

6-4-85

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND, OHIO 44114

May 29, 1985

THOMAS D. LAMBROS
Judge

Honorable G. Wix Unthank
United States District Judge
Eastern District of Kentucky
P.O. Box 278
Pikeville, Kentucky 41501

Dear Wix:

Thank you for making the Summary Jury Trial Program at the Sixth Circuit Conference a smashing success. I have always said that the Sixth Circuit conferees are most perceptive individuals. Again they confirm my assessment of them. They have unanimously reported with uncontrollable fervor that this program was the best program that they have observed. Others reported that it was like a Hollywood production and that the cast and production deserve a combined Oscar and an Emmy. From the judges of the Sixth Circuit to the planning committee to the life members and the delegates, I have received reviews which are most pleasing to hear.

Dwight Eisenhower's success has been attributed to his selection of the right people to fulfill a mission. You and each of the participants were truly the right persons for the program. I am grateful for your immeasurable contribution. I look forward to our doing it again. Your continued commitment to improving the methods of administering justice is so important. It is my hope that you will continue in those efforts that have been very vital to the system of dispute resolution for which each of us has a great deal reverence.

Thank you Wix for your contribution.

Sincerely,



Thomas D. Lambros

TDL/ch

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ECUMENICAL HISTORIANS INFORM US THAT MANKIND CAME FORTH FROM THE EUPHRATES AND TIGRIS RIVER VALLEYS IN THE MID-EAST. THESE PEOPLES BECAME BOUND IN GROUPS IN WHICH THEY WERE GOVERNED BY KINGS, PRIESTS, PROPHETS AND TRIBAL LEADERS. THE POWER TO LEAD AND RULE WAS BESTOWED AS A DIVINE RIGHT.

SOMETIME BEFORE THE BIRTH OF CHRIST IN A SMALL LAND, PRESENTLY KNOWN AS GREECE, AN EXPERIMENT WAS CARRIED OUT WHEREIN THE MEMBERS OF A GROUP OR COLONY WOULD ATTEND MEETINGS AND VOTE INDIVIDUALLY UPON THE ISSUES. THIS IS SOMETIMES SAID TO BE THE BEGINNING OF THE IDEA OF DEMOCRACY. HOWEVER, A GROUP KNOWN AS SPARTANS PUT AN END TO THIS EXPERIMENT.

HOWEVER, THE IDEA SPREAD WESTWARD AROUND THE MEDITERRANEAN TOUCHING ROME, SPAIN, AND FRANCE ON ITS WAY INTO ENGLAND.

IN ENGLAND, BY REASON OF A REVOLT OF THE PEOPLE, A DOCUMENT KNOWN AS "the magna carta" TRANSFERRED SOME OF THE POWER TO THE PEOPLE WHICH WAS BESTOWED UPON THE CROWN BY DIVINE RIGHT.

ALTHOUGH ENGLAND HAD AND STILL HAS A KING, SUCH OFFICE IS CEREMONIAL IN THAT THE LEGISLATION IS BY A HOUSE OF LORDS AND COMMONS AND THE EXECUTIVE IS A PRIME MINISTER.

IN MANY RESPECTS THE GOVERNMENTS OF THE UNITED STATES AND ENGLAND ARE SIMILAR. BECAUSE OF LINEAGE THIS IS AS IT SHOULD BE. HOWEVER, IN THE AREA OF THE LOUISIANA PURCHASE THERE REMAINS A VESTIGE OF THE LAW OF FRANCE AND IN FLORIDA THAT OF SPAIN.

I WOULD BE REMISS, IF IT WASN'T MENTIONED THAT OUR IDEA (PTP) ALSO WENT TO THE "FERTILE CRESCENT AREA " SOUTHEASTWARDLY. THE HAMBURABIAN CODE, ENACTED IN THE EIGHTEENTH CENTURY BEFORE THE BIRTH OF CHRIST BY THE KING OF BABYLONIA IS YET STUDIED BY PRESENT DAY JURIST.

MONTESQUIEU, LOCKE, PAINE, MADISON, JEFFERSON AND HAMILTON ARE CONSIDERED AS SOME OF THE MORE PROMINENT ONES ESPOUSING THE IDEA OF "NATURAL LAW". Their argument was that man was given the natural right to determine his own course of events . . .

