ON JUDGE AILEEN M. CANNON

The New York Times is out with a long, interesting, piece on SDFL Judge Aileen M. Cannon by Schmidt and Savage. I won't call it a hit piece, but it is extremely negatively framed, and in some regards disingenuously so. For a news article, there is no way not to view it as a position piece.

> "Aileen M. Cannon, the Federal District Court judge assigned to preside over former President Donald J. Trump's classified documents case, has scant experience running criminal trials, calling into question her readiness to handle what is likely to be an extraordinarily complex and high-profile courtroom clash.
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> Judge Cannon, 42, has been on the bench since November 2020, when Mr. Trump gave her a lifetime appointment shortly after he lost re-election. She had not previously served as any kind of judge, and because about 98 percent of federal criminal cases are resolved with plea deals, she has had only a limited opportunity to learn how to preside over a trial."

That is the opening salvo. Okay, Cannon is a newish federal judge. So what? You take your federal judges as you get them, not as you want them. Criminal trials are not the only trials federal judges do, they also do civil trials. And complicated criminal hearings, including evidentiary ones, pre-trial that most often lead to pleas. The NYT did not delve into that, to any extent it may exist. The fact Cannon has only four criminal jury trials is not shocking in the least. Importuning that she is incompetent because of that is lame.

In Arizona state courts, I have Rule 10 right to

notice a change of judge as a right within 10 days of arraignment or assignment of judicial officer.

There is no such availability in federal court. You get what you get. TV lawyer gadabouts like Norm Eisen are shouting that Cannon MUST recuse, and if not Smith must affirmatively move for her disqualification. Based on a ruling in a short civil matter involving Trump previously. Granted her action in that matter was dubious, to be overly kind. But even the hideous 11th Circuit slapped that down, and she complied with the edict. This is a non-starter, and Smith would be an idiot to attempt it. Attempt that and lose, and you almost certainly would, now you *really* have a problem.

Would Cannon self recuse? There is no evidence of that to date. My friend Scott Greenfield thinks she should for the sake of her career, while acknowledging there is little to no chance of forcing her off like windbags like Eisen clamor for.

I, which rarely happens, disagree with Scott. It would torpedo her career and be a tacit admission she is a right wing nut job incapable of presiding over any partisan issues. That would not be a good look, does not look like a career enhancer in a jurisdiction like SDFL to me.

Back to the NYT article. It reports:

> “But the chances appeared low. Under the Southern District of Florida’s practices, a computer in the clerk’s office assigns new cases randomly among judges who sit in the division where the matter arose or a neighboring one — even if the matter relates to a previous case. Nevertheless, Judge Cannon got it.

That is completely contrary to the facts as I understand them. As I have related in comments previously, anybody who took the job seriously enough to check with the clerk’s office, and

current status of the SDFL bench could have seen this coming. Not just as a freak chance, but arguably a likelihood. Smith chose to put his eggs in that basket, and did so.

Another portion of the report literally made me roll out of bed and laugh:

> "At the same time, they said, she is demonstrably inexperienced and can bristle when her actions are questioned or unexpected issues arise. The lawyers declined to speak publicly because they did not want to be identified criticizing a judge who has a lifetime appointment and before whom they will likely appear again."

Seriously?? That describes pretty much EVERY federal judge I have been in front of, irrespective of how long they have been on the bench. This is completely silly land.

Here is another one:

> "The Trump case is likely to raise myriad complexities that would be challenging for any judge — let alone one who will be essentially learning on the job.
>
> There are expected to be fights, for example, over how classified information can be used as evidence under the Classified Information Procedures Act, a national security law that Judge Cannon has apparently never dealt with before."

Seriously? There are a LOT of very experienced federal District judges that have never had to meaningfully deal with CIPA at trial. And most of the ones that have are in DC or EDVA. Again Smith chose this locus, he, and we, will have to live with it. So too should the NYT instead of posting up a somewhat dubious and negative filled report.

The Times report goes on to belittle Cannon's

background and qualification to even serve. But Cannon is nowhere near as bad as many of Trump's appointments. She is a graduate of Duke and then the University of Michigan Law School. She worked for years at Gibson Dunn and as an AUSA. She is fully qualified, even if you think she should not have been nominated. And the NYT citing "ABA" ratings as still being relevant in any regard seems quaint, at best.

Read the NYT article. I am sure it will inflame your passions. But this is federal court, and the law, where not your passions control things. Am I warm and fuzzy about Judge Aileen M. Cannon? No, not whatsoever, but that is irrelevant. Here is where the issue is, for better or worse. Unless Cannon self recuses, that is where it shall remain.