

Rec'd LPA 7/10/90

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

WASHINGTON, D.C. 20544

July 9, 1990

MEMORANDUM TO THE MEMBERS OF THE JUDICIAL CONFERENCE OF
THE UNITED STATES

Subject: Senator Joseph Biden's Comments at his Senate Judiciary Committee
Hearings Held June 26th

At Senate Judiciary Committee hearings held June 26, 1990 on S. 2648, Senator Biden strongly criticized the Judicial Conference, singled me out for special criticism, and also criticized Judge Aubrey Robinson. In my case, Senator Biden was disturbed about comments attributed to me by *The Legal Times* and, in the case of Judge Robinson, the Senator's unhappiness arose over comments attributed to Judge Robinson in the *Texas Lawyer*.

As you may recall, Title I of S. 2648 is the substantially improved version of the so-called Civil Justice Reform bill previously introduced by Senator Biden as S. 2027. Title II of S. 2648 would create 77 new judgeships, 11 of which were not included in the Judicial Conference's more recent request for 96 judgeships. Senator Biden was critical not only of the Conference for failing to agree to the new Title I but also of Judge Robinson and myself for statements made about Title II, the judgeship section.

I feel keenly the need to faithfully represent the best interests of the Judiciary and not to do anything which would detract from that central mission. Therefore, I was deeply concerned to learn of the reaction of Senator Biden and his staff to *The Legal Times* article concerning a speech that I gave at the District of Columbia Circuit Conference. Neither do I feel, nor did I intend, to say anything disrespectful about Senator Biden or his colleagues. However, *The Legal Times* article lifted two or three comments out of the context of the talk which was given in a humorous vein to what I thought was an executive session of the Conference and attributed one statement to me that I did not make at all. Specifically, I did not say "instead, Biden put the new slots where they would do him the most political good." Moreover, I recognize that humor may be amusing to some and not to others.

Senator Biden expressed his displeasure with *The Legal Times* article prior to the June 26th hearing through a letter to the Chief Justice, a copy of which is attached. Also attached is the Chief Justice's reply to Senator Biden.

The Chief Justice's letter basically captures the atmosphere and context of my talk. In fact, he arrived at the District of Columbia Circuit Conference soon after I gave my speech. In light of the high regard which the judges hold for Senator Biden and his position, I am sure had they felt that I had been disrespectful to the Senator that they would have called this to the attention of the Chief Justice. But this did not happen.

A few days ago, I was able to obtain a copy of the court reporter's transcript of my remarks. (I did not use a prepared text but only notes.) A copy of the transcript is attached. Upon reading it, I do not find it to be either disrespectful or offensive, and I believe that if Senator Biden had the full text available instead of the article his reaction might well have been different. There are a couple of words I would change upon reflection. Moreover, there is one factual error in the bottom line of page 25 going over to 26. In fact, 31 judges were not "added" to the Biden bill but rather 31 were deleted from the Judicial Conference bill. In another less important matter in *The Legal Times*, I am quoted as saying that Biden had "zapped" 3 "judgeships" that the Judicial Conference had sought for Texas. In fact, I said 3 courts, not judgeships. The truth is that 7 of the 13 judgeships proposed by the Judicial Conference for Texas were deleted in the Biden bill.

The one thing I do regret is that my comments can be interpreted to question motives. That surely was not my intent, as you will see from the attached letter of apology which I sent to Senator Biden following the June 26th hearing. I certainly did not consider any possible inferred motives in my talk to be inappropriate or against the public interest. I assumed that any agreements that may have been made by the senators involved were part of the necessary compromises that take place in virtually all legislation.

To make the record complete, I am attaching a follow-up article from *The Legal Times*. In addition, although Judge Aubrey Robinson is perfectly capable of speaking for himself, I am including a copy of the *Texas Lawyer* article and Judge Robinson's letter to Senator Biden so that you will be aware of the full context.

I have gone on at such length because, as you know, I serve as Director under the supervision of the Judicial Conference of the United States. The Conference is entitled to a report. I would not do anything knowingly that would reflect discredit on the Conference or on the Judiciary.

