

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

CHAMBERS OF

JAMES L. OAKES

CHIEF JUDGE

BRATTLEBORO, VERMONT 05301-0696

March 15, 1990

~~K. B. G.~~
~~J. M. A.~~
H. Segal
~~B. Fuglen~~
~~B. B. Justice~~
the call

To: All Chief Circuit Judges

cc: Chief Justice Rehnquist
Chief Judge Charles L. Brieant, S.D.N.Y.
Judge Robert F. Peckham, N.D. Cal.
Ralph Mecham, Director, AO
Steven Flanders, Circuit Executive, 2d Cir.

Re: S. 2027 (The "Biden Bill," a/k/a Civil Justice Reform Act
of 1990)

Following our breakfast and meeting of yesterday, I went over to Capitol Hill to pay my respects to the New York, Connecticut, and Vermont Senators, only to find that they were all on spring break. Through the offices of Senator Leahy, to whom I had already spoken adversely about the Biden Bill, I managed to have an hour-and-a-half conference with Ann Harkins, general counsel to the Subcommittee on Law and Technology of the Committee on Judiciary, and with Katherine Collins, counsel to that subcommittee, which Senator Leahy chairs. I was able to get across to them the concerns, or some of them, that we have with the bill as discussed particularly at breakfast, including our opposition to the tracking aspects and the fact that former New Jersey state court judges, now federal judges, think that the federal practices are much better as reported by Leon Higginbotham, the bad experience we had with the master calendar system which we had gotten rid of twenty years ago, the unfortunate aspects of taking away magistrates' initial discovery powers, etc. I was able to suggest to them some witnesses, including the Southern District of New York's Milton Pollack, a senior judge who does the work of two ordinary active judges both in Manhattan and Houston and on the Multidistrict Panel and who is one of the greatest individualized case managers that I know of, and Nina Gershon, a magistrate in the Southern District who was the first person to call my attention to the dangerous aspects of this legislation.

I also learned, however, more about how the bill came about and what the real aims behind it are. According to my sources, Senator Biden and his office, particularly an administrative assistant named Peck, have been working on this for over two years, and the bill is really tops on the list of Biden priorities.


Chief Circuit Judges
March 15, 1990
Page 2

Indeed, I may have come along in the nick of time to persuade Senator Leahy not to sign on as a co-endorser as so many others have done, as you know. The bill is at the instance of the large corporations, many of which are headquartered in Delaware, who are gravely concerned about the costs of litigation including but not limited to the cost of discovery, and think that compelled federal court case management may be the way to reduce that cost. Proponents of the bill are said to include not only large industrial corporations and products liability defendants but insurance companies, unions, I believe they mentioned the NAACP, and, as my sources indicated, a joining together of groups that are generally on opposite sides of the fence. Senator Biden is going to have one more day of hearings, but he really has the bill on a fast track, as was mentioned at breakfast.

Ms. Harkins, who seems to be quite politically astute, indicated that so far as the Senate was concerned, we might get some changes made, but we would have to get some Christmas tree ornaments to put together on a package, because some form of bill was definitely going to come out.

At the end of our discussion, which ended, as it had begun, on very pleasant terms, the women asked me if I would be willing to testify against the bill, and I said of course, subject to the views of the other judges. I am sure these people will keep us informed, and I think they are genuinely interested in the judges' concerns.

Sincerely yours,


James L. Oakes
Chief Judge