

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

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April 5, 1990

MEMORANDUM TO THE CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE ON THE
BIDEN BILL

Attached is the Statement of Principles on the Biden Bill,
as agreed to in your teleconference on Friday, March 30, 1990.
The statement was shared with the Chief Justice and Jeff Peck
earlier this week.

This is also a reminder that the next teleconference will be
Monday, April 9, 1990, at 3:30 p.m. Eastern time.



Karen K. Siegel

Attachment

cc: Honorable Charles Clark
Honorable Wayne D. Brazil
Mr. L. Ralph Mecham
Mr. James E. Macklin, Jr.

STATEMENT OF PRINCIPLES

RE S.2027

The subcommittee of the Judicial Conference's Executive Committee endorses the following concepts:

1. The chief judge in each district court should appoint a representative advisory committee to:
 - a. assess the state of the court's civil and criminal dockets, describing not only current conditions, but also trends both in the nature of filings and in the kinds of demands being placed on the court's resources, and
 - b. recommend ways of reducing the cost of civil litigation and of shortening the time between filing and disposition.
2. In preparing such recommendations, the advisory committees should consider the following:
 - a. the problems of cost and delay in civil litigation cannot be considered in isolation; rather, they must be examined in the context of the full range of demands made on the district court's resources.
 - b. all of the major players in the litigation community share responsibility for the problems of cost and delay in civil litigation; thus, for solutions to be effective and equitable, they must include significant contributions not only by courts, but also by lawyers and clients.
3. In determining how lawyers and clients can contribute to solving these problems, especially the excessive costs often associated with civil discovery, advisory committees and courts should consider whether it would be appropriate, prior to the initial status or scheduling conference under Rule 16, to require counsel to meet and confer, and file a statement designed to limit discovery and prepare the case expeditiously for resolution by settlement, motion, or trial.
4. In proposing solutions to cost and delay problems, advisory committees and courts should assess, among other things, the settlement process, including the advisability of implementing or experimenting with ADR programs.
5. Each district court should consider the recommendations made by its advisory committee and should implement appropriate measures through established procedures for adopting local rules.

6. The Judicial Conference should conduct a demonstration program in three to five districts in order to experiment with and assess the relative effectiveness of various methods of reducing cost and delay and various case management techniques. After thorough evaluation, the results of such experiments should be made available to every district court and to the committees of the Judicial Conference that are charged with responsibility for considering and recommending additions to federal procedural rules.

7. The Congressionally-mandated rulemaking process should be used for implementing any cost or delay reduction measures that are proven successful through the demonstration programs and that are suitable for national implementation by procedural rule.

8. Substantial additional resources should be committed to training judicial officers in case management techniques.

9. District courts cannot experiment with and identify the most effective and appropriate measures for reducing cost and delay, and cannot implement the most successful case management techniques, without infusions of substantial additional resources. Effective systems for containing costs and reducing delay cannot be established without fully automated dockets, ready access to more complete data about the status of each case, more support personnel, and the appointment of a truly adequate number of new judicial officers.

10. Effective case management requires full and flexible use of all judicial personnel. It would be counter-productive to impose artificial restraints on the roles magistrates can play in case management.

11. It is essential that any system of case management that is adopted preserve in district judges the authority and flexibility to tailor procedures and schedules that are appropriate to the needs of each suit.

The subcommittee of the Judicial Conference's Executive Committee cannot agree to the following:

1. The notion that there is a single case management system or plan that will satisfy the needs of every district.
2. The case tracking system provided for in S.2027 (many of the problems with which are set forth in the Description and Preliminary Analysis adopted by the Judicial Conference on March 13, 1990), including the requirement for clerical tracking coordinators.
3. Statutory limitations on the use of U. S. magistrates.
4. The notion that local advisory groups can be empowered to impose procedural rules or schedules on district courts.
5. The criteria for measuring judicial productivity set forth in S.2027. Any effort to assess the productivity of individual judicial officers or courts must be based on a sophisticated, comprehensive set of data that takes into account the full range of relevant quantitative and qualitative factors.