Although Senator Biden at the hearing was sharply critical of the Judiciary, the Judicial Conference, Judge Robinson, and myself, I believe that the breach is not a lasting one. Certainly, I have tried to do my part to make sure that it is not. Senator Biden himself and his staff at the hearings indicated that the Senator plans to move ahead soon with both the Civil Justice Reform title (Title I), the judgeships title (Title II), and perhaps a Title III to consist of more general legislation of interest to the Judiciary. The bill is expected to be marked up by the Committee either on July 12th or July 26th, and Senator Biden hopes to get it passed by the Senate before the congressional recess starts on August 3rd.



L. Ralph Mecham

Attachments

NOWELL TREFLIN, ALABAMA
PAUL SIMON, ILLINOIS
HERBERT KOHL, WISCONSIN

ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6271

RONALD A. ELAM, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
JEFFREY J. PECK, GENERAL COUNSEL
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
AND STAFF DIRECTOR

June 6, 1990

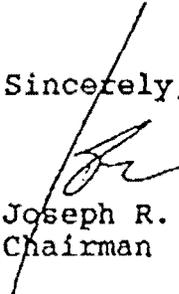
The Honorable William H. Rehnquist
Chief Justice of the United States
U.S. Supreme Court
Washington, D.C. 20543

Dear Mr. Chief Justice:

As you know, on May 17, Senator Thurmond and I introduced S.2648, the Judicial Improvements Act of 1990. Title I is the revised civil justice legislation, and Title II creates 77 new federal judgeships. Last week, the attached article appeared in the Legal Times. I am writing to inquire whether the statements attributed to Mr. Meham in the article reflect the views of the Judicial Conference.

Thank you for your attention to this matter, and I look forward to your reply.

Sincerely,


Joseph R. Biden, Jr.
Chairman

Enclosure

*R. How I benefit from
more Republican judges,
as Republican Senatorial
Choice is beyond me.*

JUN 15 '90 11:11 ADM. ASST. TO C.J.

P. 2/2
C. J. Brennan

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

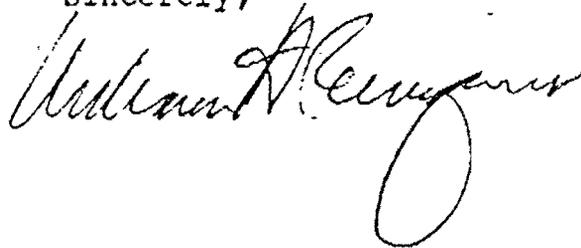
June 12, 1990

The Honorable Joseph R. Biden
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

I have received your letter of June 6th inquiring as to a newspaper column report of statements made by Ralph Mecham, Director of the Administrative Office, at the District of Columbia Circuit Conference in Hershey. Mr. Mecham was speaking "off the cuff" to an audience of lawyers and judges, and his jocular remarks about the civil justice and judgeship provisions of S. 2648 do not represent the position of the Judicial Conference. The Conference has long favored the creation of additional judgeships, and its position on the civil justice legislation is being worked out by the Committee of District Judges about which you and I spoke when we had lunch in April.

Sincerely,



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

L. RALPH MECHAM
DIRECTOR

JAMES F. MACKLIN, JR.
DEPUTY DIRECTOR

WASHINGTON, D.C. 20544

June 26, 1990

Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D. C. 20510-6275

Dear Mr. Chairman:

It was reported to me that at the hearing this morning on S. 2648 you were deeply concerned by comments attributed to me in a Legal Times article which you believe reflected adversely on yourself and your colleagues. That was not my intent nor do I believe it was so construed by the judges who were present. These comments do not reflect the views of the Judicial Conference as Chief Justice Rehnquist advised you on June 12th. A copy of the Chief Justice's letter is enclosed.