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THEY KNEW THAT ALL MEN WERE NOT EQUAL IN A SENSE THAT ONE IS MORE INTELLIGENT, STRONGER, OR BORN OF PARENTS WHO HAD ACQUIRED MORE. THAT IN ORDER TO PROTECT ONES RIGHTS AND FREEDOM IT BECOMES NECESSARY TO BIND TOGETHER. THUS THE MOTTO OF OUR STATE...UNITED WE STAND- DIVIDED WE FALL.

THUS THE BASIC PATTERN OF OUR CONSTITUTIONAL LAW IS THAT ALL LAWFUL POWER COMES FROM THE PEOPLE AND IS GIVEN BY THEM TO BE HELD IN CHECK TO PRESERVE THEIR INDIVIDUAL RIGHTS AND FREEDOM.

HISTORY AND EXPERIENCE TAUGHT THE CONSTITUTIONAL FATHERS THAT THE GREEK EXPERIMENT DID NOT SURVIVE BECAUSE OF A FICKLENESS AND UNPREDICTIBILITY PECULIAR TO A LARGER GROUP.

PIGEON STORY....ONE KEY..SMALL REWARD INSTANTLY

ANOTHER KEY...DELAY PLUS A WALK..GOT A LARGER REWARD.

95% IMMEDIATELY ACCEPTED INSTANT REWARD BUT ONLY 30% COULD BE RETRAINED TO ACCEPT THE DELAY.

HISTORY AND EXPERIENCE ALSO TAUGHT THEM THAT TO CENTRALIZE POWER IN ONE PERSON OR A SMALL GROUP COULD ONLY MEAN TYRANNY.

THUS, THEIR KNOWLEDGE, EXPERIENCES AND THOUGHTS WERE BROUGHT TOGETHER IN A DOCUMENT, WE KNOW AS "OUR CONSTITUTION".

THIS DOCUMENT THROUGH A DIVISION OF POWER, VERTICAL AND HORIZONTAL IS INTENDED TO INSURE LIBERTY FOR THE PEOPLE.

THE CONSTITUTION DIVIDES THE POWER HORIZONALLY IN THE FIRST THREE ARTICLES BY VESTING THE POWER IN THE LEGISLATIVE, EXECUTIVE AND JUDICIAL.

THE CONSTITUTION DIVIDES THE POWER VERTICALLY IN THE FOURTH ARTICLE, WHEREIN THE CONSTITUTION GUARANTEES EVERY STATE A REPUBLIC FORM OF GOVERNMENT AND PROTECTION FOR EACH FROM INVASION WITHOUT AND WITHIN.

THE TENTH AMENDMENT FURTHER DIVIDES THE POWER VERTICALLY IN THAT IT PROVIDES THAT ALL POWERS NOT DELEGATED TO THE U. S. BY THE CONSTITUTION NOR PROHIBITED BY IT TO THE STATES ARE RESERVED TO THE

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STATES OR TO THE PEOPLE.

ONLY TIME IS THE TRUE TEST OF IDEAS.

THE IDEA OF THE EUPHRATES AND TIGRIS RIVER VALLEYS IS STILL WITH US. SO IS THE IDEA OF IT IS A LAW OF NATURE FOR MAN TO HAVE A SAY IN THE COURSE OF HIS DESTINY.

Between the Late 1700's (the Marshall Court era) and the Depression era in the 1920's, the pervasive role of the Constitution as viewed by the Judiciary was the autonomy and vitality of the States.....Thus States Rights.

Commencing with the post civil war era and extending through the 1950's , the pervasive role of the constitution as viewed by the Judiciary was toward a stronger and more centralized Federal Government.

Theresince, the pervasive role of the Constitution as viewed by the Judiciary seems to penetrate the spheres of Federal, State and Local Governments and emphasize Individual rights, such as Freedom of Speech, Religion, Unreasonable Searches and Seizures.

Our Government has been in existence slightly more than two hundred years, whereas England has existed many times more.

Although we may be considered as infants, I would like to believe that we have the best idea.

STORY OF BEING MOVED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

SUMMARY JURY TRIAL AS A SETTLEMENT PROCEDURE

ONE OF THE MORE DELICATE PROBLEMS ARISING IN MY COURT, AS WELL AS OTHER COURTS, IS THE MATTER OF SETTLEMENTS.

