Case Files, General Index, and Briefs of the Supreme Court and the Court of Appeals

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Version 3
August 20, 2018

January 22, 1970

Herbert C. Davis, Esq.
6100 Excelsior Boulevard
St. Louis Park, Minnesota 55416

Re: In re Jerome Daly
Supreme Court File #42174

Dear Mr. Davis:

Enclosed please find a copy of an order filed in the above entitled matter the 21st day of January, 1970.

Yours very truly,

Richard E. Klein

REK/jk

Enclosure

January 22, 1970

Jerome Daly, Esq.
28 East Minnesota Street
Savage, Minnesota 55378

Re: In re Jerome Daly
Supreme Court File #42174

Dear Mr. Daly:

Enclosed please find copies of two orders in the above entitled matter which are herewith served upon you by mail.

Yours very truly,

Richard E. Klein

REK/jk

Enclosures (2)

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Richard E. Klein, being first duly sworn on oath, deposes and says that on the 22nd day of January, 1970, he made service of the attached order by mailing a true and correct copy thereof to Jerome Daly, attorney, first class mail, postage prepaid, addressed as follows:

Jerome Daly, Esq.
28 East Minnesota Street
Savage, Minnesota 55378

Richard E. Klein

Subscribed and sworn to before me
this 23rd day of January, 1970

Wayne Tschimperle
Deputy Clerk

Odden has copy
Selnes has copy

STATE OF MINNESOTA

IN SUPREME COURT

42174

In re Jerome Daly.

O R D E R

WHEREAS, on September 5, 1969, the above entitled matter was referred to the Honorable E. R. Selnes, designated as referee herein; and

WHEREAS, the Honorable E. R. Selnes has requested that he be relieved from serving as such referee; and

WHEREAS, this matter has been set for hearing on February 9, 1970, at 2:00 P.M.;

NOW THEREFORE, IT IS HEREBY ORDERED that the Honorable E. R. Selnes is relieved of the assignment as referee herein; and

IT IS HEREBY FURTHER ORDERED that this matter is herewith referred to the Honorable Donald C. Odden, designated as referee herein, for further proceedings consistent with the opinion of the court filed herein on September 5, 1969; and

IT IS HEREBY FURTHER ORDERED that the above entitled matter is set for hearing on February 9, 1970, at 2:00 P.M., in Room 722, Flour Exchange Building, Minneapolis, Minnesota, or as soon thereafter as counsel can be heard.

Dated January 20, 1970

BY THE COURT

Associate Justice.

42174

(A)

SUPREME COURT
FILED
JAN 20 1970
JOHN McCARTHY
CLERK

Order re Referees

No. 3290½—Affidavit of Service by Mail. (Rev. 1957) Miller-Davis Co., Minneapolis

State of Minnesota,

County of HENNEPIN } ss.

DONNA R. RACETTE of the City of St. Louis Park

County of Hennepin in the State of Minnesota, being duly sworn, says that on the 22nd day of October, 1970 she served the annexed Findings of Fact and Recommendation of Referee Donald C. Odden dated October 16, 1970, on Jerome Daly

~~the attorney(s) for~~

the Respondent in this action, by mailing to said Jerome Daly a copy thereof, inclosed in an envelope, postage prepaid, and by depositing same in the post office at St. Louis Park Minnesota directed to said ~~attorney(s)~~ Respondent at Savage, Minnesota, the last known address of said ~~attorney(x)~~ Respondent.

Donna R. Racette

Subscribed and sworn to before me, this 22nd day of October, 1970.

Herbert M. Owens

Notary Public Hennepin County, Minnesota

My Commission Expires My Commission Expires Aug. 27, 1975.

STATE OF MINNESOTA

IN SUPREME COURT

File No. 42174

In the Matter of the Application for the Discipline of Jerome Daly, an Attorney at Law of the State of Minnesota.