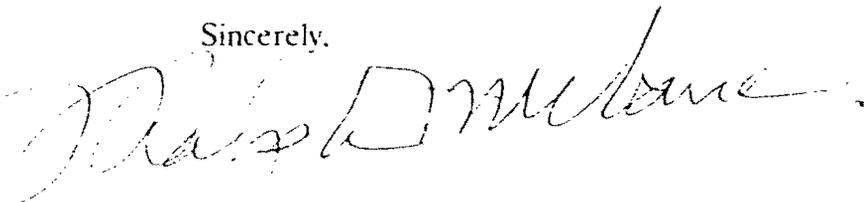
I apologize for my remarks which resulted in unfair characterizations of your motives. I had understood that my comments were off the record and were being made only to the federal judges of the D. C. Circuit, who had expressed a great interest in your bill, S. 2648. I regret that my -- and the Conference's -- words of praise for you have not received the same attention. Your leadership on the judgeship bill is sincerely appreciated and well recognized by the Judicial Branch and by me. In fact, at the same meeting, I praised your action in introducing a judgeship bill as a "major breakthrough", a statement which along with other positive comments I made about the progress made on Title I of your bill, did not appear in the report.

I hope that the friction of recent days can be put behind us and that we both can return to our shared goal of advancing the cause of justice through mutual cooperation and an understanding of the needs of our respective branches.

Honorable Joseph R. Biden, Jr.
Page two

I will be pleased to come to your office this afternoon or at any other time to carry this same message and respond personally to your concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ralph Mechem". The signature is written in dark ink and is positioned above the typed name.

L. Ralph Mechem
Director

United States District Court
for the District of Columbia
Washington, DC 20001

Aubrey E. Robinson, Jr.
Chief Judge

June 26, 1990

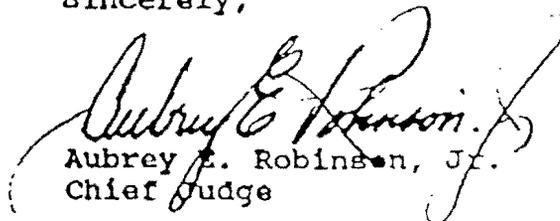
Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20515

Dear Senator Biden:

I understand that my name came up at this morning's hearing in connection with remarks attributed to me in a June 18, 1990 article in the Texas Lawyer.

Please be advised that I have spoken for the Judicial Conference of the United States on S. 2648, or its predecessor, S. 2027, on only one occasion, in testimony before your committee on March 6, 1990. The comments attributed in the Texas Lawyer article were not made on behalf of the Judicial Conference or in a representative capacity.

Sincerely,



Aubrey E. Robinson, Jr.
Chief Judge

1 REMARKS BY L. RALPH MECHAM, DIRECTOR

2 ADMINISTRATIVE OFFICE OF THE U.S. COURTS

3 MR. MECHAM: It's a privilege to be here and share
4 this marvelous day with you. We call this the Wald/Robinson
5 weather. Tremendous downpour during the meetings and then sun
6 breaking out as if by miracle in the afternoons. At least we
7 hope that will be the case. I'm pleased to represent that
8 benighted group which Judge Wald referred to as the naysaying
9 bureaucracy. Sometimes, we're even some yea-saying bureau-
10 crats, at least we try to.

11 I would like to pay a tribute if I may to Judge
12 Aubrey Robinson this morning. Judge Robinson has been relied
13 upon by two Chief Justices of the United States for important
14 leadership roles on the Judicial Conference of the United
15 States. He has served for over five years as a member of the
16 Executive Committee and was instrumental, when Chief Justice
17 Rehnquist assumed that office, to effect, along with four or
18 five of his colleagues, a change of emphasis and stress on the
19 operations of the Conference itself, and really a complete redo
20 of the philosophy and operations of the Conference Committees.

21 The result is the Conference is much more open; the
22 participation is much broader; in fact, after Judge Robinson
23 and his crew finished their work, there were 158 new Judges
24 appointed to committees, out of about 250 total. So, more
25 Judges are having an opportunity to participate; the process is

1 much more open; and I hope much more effective. I'd just like
2 to thank Judge Robinson for his important work in that area.

