FACSIMILE COVER SHEET

DATE: 6-7-90

TIME: a.m.

TO: L. Ralph Mecham
Director, A.O.
Washington, DC.
8-786-5393
FAX NUMBER

FROM: J. Diana Murphy
CLERK, U. S. DISTRICT COURT
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THIS FACSIMILE MESSAGE CONTAINS A TOTAL OF 8 PAGES, INCLUDING THIS COVER PAGE.

To: FJA Ex. Comm.
From: Diana E. Murphy

In this memo I will propose for your consideration some points which might be included in an FJA position statement on Title I.

1. The sponsors are to be commended for their interest in effective case management, but many judges continue to believe this area should best be addressed by the rules process.

2. We recognize the considerable improvements made in the legislation as revised and appreciate that the sponsors and staff have listened to our concerns and attempted to redress many of them. The legislation has been greatly improved by removing the prohibition against the use of magistrates, by eliminating many mandatory procedures and permitting districts to continue to do what works well in different localities, by shifting the tracking system to two demonstration districts, and by providing for review by district judge committees rather than the judicial councils.

3. The findings in section 102(2) and (3) put the responsibility for cost and delay in civil litigation on the court, litigants, and the litigants' attorneys. The role of Congress in determining the caseload and procedural requirements in the federal courts and their impact on costs and delay also needs to be recognized, however.

In the long run, effective management systems in the federal courts cannot succeed unless Congress is aware of the impact of its actions on the litigation process[1] and of its responsibility to contribute to solutions. Better communication and consultation is needed between Congress and the courts on an ongoing basis.

4. No one aspect of the work of the courts can be viewed or treated in isolation. The federal courts are a valuable resource, but they have finite limits.

5. Section 472 provides for the appointment of advisory groups; the study and compilation of reports on civil and criminal dockets and the causes of cost and delay; and recommendations for actions. This process will take considerable time and resources away from other work of the courts.

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[1] The Sentencing Guidelines and mandatory minimum sentencing statutes cause more criminal cases to go to trial; time-consuming sentencing hearings and victim restitution hearings; Speedy Trial Act; etc.

6. Section 473 requires each district plan to have a content which may call for impossible targets and mislead litigants, the bar, and the public.

a. The requirement that trial is to occur within 18 months without a special certification sends a message that cannot be fulfilled at the present time in many districts (the volume and length of criminal trials being the main reason). Eighteen months would more properly be viewed as a goal for disposition of each civil case.

b. For similar reasons, no <u>firm</u> trial dates are possible for civil cases in many districts. While it is well recognized that firm trial dates lead to settlement of cases, the bar learns when courts are taken over by criminal cases that the target trial dates are not firm regardless of the court's desires.

c. No meaningful target dates for deciding motions are possible at the outset of the case -- at that time there is no knowledge of the number or complexity of motions to be made in a case, or across the docket, or what type of trials or emergency hearings may be ongoing when the motions are brought.

7. Section 475 requires complete docket assessment in each district at least once every two years in consultation with the advisory group. This requires almost constant review and assessment with an involved procedure. This requirement should be, at the minimum, every three years.

8. The development of a plan, implementation of the plan, the review of the plan by the circuit committee and the Judicial Conference, the use of an advisory group and its appointment, and the ongoing recording and assessment required by the statute institutes a whole new area of procedure. This will necessarily take away from other work.

9. Judges need more time to think in order to render wise decisions and in the ongoing development of the law.

[illegible]

10. The statute is based on assumptions that it will produce benefits, but there is no hard information available on the cause and effect of the procedural requirements and no look at the total problems of the federal court.

FEDERAL JUDGES ASSOCIATION

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WASHINGTON COORDINATOR
THOMAS F. RAILSBACK
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May 30, 1990

Honorable Diana E. Murphy
President, Federal Judges Association
670 United States Courthouse
110 S. 4th Street
Minneapolis, Minnesota 55401

Dear Diana:

I agree with Richard Arnold's statement that the FJA "... should continue to insist firmly that the whole thing (Biden Bill) is a bad idea." Also, that "... the end product will be better if FJA is somewhat firmer about opposing the bill in principle."

