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Jan. 14, 1987

Letters to the Editor:
New York Law Journal
111 8th Avenue,
New York, New York

Dear Sir:

1a. As the prime "victim" of judicial sanctions, I view with apprehension the lack of response by the media, the civil rights organizations, and the bar to the proposals presently contemplated (NYLJ, Jan. 8, 1987).

b. In a one (1) year period in 1985-1986, I was convicted, sentenced, and incarcerated three (3) times, each time without benefit of a trial, albeit mandated by the Constitution of the United States (Bloom v. Illinois, 391 U.S. 194) (NYLJ, Dec. 9, 1986); fines have been levied against me in the approximate amount of $500,000; my bank assets have been seized by virtue of a "phantom" judgment; Orders have been issued directing the Sheriff to "break into" my premises, seize all "word processing equipment and software", and my possessions "inventoried"; and other draconian sanctions imposed.

c. I have no personal interest in such proposed legislation by the Office of Court Administration, since I have every intention of continuing my charted course, however draconian the fines and penalties may be!

d. I will breathe according to my own fashion, or not at all! "Here I stand, I can [will] do no other!"

e. My right to publish was established by Peter Zenger before the adoption of the U.S. Constitution, ironically at his trial in New York County, the same county which now desires my word processing equipment seized!

2a. The right to access to the courts is encompassed in the First Amendment's right to petition (California Motor v. Trucking Unlimited, 404 U.S. 508, 513), which can no more be made subject to abridgment than "speech" or "religion".

b. "Abridgment", in First Amendment context, means anything that "chills" those rights, absent a very compelling overriding interest.

c. Law is a business, as well as a profession. What rational lawyer, of less than inexhaustible means, faced with the possibility of sanctions, would have contended that libel was protected by the U.S. Constitution prior to N.Y. Times v. Sullivan (376 U.S. 254)?

Under the then prevailing law, the highest court of Alabama was not wrong when it stated (N.Y. Times v. Sullivan, 273 Ala. 656, So.2d 25, 40):

> "The First Amendment of the U.S. Constitution does not protect libelous publications (cases cited). The Fourteenth Amendment is directed against State action and not private action (case cited). Assignment of error No. 306 is without merit."

How much of a fine should the Alabama courts have imposed on counsel for the Times for asserting a proposition which was, as it stated, "without merit"?

d. Could or would any attorney undertake to prosecute Gideon v. Wainwright (372 U.S. 335) in the face of Betts v. Brady (316 U.S. 455), if sanctions could be imposed upon him personally?

The trial judge was neither arbitrary nor discourteous in dealing with Clarence Gideon. The transcript, as reproduced by the U.S. Supreme Court reads as follows (p. 337).

> "The Court: Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when a person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case."

e. It is the existence of the power to impose sanctions that chills and destroys the First Amendment right to access to the courts for relief (Cotting v. Kansas City, 183 U.S. 79, 99-102), even when it is not imposed.

If the schedule of assessments are small, they will not significantly curb meritless lawsuits, assuming arguendo they exist in significant numbers.

If the fines or assessments are large, they probably would be unconstitutional, as discriminatory against the poor (Cotting v. Kansas City, supra).

Almost all judges, were at one time or another practicing attorneys, and are generally more emotionally traumatized by having to impose sanctions, then is the sanctioned attorney.

In last analysis, sanctions will not advance any legitimate cause, and will probably be as ineffective as Prohibition!

f. As described in Sacher v. U.S. (343 U.S. 1, 12):

> "Men who make their easy to the bench sometimes exhibit vanity, irascibility, narrowness, arrogance, and other weaknesses to which human flesh is heir."

While some may argue that the above type of jurists is small, their very existence, albeit in small numbers, can paralyze the entire bar, since one cannot know beforehand the identity of the jurist eventually selected.