3 We at the Administrative Office are very cautious
4 about saying nay. We have learned, in fact, that our place is
5 to say yea if at all possible and if not, to finesse and punt
6 as delicately as we can. Indeed, we've learned that this is a
7 Judge-run operation and, in fact, someone recently asked me,
8 what was the difference between an Article III Judge and a
9 terrorist, and I said I wasn't sure precisely, and the answer
10 was, you can negotiate with a terrorist.

11 I was asked to speak on some scintillating admini-
12 strative aspects of the Administrative Office -- our accounting
13 system, our automation system and so on, but by popular lack of
14 demand, I will instead refer very briefly, if I may, to two of
15 the missions that we perform in the Administrative Office.

16 One is to try to carry out the legislative mandates
17 and directives of the Judicial Conference of the United States,
18 and secondly, and closely related to that, is to assemble,
19 prepare, and advocate the budget before the Congress for the
20 judiciary. Just let me just say a word or two about the
21 legislative part of it.

22 The Conference is particularly concerned just now
23 with what has become known as the Biden bill, the Civil Justice
24 Reform Act. Judge Robinson indeed represented the judiciary in
25 appearing before Senator Biden and the Senate Judiciary Com-

1 mittee to talk about this legislation. I think it's fair to
2 say that there was great initial consternation and still some
3 among the judiciary of the land.

4 There was a clear separation of thought and a divi-
5 sion among the judiciary. About two percent supported the bill
6 and about 98 percent opposed it with various degrees of vio-
7 lence. Of those 98 percent, there was again a split, roughly
8 between those who felt that we may have to have legislation;
9 perhaps it can do some good; maybe we can do some good about
10 the civil backlog that occurs in some courts. Senator Biden is
11 after all Chairman of the Judiciary Committee and we need him
12 on things like judgeship legislation and legislation to imple-
13 ment the Federal Court Study Committee report, and perhaps we
14 ought to try to perfect the bill and make it more acceptable.

15 On the other side, it was very strongly felt and
16 deeply moved on the part of many of the Judges, look, this is
17 an unwarranted intrusion on the powers of the court; secondly,
18 it probably violates the separation of powers. Congress should
19 not get down to micro-managing the civil docket of every Judge
20 in the United States by requiring 45 shalls in the legislation.
21 We sort of went into "shall-shock" in the judiciary. I'm sorry
22 for that.

23 But this was more than a shock; it was virtually a
24 cold bath out there. But I think the dominant feeling was that
25 we ought to try to work with Senator Biden; try to work some-

1 thing out that was worthwhile. Judge Robinson was among the
2 leaders of that; Judge Bob Peckam chaired the committee, a
3 Senior District Judge from California.

4 Well, the result now is that Senator Biden, last
5 Thursday late, introduced a revised bill which is a substantial
6 improvement over the first one, from the judicial point of
7 view. We'll continue to work with him. As we expected, he did
8 tie onto it legislation to create 77 new Judgeships and we're
9 also told that there will be a Title III to the bill, which
10 will include many of the provisions of the Federal Court Study
11 legislation that are acceptable, indeed, supported strongly by
12 many of the Judges and the bar throughout the country.

13 Well, I could go into great detail about this. Time
14 does not permit, but the second round of hearings will be held
15 on the 12th of June and we will see where we go. As far as the
16 judgeship legislation goes, the D.C. Circuit isn't directly
17 affected by that in that none were requested by your Circuit
18 and none were received in the bill.

19 It was interesting to see that the Judicial Con-
20 ference requested 96 Judges new throughout the land; Senator
21 Biden requested 77; and of those 77, there were ten -- if I can
22 find the data here quickly. Well, I can't lay my hands on it
23 speedily. But there were ten of those 77 not recommended by
24 the Judicial Conference in connection with their weighted
25 caseload. He also added a good number to the bill, which were

1 not recommended, a total of 31 -- nine appeals Judges, 22
2 district.

3 His theme seemed to have been twofold. One was
4 overt, he was trying to bless those courts that have a tremen-
5 dous increase in drug caseload with added Judges. The other
6 one, I think, was somewhat covert. If you go down the list,
7 you'll see that virtually all the Republicans on the Senate
8 Judiciary Committee received extra Judgeships for their states
9 -- Hatch of Utah, Simpson of Wyoming, and a number of others.