FINDINGS OF FACT and RECOMMENDATION

The above-entitled matter came duly on for hearing before the undersigned, Referee appointed by the Supreme Court of Minnesota, at Room 722, Flour Exchange Building, Minneapolis, Minnesota. Herbert C. Davis, Esquire, appeared for the State Board of Law Examiners, the Petitioner herein, and Jerome Daly, Esquire, appeared in his own behalf. The Court, having heard the testimony and reviewed the other evidence received at the hearing, pursuant to the Order of the Supreme Court, makes the following

FINDINGS OF FACT:

1. The Respondent, Jerome Daly, was born July 11, 1926, is Forty-four (44) years of age, and is single. He resides in Rosemount, Minnesota, and is engaged in the practice of law at Savage, Minnesota. In addition to his practice, he runs a farm. He is not now associated in practice with any other person. At one time, he was associated in practice with Dan Cody, Gilbert Schlegal and George Waldrup in the New York Building in St. Paul, Minnesota. He attended St. Thomas College and the St. Paul College of Law. Upon completion of his law school work, he was admitted to practice law in the State of Minnesota on May 14, 1953. He was engaged in the general practice of law at his office in Savage, Minnesota, since the fall of 1962 and, during the time he has practiced in Savage, he associated for a time with his brother, Robert Daly.

2. On September 5, 1969, the Supreme Court of Minnesota filed its Opinion in the case In re: Jerome Daly, Supreme Court File No. 42174, in which the Supreme Court adjudged Respondent to be guilty of contempt of that Court, referred further proceedings in that matter to the Honorable E. R. Selnes, Retired Judge of the District Court, as Referee, and assigned the duty and responsibility of conducting a thorough investigation of the fitness and competency of Jerome Daly to continue as a member of the Bar of this State to the State Board of Law Examiners.

3. Thereafter, the State Board of Law Examiners, following its investigation, filed its Petition and Accusation with the Clerk of the Supreme Court in which the State Board of Law Examiners requested that Respondent be disciplined by disbarment from the practice of law. On September 17, 1969, the Chief Justice by Order dated January 20, 1970, appointed the Honorable Donald C. Odden, Judge of the District Court, to serve as Referee and scheduled a hearing of the matters on February 9, 1970, at 2:00 o'clock p.m., in Room 722, Flour Exchange Building, Minneapolis, Minnesota. On January 28, 1970, Petitioner, upon the affidavit of its counsel, served its Notice of Motion and Motion to Amend the Petition and Accusation by the inclusion of additional charges, which Motion was heard and granted by Referee Odden at the commencement of the hearing on February 9, 1970. The hearing on the proceeding continued from its commencement on February 9, 1970, at 2:00 o'clock p.m., until its conclusion on February 18, 1970. A transcript of proceedings has been prepared.

4. Respondent has persistently and perniciously used his position as an attorney of the Courts of this State to participate as a party and as counsel for other persons in a multitude of cases wherein he has espoused his theory that the Federal Reserve System is unconstitutional and void; that Federal Reserve notes not

redeemable in gold and silver coin are not legal tender; and that obligations contracted upon the consideration of a bank's promise to extend credit or upon delivery of Federal Reserve notes not redeemable in gold and silver coin, do not obligate the borrower to repayment of any of the credit so extended or the money so received. In spite of rulings of Courts of record in which it has been raised, that this theory is untenable and unfounded, and despite an order of the United States District Court for the District of Minnesota restraining him from raising those questions in subsequent litigation, Respondent has continued to expouse such theory without appeal of the lower Court rulings and orders. Such litigation has resulted in very substantial expense to those persons joined in lawsuits initiated by Mr. Daly or in defenses raised by him. The assertion of such theories has occupied the time and effort of Courts in nearly all levels of jurisdition. Respondent also claims a conspiracy exists between leading political figures, including many of the principal Federal executive officials, the Federal Reserve Board and officers of its member banks, Judges of the United States Supreme Court, the Court of Appeals, the United States District Court, the Supreme Court of Minnesota, several District Court Judges, the Bar Association of Minnesota, the Jewish religious community and the Christian religious community; and upon absurd and unsupported claims by Respondent that such a conspiracy was responsible for the assassination of President John F. Kennedy. (Respondent has taken the position that by reason of the institution of a proceeding in the United States District Court for Minnesota, he caused the assassination of President John F. Kennedy.) Respondent admits that he has never attempted, through ordinary legal processes, to have these fiscal clsims determined by the United States Supreme Court, and as stated in his testimony, if the United States Supreme Court determined that his claims were without merit, such a decision would be "a fraud upon the public of the United States" (T.v. 1 p.137).

