

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

L. RALPH MECHAM  
DIRECTOR

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DEPUTY DIRECTOR

WASHINGTON, D.C. 20544

April 19, 1990

MEMORANDUM TO THE CHIEF JUSTICE

Subject: Biden Bill Voting Process

The attached memorandum from Charles Clark to you faithfully adopts the voting methodology which appears in your memorandum of April 6th addressed to the Executive Committee. It calls for three voting alternatives, "approved," "do not oppose," "oppose."

This is death bed repentance and you may have thought of these possibilities before sending your April 6th memorandum. I fear that we could end up for example with 19 "do not oppose" votes, 5 "approved," and 1 "oppose" vote. I am afraid that this possibility, or something like it, could well create the appearance of irresolution on the part of the Conference and will add to what I am reasonably sure will be Biden's great unhappiness with the proposed administrative remedy rather than a legislative remedy.

Moreover, recommendations made by the Executive Committee would impose substantial procedural changes on the district courts. If the Conference intends to do that, it should probably be done by a straight up or down vote as it did with the principles agreed to at the Conference in March. A quick count of the recommendation shows approximately 14 "shalls" mandating behavior on the courts, and 7 "wills" mandating behavior by the Conference, and only 2 "mays." I am not at all sure that the Conference has such directive power over the courts. However, if it does or presumes to exercise such authority, it ought not to have the option to back into such a momentous position by a "do not oppose" vote.

I recognize that you may have strong feelings to the contrary and we shall follow whatever directive you give us.



L. Ralph Mecham