10 In addition to that, one of his problems, of course,
11 is going to be Jack Brooks, Chairman of the House Judiciary
12 Committee. He zapped the three Texas courts, which had far and
13 away the greatest need for Judges and the most Judges in the
14 country. He took about six of their total Judges out and I
15 suppose he's going to negotiate with Mr. Brooks on adding those
16 back in in the conference. Well, it will be fascinating to
17 watch to see how this process works.

18 Let me just say a word or two about judicial pay.
19 The Judges at least are interested in this and you lawyers
20 ought to be. They're going to be a lot happier if this thing
21 goes through on the 1st of January.

22 Since the Administrative Office is blamed frequently
23 for the things that go wrong, often unjustly, I think it's only
24 fair that we take credit for some of the things that go right,
25 even though we may only have a modest contribution to it.

1 Since I became head of the Administrative Office on
2 the 15th of July of 1985, by next January, when the 25 percent
3 pay kick goes into effect, roughly the pay for each Judge will
4 have gone up \$1,000 a month for each month I've been on the
5 job. District Judges will have gone from \$76,000 to \$121,000;
6 Circuit Judges from \$80,500 to \$128,000. You have an interest
7 in keeping me here.

8 The big worry is the rollback. Nader and others
9 would like to roll back the Judges' pay. I know of at least
10 three opinions, which I'm sure would prevail in the courts --
11 at least I hope they would, including that of the General
12 Counsel of the Administrative Office -- that the day the
13 President signed that bill, after the Congress approved it
14 affirmatively and he signed it, the right to that pay was
15 vested constitutionally in the Article III Judges. I hope we
16 don't have to test that.

17 Appropriations, we fared well in '89 with the supple-
18 mental. We ride every train that comes out of town with money
19 on it. We managed to pick up \$56 million under the drug
20 legislation because of the impact of the drug war on the
21 courts. This go-round, in FY91, the Attorney General and the
22 OMB agreed that the added cost to the judiciary by drug legis-
23 lation will be \$403 million.

24 We fared well in FY89 and FY90; however, the big
25 thing we're worried about now in FY90, and conceivably in '91,

1 is the summit agreement between the executive and the legisla-
2 tive, where the judicial is not represented. They forget we
3 exist because we're such a minuscule group as far as money goes
4 -- one-tenth of one percent of the judiciary. But you can't
5 run a judiciary without legislation, without appropriations,
6 and you can't take on the missions and jurisdiction imposed
7 upon the judiciary by Congress and the President without added
8 manpower and added funding.

9 So, we are watching with great concern. We see that
10 Richard Darnen feels that we now have a deficit of \$123 to \$138
11 billion; whereas, the Gramm-Rudman target is \$64 to \$74 and
12 two-thirds of the budget is exempt from Gramm-Rudman-Hollings
13 sequestration cutbacks. The only thing in the judiciary that
14 is exempt from cutbacks is the salary of Article III Judges.
15 The rest of the money is subject to the cuts and that could
16 result in substantial cuts. So, we're watching with great
17 care.

18 Well, I heard your Chairman say that we're supposed
19 to stay on the track as far as time goes. There are a number
20 of things that I would talk about this morning if I had further
21 time, but I think that sort of sums up some of the legislative
22 challenges, the appropriation challenges, and if those of you
23 who -- particularly you Judges and others -- who have some
24 problems that we can assist you with at the AO, I plan to be
25 here for the duration. Thank you very much. [Applause]

1 JUDGE PENN: The next two speakers really need no
2 introduction to this Conference. They've appeared before us at
3 almost every Conference, at least that I have attended, and I'm
4 speaking of Robert Weinberg, who is the Chairperson of the
5 Standing Committee on Pro Se and Pro Bono Matters, and of
6 course, Charles Horsky, who is on the Standing Committee of
7 Civil Legal Aid.

8 First, I would call upon Mr. Weinberg.