In a number of instances, Respondent has deprived the State and Federal Governments, private persons, and banking institutions of property to which they were lawfully entitled through devices deliberately intended to delay the eventual determination of the rights of the parties involved, by abuse of the assertion of the attorney-client privilege, by refusal of information upon the ground of self-incrimination as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution, by filing of Affidavits of Prejudice and by the deliberate refusal to follow lawful Orders of the Courts of the United States and the State of Minnesota.

This Referee finds that the attacks made by Respondent upon the monetary system of the United States have been made capriciously for the purpose of harassment of the defendants involved in the action and to avoid legal obligations of Respondent and his clients to the Federal and State Governments, private individuals, and banking institutions. Illustrative of this Findingof Fact are the following events:

A. In 1966, Respondent represented Alfred M. Joyce in an action commenced by Joyce against the Northwestern State Bank of Appleton, Minnesota, and others, in the District Court for the Eighth Judicial District of Minnesota, in which Respondent raised the monetary claims above referred to, in an action contesting title to a piece of property acquired by the President of the defendant bank from Joyce, and resold. During the time that that proceeding was pending, Respondent commenced actions raising substantially the same issues on behalf of William Wildanger, Leo Zurn, and others, in the United States District Court for the District of Minnesota in the Fourth Division, and an action on behalf of Alfred M. Joyce in the District Court for Scott County, Minnesota, which was removed to the Federal District Court, Fourth Division. Some of the defendants joined in these cases are as follows:

Northwestern State Bank of Appleton
First National Bank of Minneapolis
Northwestern National Bank of Minneapolis
Stockyards National Bank of South St. Paul
The American National Bank of St. Paul
The Drovers State Bank
The First National Bank of Montevideo
The Federal Reserve Banks of Minneapolis; Kansas City, Missouri; Dallas, Texas; St. Louis, Missouri; San Francisco, California; Chicago, Illinois; Atlanta, Georgia; Richmond, Virginia; Philadelphia, Pennsylvania; New York, New York; Boston, Massachusetts; Cleveland, Ohio
The Chase Manhattan National Bank of New York, New York
The Bank of America, San Francisco, California
First Bank Stock Corporation of Minneapolis, Minnesota
Northwest Bank Corporation of Minneapolis, Minnesota
The Board of Governors of the Federal Reserve System, and each of its members
Joyce A. Swan
John Cowles, the Minneapolis Star and Tribune
The Park National Bank of St. Louis Park
Phillip Neville
Earl McNeil
Patrick Foley
Sidney P. Abrahamson
Commodity Credit Corporation of the United States
Richard A. Nordbye
Cargill, Inc.
Gunnar H. Nordbye
National City Bank of Minneapolis
Edward J. Devitt
Lowell W. Andreas
Roger L. Nordbye
Miles W. Lord
Dwayne O. Andreas
Archer Daniels Midland Company
Earl R. Larson
Continental Bank of Chicago, Illinois
Earl Warren
Abe Fortas
Madison National Bank of Washington, D. C.
Carolyn Agger Fortas
American Express Company, Inc.
Lyndon B. Johnson
Hubert Humphrey
Henry Fowler
Nicholas Katzenbach
Ramsey Clark
Robert Kennedy
French American Banking Corporation
Banque Nationale de Paris
Other foreign banks, and a number of individuals