3a. Common sense, compels the irresistible conclusion, that no one, except governmental units and financial goliaths, would or could intentionally engage in frivolous litigation.

b. The high cost of litigation in itself prohibits any ordinary attorney or client from intentionally engaging in litigation that is patently meritless, and which must inevitably be dismissed!

c. Can anyone advance a reason why any attorney or client would commence a meritless and expensive lawsuit, only to have it dismissed?

d. There are times, when an attorney believes that an action is without substantial merit, properly advises his client of such fact, but nevertheless the client is insistent that the action be brought. There are times when because of other factors, despite misgivings, the attorney is compelled to yield to the client's desires. Indeed, at times, the attorney is wrong, or at least the judge and/or jury come to a conclusion that the action has merit and grant relief.

4a. Most important, civilized society, as expressed in the law, has struck a balance as to some competing values, which are totally at odds with concepts of "frivolous litigation".

b. Civilized society, for example, has placed "life" and "liberty", as expressed by the Writ of Habeas Corpus ad subjiciendum [a civil proceeding], on such an elevated plateau, that it would be unconstitutional to suspend the "repeated" application for such writ (Sanders v. U.S., 373 U.S. 1).

One can present precisely the same writ of habeas corpus to every Supreme and County Court jurist in this state, despite repeated and unanimous denial thereof (Fay v. Noia, 372 U.S. 391, 423 n. 32; People ex rel. Tweed v. Liscomb, 60 N.Y. 559, 567-570). Indeed, the final jurist of about 400 such jurists, has the power to sustain said writ, and once having been sustained such released prisoner may not be re-incarcerated pending an appeal, no matter how dangerous he may be to society or the certainty of his guilt (CPLR §7012)!

c. One need go no further to find justification for the high value placed on "freedom", then to remember that one month after Hitler was lawfully made chancellor, he suspended the writ, and it was the beginning of twelve (12) years of tragedy. The pre-text for the suspension, being the Reichstag fire.

d. No judge nor court should have the power to impose a fine or sanctions, no matter how frivolous the "censoring judge" might believe the suit may be, where important issues or interests are at stake, and absent a high degree of evidence of bad faith!

5a. The "constitution recognizes higher values then speed and efficiency" (Stanley v. Illinois, 405 U.S. 645, 656).

b. The American experience with a judicial process, which was concerned with "speed and efficiency", finds reflection in the practices of the Ku Klux Klan, where the victim was given a "drumhead" trial in dead of night (Briscoe v. LaHue, 460 U.S. 325, 340). From accusation to execution, the time was measured in minutes.

King Richard III, one of the finest administrative monarchs, also had an efficient judicial procedure, especially when children were involved.

c. In Powell v. Alabama (287 U.S. 45), the trial judge "appointed all the members of the bar" (at 49), and could not find a single attorney to represent the Scottsboro boys. Should an attorney, motivated by principal, who volunteered to represent such defendants, be faced with prospective fines and sanctions?

A portion of the court's opinion, per Sutherland, J., certainly no flaming liberal, reads as follows (49-50):

> "There was a severance upon the request of the state, and the defendants were tried in three separate groups ... . Each of the three trials was completed in a single day."

Is this the "speed and efficiency" which sanctions wish to attain? The administrators will say "no", but years down the line the picture will reveal that it is "yes"!

6a. As an added insult, before the opinion of the Court of Appeals was published in anything other than the Court's slip opinion, the Office of Court Administration, which seems to be only concerned with "speed and efficiency", undertook the implementation thereof (NYLJ, Jan. 8, 1987).

b. Those primarily concerned with "speed and efficiency" should first evaluate the relative advantages between the methods used to exterminate the Armenians in 1915, as against the 1935 procedures in the rape of Nanking, as against the efficiency of Hitler's ovens!

c. Resolution of disputes belong in the courts with words, not in the street with bats and guns!

d. There is less reason for censoring litigation through fear of sanctions, then there is for the imposition of sanctions for the publishing of "frivolous" news stories, or for "frivolous" sermons from the pulpit.

e. The proposed rules will harm, everyone, clients, attorneys, and society. Everyone, that is, except me, for if passed, I hope to be "honored" by being the first violator!

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