United States District Court
Eastern District of Missouri
319 U.S. Court House & Custom House
St. Louis, Missouri

John F. Nangle
Chief Judge

) 539-3603
$ 262-3603

June 15, 1990

The Honorable Robert F. Peckham
Chief Judge, Northern District of California
Post Office Box 36060
450 Golden Gate Avenue
San Francisco, California 94102

Re: Biden II

Dear Bob:

I have enclosed an especially insightful view of the above bill sent to me by the Federal Practice Committee of the District Court for the District of Minnesota.

I believe that it sets out the view of virtually all of the District Judges in the system.

I have underlined several interesting points but would make a particular reference to the alternative suggested in Paragraph 2 on Page 2. I believe that even Senator Biden would consider such an amendment to Biden II.

I realize that we all have received ideas and suggestions from a number of sources concerning the above bill. However, I did think that the enclosed letter was short and well done and deserved to be called to your attention and that of the other Committee Members.

Kindest personal regards,

John F. Nangle

JFN:bar
Encl.

CC: Executive Committee Members (w/Encl)
Mr. Robert E. Feidler (w/Encl)

FEDERAL PRACTICE COMMITTEE
United States District Court
District of Minnesota

The Honorable Joseph R. Biden
United States Senator
489 Russell Building
Washington, D.C. 20510

Re: Civil Justice Reform Act of 1990

Dear Senator Biden:

We write to you as members of the Federal Practice Committee for the United States District Court for the District of Minnesota with our comments on the proposed Civil Justice Reform Act of 1990. First, we would like to make it clear that we applaud and agree wholeheartedly with the goals of the proposed legislation, to reduce delays and the resulting costs which burden the ability of the federal civil justice system to provide appropriate and timely relief to litigants. Effective case management by the federal court system is an essential element of the important objective of reducing delays which have impacted court systems. We have reviewed an amended version of the proposed law, which we received on May 8, 1990, and uniformly believe that it is substantially improved over the original proposal. However, we believe that we must continue to oppose enactment for the following reasons.

1. **The proposed legislation fails to take into account the fact that there are many districts, including the District of Minnesota, which currently have aggressive and successful case management systems.**

There is no question that there are districts in which mandated case management would prove helpful in reducing delay. Several of our members have had experiences which suggest that case management is not always effectively performed in each district. But in the District of Minnesota a very effective case management systems has been utilized for over ten years. The United States Magistrates have been used very successfully to complement the work of the District Judges. The magistrates handle a significant number of civil trials by consent, they regularly conduct summary jury trials, and they conduct a pretrial conference in each civil case within three months of filing. They establish fair and aggressive discovery and motion deadlines and they stick to the deadlines. The judges regularly utilize not only the talents of the magistrates, but also other management

techniques such as appointment of special masters and bifurcation of trials. All judicial officers emphasize settlement and one of the district's magistrates is specifically assigned to encourage the settlement process. The results of this process are impressive. It is not unusual in the District of Minnesota for cases to be scheduled for trial within three to four months after the close of discovery. It is a system with which we are very well satisfied as to its fairness and pace.

It seems illogical and inappropriate to replace our proven case management system with an unproven new system. As an alternative, we would suggest inclusion of a provision which would allow a committee, such as the Committee of Chief Judges referenced in Section 474, to review the existing case management systems in the districts and permit those which are functioning well to continue, with or without modification. Such an alternative would avoid the very substantial risk of replacing a proven system with an experimental system and creating additional delay, cost and confusion.

2. While the newest version of the proposed legislation affords more flexibility, the mandatory time requirements to be imposed may be actually inimical to the needs of an effective case management system.

In our view, flexibility is the hallmark of an effective case management system. Section 473(a)(1) would mandate a "systematic, differential treatment of civil cases" which appears to suggest a form of "tracking" extensively required in the original version. Every case is different and it is important to avoid establishing "categories" into which cases are slotted. Our experience suggests that it is best to tailor a plan to each case with realistic and firm deadlines best suited to the particular case. Judicial officers are well prepared to determine how quickly to expect a case to develop and whether reasons for delays are bona fide or not. It would be a mistake, in our view, to treat any two cases as identical.

The legislation also requires "setting early, firm trial dates." That certainly is a useful goal, but it is not very realistic. Case complexities change frequently and the pressure of an ever-increasing criminal calendar makes it very unlikely that a date set early in the process will be met. We are mindful of the needs and expectations of litigants and are concerned that such expectations will be adversely affected by frequent change in the anticipated trial date. Cases should be tried as quickly as they are ready to be tried and it is best, in our view, to permit the experience of a judge or magistrate to guide a case to disposition in the manner most appropriate to the particular dispute.

We are also concerned about a mandate for phasing discovery "into two or more stages" or establishing plans to "limit discovery." Again, such steps may well be counterproductive to the goal of limiting delays. Discovery should be complete and it should be accomplished in a limited period of time. A judicial officer should have the necessary flexibility to oversee an appropriate plan for each case.

The legislation also appears to require referral of cases to alternative dispute resolution. Our committee has considered use of such techniques in the past but has decided against it, in part because our successful case management system has made ADR unnecessary. While we certainly believe ADR can be very beneficial, our view is that use of the technique should be discretionary rather than mandatory.

3. Congress should delay consideration and enactment of this legislation until the federal courts have had time to implement the Judicial Conference's plan to improve civil case management.

The Judicial Conference, as you are aware, has approved a 14-point program to address the problems of cost and delay in the federal courts. Many of the points are identical to or similar to provisions in the proposed legislation. It seems appropriate, especially since management of the court system has traditionally been the province of the judicial branch of government, to give the Judicial Conference plan sufficient time to work before imposing management by legislation. We urge you to consider this alternative.

4. The legislation appears to us to inappropriately target the judiciary as the main cause of delays and costs in the federal judicial system.

If it is indeed the premise of the legislation, which its tone suggests, that judges are responsible for delays, we cannot disagree more emphatically. In the District of Minnesota, the judges and magistrates have been the most important influence in reducing delays and costs. That fact should be taken into account in your deliberations.

We are enclosing a copy of the Roster of the members of the Minnesota Federal Practice Committee. We appreciate your consideration of our views on this

very important topic and hope that you will contact any of us if you believe that additional information would be helpful. Thank you very much.

Respectfully submitted,

FEDERAL PRACTICE COMMITTEE
United States District Court
District of Minnesota

By _____
John M. (Jack) Mason, Chair
Dorsey & Whitney
2200 First Bank Place East
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Telephone: (612) 340-2906

By _____
John R. (Jack) Tunheim, Chair
Committee Of Civil Justice
Reform Act of 1990
Chief Deputy, Attorney General
102 State Capitol
St. Paul, Minnesota 55155
Telephone: (612) 296-2351

cc: Minnesota Congressional Delegation
Minnesota Federal Practice Committee Members

bcc: The Honorable Donald Lay, Chief Judge, Eighth Circuit Court of Appeals
The Honorable Robert S. Peckham, Senior Judge, U.S. District Court
The Honorable John S. Nangle, Chief Judge, U.S. District Court
The Honorable Donald D. Alsop, Chief Judge, U.S. District Court
Francis E. Dosal, Clerk, U.S. District Court