

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

"The Mother Court"

Convened November 3, 1789

W. Lee
COPY FOR YOUR
INFORMATION

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UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, NY 10007-1581

UNITED STATES COURTHOUSE
101 EAST POST ROAD
WHITE PLAINS, NY 10601

CHIEF JUDGES

CHARLES L. BRIANT
1986 - PRESENT

CONSTANCE BAKER MOTLEY
1982 - 1986

LLOYD F. MACMAHON
1980 - 1982

DAVID N. EDELSTEIN
1971 - 1980

SIDNEY SUGARMAN
1966 - 1971

SYLVESTER J. RYAN
1959 - 1966

JOHN W. CLANCY
1956 - 1959

WILLIAM BONDY
1955 - 1956

JOHN C. KNOX
1948 - 1955

CLIFFORD P. KIRSCH
DISTRICT EXECUTIVE

~~RAYMOND E. SHERARD~~
CLERK OF COURT

February 27, 1991

Hon. Anthony A. Alaimo
United States District Judge
Southern District of Georgia
Post Office Box 944
Brunswick, Georgia 31521

Dear Tony:

Thank you for your February 20th letter in which you note your objection to having the Southern District of Georgia designated as a pilot district by the Judicial Conference of the United States.

This issue is a difficult one, and without taking a position on the merits at this time I thought I should write to acknowledge your note, providing also some information which might be of assistance to you and the judges of your Court.

I too was shocked at first to learn that our Court had been tentatively selected as a pilot district. I began to marshal our excuses and set the stage to request reconsideration. I believed at the time that there were very good reasons to exempt this District, one of them being its sheer size and another arising from our long unfilled judicial vacancies (7 of them as I write).



However, I brought up the matter at the next meeting of the Board of Judges. I found to my surprise, in the course of a long discussion, that for many different reasons the Judges were able to come to a consensus that they should not resist designation and did not want me to oppose it.

While all seem to agree with the basic proposition that no power, either in the judicial or legislative branch, can make a judge do anything in connection with his or her judicial decisions, except possibly by direct appeal in a particular case or a Writ of Mandamus should there be a clear abuse of discretion, all of the judges for one reason or another thought that it would be a good idea to engage in this experiment. Some thought that by participating they could be assured that the results of the experiment would not be skewed by the activities of one or two small districts led by the judges who testified favorably in front of Senator Biden, volunteering to serve, and then intentionally or unintentionally creating invalid statistical results. Others thought that participation in a pilot group would bring us additional funds and additional substantive assistance from the Administrative Office, the Federal Judicial Center, and perhaps even the Congress. Others thought that some of the proposed reforms either would work well, or would not work at all, and wanted to confirm their opinion for themselves rather than rely on others.

Whatever the reasons, all of the Judges, including Senior Judges, agreed that I should be instructed not to oppose designation of this District as a pilot court.

In retrospect, I think that their views may be correct. If something will work here it will work anywhere, and I cannot perceive any detriment to an individual judge in joining the program to try it out.

There is a further very serious problem. If courts which simply don't want to do it are exempted, their places will have to be filled with courts that do want to participate. I am sure there are some such courts around and if they predominate in the statistical sample of ten courts then the statistical sample is no longer random, it ceases to be representative, and the results are not entitled to any weight. Any experiment manned only by volunteers is likely to produce false conclusions.

Maybe the best thing that the judges of your Court could do for their Court and for the judiciary, is to disclaim, as our Court has done, that anybody has the power to make us do it, but nonetheless to do it voluntarily in the spirit of cooperation with a worthwhile goal.


I write out of my great respect for you personally and for Chief Judge O'Kelley, who has shared many significant efforts with me, and also because I thought your communication should be acknowledged.

Nothing in the foregoing letter indicates any predisposition on my part to vote one way or another if the moment of truth faces us next month.

It was good to hear from you, and I look forward to seeing you in Washington.

With kindest regards to you and Chief Judge O'Kelley, I am

Sincerely yours,



Charles L. Brieant
Chief Judge

CLB:afc

CC: Chief Judge Oakes
Chief Judge O'Kelley
Mr. Mecham