WHEN I WAS A YOUNG ATTORNEY, I WAS RELUCTANT TO RAISE THE QUESTION OF SETTLEMENT FOR FEAR THAT IT WOULD INDICATE A WEAKNESS IN THE LAW OR FACT OF MY CASE. ON THE OTHER HAND, WHEN SETTLEMENT WAS DISCUSSED AND I EXPOSED THE STRENGTH OF MY CASE IN ORDER TO EFFECT A MORE FAVORABLE SETTLEMENT, I SOMETIMES DISCOVERED THAT I HAD DISCLOSED MATTERS THAT WORKED TO MY LATER PREJUDICE. THUS, I REACHED THE POINT WHERE I SAID "IF I HAVE TO PROVE MY CASE I ONLY WANTED TO DO IT ONE TIME. . . . AT THE TRIAL".

YOU CAN GATHER FROM THIS THAT I WAS WANTING IN THE SKILL OF A SETTLER. ANOTHER AREA IN WHICH I WAS LESS SKILLFUL WAS IN THE COLLECTION OF FEES, BUT THIS IS ANOTHER CAN OF WORMS.

AT A RECENT SESSION OF THE JUDICIAL WORKSHOP FOR THE SIXTH CIRCUIT, THERE WAS PRESENTED A SUPPLEMENTAL SETTLEMENT PROCEDURE WHICH APPEARED PROMISING. THIS IS CALLED A "SUMMARY JURY TRIAL".

THE ORDINARY PROCEDURE FOR A CIVIL ACTION IN THE UNITED STATES DISTRICT COURT AT PIKEVILLE IS AS FOLLOWS:

COMPLAINT AND ISSUANCE OF SUMMONS

WITHIN 20 DAYS FROM SERVICE OF SUMMONS

ANSWER

CLERK SUBMITS RECORD TO COURT FOR SETTING
OF PRELIMINARY CONFERENCE

PRELIMINARY CONFERENCE (WITHIN 30-DAYS OF FILING OF
ANSWER)

CUT-OFF DATE FOR DISCOVERY
SETTING OF PRETRIAL DATE
SETTING OF TRIAL DATE

PRETRIAL CONFERENCE (DEPENDENT UPON TME OF DISCOVERY,
ETC.)

WITNESS LIST
EXHIBIT LIST
GROUND RULES FOR TRIAL

TRIAL

15-45 DAYS FROM PRETRIAL CONFERENCE

A SUMMARY JURY TRIAL DOES NOT SUBSTANTIALLY VARY
THIS PROCEDURE. IT SUPPLEMENTS IT. ALTHOUGH THE COURT MAY
ORDER A SUMMARY JURY TRIAL, IT IS MY PERSONAL OPINION THAT IT
SHOULD VERY SELDOM BE COMPELLED. IT SHOULD ORDINARILY ARISE
AFTER THE COMPLETION OF DISCOVERY, UPON MOTION OF BOTH PARTIES,
AND BEFORE PRETRIAL CONFERENCE.

SUMMARY JURY TRIAL

(a) PRETRIAL

WITNESS LIST, SUMMARY OF EVIDENCE OF EACH
WITNESS.

(b) SIX JURY TRIAL

PRESENTATION OF EVIDENCE BY COUNSEL ONLY
ALL PARTIES PRESENT.

MINI-INSTRUCTIONS

INDIVIDUAL VERDICT BY SUMMARY JURY. UPON
ISSUE OF LIABILITY UNLESS PARTIES REQUEST
VERDICT UPON AMOUNT OF DAMAGES.

(c) PARTIES GIVEN 30-60 DAYS TO REACH SETTLEMENT.

(d) IF SETTLEMENT ACCORDED. . . . JURY COSTS TO BE EQUALLY
DIVIDED BETWEEN THE PARTIES OR AS AGREED BY PARTIES.

(e) IF SETTLEMENT NOT REACHED, MATTER GOES TO FULL
TRIAL.

IF VERDICT UPON FULL TRIAL IS CONTRARY OR
DISPROPORTINATE TO SUMMARY JURY TRIAL MAY
INCUR COSTS OF SUMMARY JURY TRIAL IN ADDITION
TO REASONABLE ATTORNEY FEE.

WE HAVE SCHEDULED SEVERAL SUMMARY JURY PRETRIAL AND
SUMMARY JURY TRIAL DATES BUT HAVEN'T PROGRESSED TO THE POINT
WHERE WE CAN DETERMINE THE PRODUCTIVENESS. HOWEVER, AS PREVIOUSLY
STATED IT DOES APPEAR PROMISING.

ANY QUESTIONS?

EAGLE-A
Trojan Bond
25% COTTON FIBER