In reference to your letter of May 24th, I think FJA should make a statement on June 12, and I agree with all the points you make on page 2 and 3.

My suggestions for amending S.2648 are as follows:

1. Strike Section 473, the micro-management of the courts provision, in its entirety. It represents a legislative superimposition on the Federal Rules of Civil Procedure and imperils the vitality of the rulemaking process. One provision, §473(a)(2)(B), which mandates the setting of a firm trial date early in the litigation such that the trial is to occur within eighteen months of the filing of the complaint, is so unrealistic it would be a complete disaster. It is the antithesis of good case management.

2. Amend Section 474 and remove the Chief Judge of the Circuit from the review committee.

3. Amend Section 477 and have the advisory group appointed by the district court under its normal operating procedures rather than by the chief judge. This in keeping with the current law. 28 U.S.C. § 137. Any final plan will have to be adopted by the judges of that district court. See § 471. It necessarily follows that they should select the advisory group.

With best wishes and looking forward to the telephone conference, I am

Sincerely yours,

Robert H. Hall

RHH/ma

cc: Members of the Executive Committee
Thomas F. Railsback, Esq.

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WASHINGTON COORDINATOR
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May 24, 1990

The Honorable Diana E. Murphy
President, Federal Judges Association
670 U.S. Courthouse
110 South Fourth Street
Minneapolis, Minnesota 55401

Dear Diana:

I have reviewed your memorandum of May 11, together with the fax that was received today describing the new bill.

Probably some version of this bill is going to pass. I believe we should continue to follow the details and make suggestions. The bill has been greatly improved by suggestions made in the past. At the same time, I think we should continue to insist firmly that the whole thing is a bad idea. Aside from constitutional or theoretical problems, the bill will simply not be effective. The sponsors have a faith in committees, plans, advisory groups, and other forms of bureaucratic apparatus that I do not share. We need to be left alone to do our work, instead of devoting days of time to plans, procedures, and other wheel spinning.

One of the comments made is that the chief circuit judge should not be involved in the process. I agree completely. I see no reason for any circuit judge to be involved - not because it would do any particular harm, but because it is simply unnecessary.

I recognize that the Judicial Conference seems to be taking a more conciliatory position. There are no doubt good reasons for this, but my sense at the present time is that the end product will

be better if FJA is somewhat firmer about opposing the bill in principle. We should keep Bob Feidler informed of whatever we do, and take his counsel, but we do not have to adopt identical tactics.

These are a few random thoughts, for whatever they may be worth.

Sincerely yours,

Richard

Richard S. Arnold

RSA/bf

cc: Members of the Executive Committee
The Honorable Tom Railsback

June 1, 1990

Hon. Diana E. Murphy
U.S. District Juge
670 U.S. Courthouse
110 S. 4th Street
Minneapolis, MN. 55401

Dear Diana,

The statement you propose to make on behalf of FJA in respect to the Biden Bill is excellent. Suggestions I have to make that are only that, suggestions (I'll number my comments to correspond to your numbers):

1. I like the introduction right at the outset that points out that the rules process is the best way to improve case management. Perhaps the statement could be stronger.

3. Rather than talk about the "role of Congress" in creating the problems I would stress the specific causes saying something like: In the long run, no management system for civil litigation in federal trial courts can be effective without adequate numbers of judges, relief from crushing criminal caseloads, and reduction in time-consuming processes. The priorities of the Speedy Trial Act, the burgeoning criminal caseload, and lengthy sentencing hearings consume essentially all of the district courts' time.

9. Add a statement to the following effect: District courts also need adequate time to commit their reasons to writing in a complete and thoughtful manner to enable meaningful appellate review.

10. I'm not sure that this is needed or politically wise since Senator Biden apparently is trying to upstage the Federal Courts Study Committee Report. The thrust of our comments makes clear that the legislation will not benefit the courts or cure anything.

Sincerely

BETTY B. FLETCHER

BBF:web