [from p. 47-8] (need to check with DOJ, Judge Campbell to determine if this is a "consensus" suggestion)

14. repeal 28 USC 1441(c) on removal of separate and independent claims [from p. 94-5]

15. create a "fall back" federal statute of limitations for federal claims not explicitly created by Congress of five years for new cases after the date of enactment [from p. 93-4]

16. clarify the general venue statute, 28 USC 1391 (a) & (b) [from p. 94]

note: Mike Remington is checking into the costs to the courts system of an increase in witness fees and/or juror fees, as suggested by the FCSC Report.

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...January 1988 when he set out

# Courts and Congress Close to Agreement On Cutting Delays, Costs of Civil Cases

## WASHINGTON DOCKET

By STEPHEN WERMIEL  
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — After locking horns for months, the federal judiciary and congressional leaders may be nearing an uneasy agreement on legislation aimed at reducing delay and expense in civil cases.

Aides to Sen. Joseph Biden (D., Del.), chairman of the Senate Judiciary Committee, have been negotiating with officials of the Administrative Office of the U.S. Courts over a compromise version of legislation Sen. Biden introduced in January.

The negotiations may not be quite as delicate as current efforts to initiate a budget summit, but it's close; federal judges are very sensitive about attempts to tell them how to manage their courts.

"We are in agreement on the general fundamental principles to reduce cost and delay. But it's micro-regulation by statute and mandatory requirements that concern us," says Chief Judge Robert Peckham of the federal district court in San Francisco, who is leading the judiciary's response to Sen. Biden.

As first proposed, Sen. Biden's legislation would have required each federal district court to appoint a local advisory committee and to adopt a civil-case management plan within one year. The plans were to include a procedure for placing cases on different tracks, with simple cases to be handled quickly, and complex cases more slowly. And judges would have been given 45 days after the time defendants respond to a lawsuit to set a detailed schedule for pretrial discovery, motions and the trial date.

The proposal, which was produced by a task force that studied the problems of delay and litigation cost, also would have required each court to publish periodic lists of cases that fall behind schedule.

In introducing the legislation, Sen. Biden said, "The civil justice system as we know it today is not fulfilling its basic objectives of providing the just, speedy and inexpensive resolution of disputes." The bill had support from Democratic and Republican leaders on the Senate and House Judiciary Committees.

But it wasn't long before federal judges were protesting the intrusion into their courtrooms that the legislation would represent. "Many thoughtful federal judges are very, very uneasy about the signals this bill sends of legislative incursion—albeit well-meaning—in the judicial arena and what it portends for the future," said Chief Judge Aubrey Robinson of the federal court in Washington, in Senate Judiciary Committee testimony in March.

While they were complaining, however, the judges didn't miss the message behind the legislation. On May 1, the Judicial Con-

...are already made  
...up. In addition, the panelists said, judges must do a better job of instructing jurors

ference, the policy-making arm of the federal courts, adopted its own 14-point program, requiring each district court to appoint an advisory group to recommend a case-management plan. But the Judicial Conference system gives judges discretion to adopt only those recommendations that are "feasible and constructive" and says nothing about tracking or listing delayed cases.

The 27-judge Judicial Conference recommended that two model plans be developed for handling civil cases with less delay and expense, and that the plans be tested in five volunteer district courts.

Now the drama has moved into a third act: negotiations between aides to Mr. Biden and officials of the Administrative Office aimed at producing a bill that the judiciary can, at the very least, refrain from opposing, if not actually supporting.

Final details of the compromise are still being drafted and haven't been approved by a working group led by Judge Peckham. But its features will be far less mandatory, according to those familiar with the discussions. They include giving districts three years, instead of one, to develop a plan, using the tracking system initially only as a pilot program in a few districts, and setting guidelines and principles that courts may adopt for civil-case management, rather than mandatory rules. District courts that move quickly would receive as an incentive extra funds to implement their plans.

Sen. Biden, aides say, hopes to settle on a compromise and to move it quickly through Congress this year. But, says Judge Peckham, "It is difficult to say for certain that we will reach an accommodation."

### TRW Inc.

TRW Inc., Cleveland, said its TRW Financial Systems Inc. unit filed a patent-infringement lawsuit in federal court in Detroit against Unisys Corp., Blue Bell, Pa.

The TRW suit alleges that Unisys is infringing on patents covering high-performance image-processing systems that TRW has licensed to other manufacturers, including International Business Machines Corp., Armonk, N.Y., and Eastman Kodak Co., Rochester, N.Y.

Unisys couldn't be reached for comment.

Image-processing systems handle large volumes of transaction documents, such as credit-card payments or utility bill payments.

TRW is seeking unspecified damages and also wants Unisys enjoined from further use of the technology TRW contends is covered by its patents. TRW is an auto parts, aerospace and defense, and electronics services concern.

...from sub-districts that would ensure r  
...nity election of at least some of t  
...judges.

But the appeals court on Friday, in a 1 decision written by Judge Patrick Higginbotham, said the remedy ordered by Judge Bunton "seems to lessen minority influence instead of increasing it."

Judges Higginbotham and Carolyn I. King reasoned that the election of judge from sub-districts wouldn't guarantee the minority litigants would appear before the judges they elected because cases would continue to be randomly assigned to the judges sitting in a particular county. In Houston, for example, "the minority member would have a 98.3% chance of appearing before a judge in whose election he had not been able to vote," Judge Higginbotham wrote.

"Where judges make their decisions alone, electing judges from single-member districts only ensures that a small number of governmental decisions will be influenced by minority interests, while minority interests will not be represented at all in the majority of judicial decisions," the judge wrote.

\* \* \*

**U.S. SUPREME COURT READIES** computer release of its decisions.

With a startup date scheduled for June 1, the high court selected 12 companies or organizations that for the first time will transmit its opinions by computer to subscribers as soon as the opinions are released by the justices in Washington. The 12 include the Associated Press; United Press International; Bureau of National Affairs Inc.; Commerce Clearinghouse Inc.; West Publishing Co.; Mead Data Central Inc., a Mead Corp. unit; Thomson Group and the Justice Department.

Each of the 12 will provide a computer connection to the court and will pay \$500 in the first year for the hookup. Each may, in turn, sell subscriptions for the opinions.

—Amy Dockser Marcus contributed to this article.

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