In each of these cases, the claim made by Respondent regarding the Constitutional questions raised respecting the monetary system were

ruled to be unfounded and the claims of the persons represented by Respondent were dismissed. After this litigation, Respondent represented Bernard E. Cole and other plaintiffs in a case which was appealed to the Court of Appeals for the Eighth Circuit. The Court of Appeals affirmed the decision of the United States District Court (which had previously rejected Respondent's claims that the monetary system was unconstitutional) by its decision entered July 5, 1968, (Petitioner's Exhibit No. 12) wherein the Court of Appeals made the following statement:

> "At best, the complaint represents a euphoric harassment of bank officials, lawyers and Federal Courts. It is difficult to accept that the complaint has been drafted by a person licensed to practice law."

B. On June 20, 1968, Judge Roy L. Stephenson, Chief Judge of the United States District Court for the Southern District of Iowa, serving by special assignment in the United States District Court for the District of Minnesota, entered his Order in the Joyce case as follows:

> "ORDERED, ADJUDGED AND DECREED that the preliminary injunction heretofore granted and issued orally by this Court herein on the 3rd day of May, 1968, and affirmed in memorandum and order of the Court dated June 17, 1968, be and the same hereby is made perpetual and permanent and that the plaintiff Alfred M. Joyce and his attorney, Jerome Daly, are permanently enjoined and restrained from continuing, commencing or prosecuting any suit, action or proceeding, either in this Court or in any court, state or federal, upon any claim arising out of any claimed transaction between the parties hereto at and prior to the date of this Order, or any claims regarding unlawful creation of money and credit, or an attempt to relitigate the same cause of action, and matters previously determined in respect to the same subject matter, or based upon any right, question or fact previously decided by this Court on March 16, 1967, and by the decision of the State District Court, Eighth Judicial District, at Montevideo, Minnesota, decided on March 14, 1966."

In response to questioning regarding the Order above recited, Mr. Daly stated the following:

"Q Did you receive a copy of it?

"A Well, I have seen a copy of it. Are you asking me was one served upon me?

"Q Was one served upon you?

"A I don't know that; I can't remember exactly.

"Q You are aware of the existence of that order, however?

"A Right.

"Q And have been since the date of its entry?

"A Oh, I wouldn't say the day of its entry; after it was entered, I was aware of the fact that it was entered."

* * * * * * (T. v. 1, p. 62)

After the entry of the Order, Mr. Daly continued to prosecute matters involving the monetary question, the subject of the Order, through the institution of other proceedings in various Courts. No appeal was taken from the Order of Judge Stephenson nor was any other form of review requested by Respondent.

Failing to persuade the Courts of record of the State and Federal system, Mr. Daly concentrated his efforts in Justice of the Peace Court in Credit River Township. Notable among those proceedings are the following:

I. In May of 1964, Mr. Daly purchased a piece of property on Spring Lake in Scott County, Minnesota. He obtained a purchase money mortgage in the full amount from the First National Bank of Montgomery, and was issued a bank money order in the sum of $14,000.00, which was used as the purchase of said property. Daly defaulted on the mortgage and in the summer of 1967 the bank foreclosed. After the year of redeption, Daly refused to give up possession, and the bank started an action in unlawful detainer in the Justice Court at Eagle Creek Township. Daly filed an affidavit of prejudice against that justice, and the case was transferred to another Justice of the Peace who disqualified himself for personal reasons. In any event, the matter finally wound up before Justice

of the Peace Martin Mahoney of Credit River Township, and after considerable delay, came on for trial on December 9, 1968. Daly's basic defense was that there was no valid consideration given by the bank in that the $14,000.00 given by them was merely a creation of credit on their books, and that the $14,000.00 was in the form of Federal Reserve notes which did not constitute legal tender. Court was held in a 3.2 beer parlor where the President of the Bank and his lawyer, Theodore Mellby of Montgomery, learned on the commencement of trial that it was to be a jury trial. He also learned that a gentleman by the name of William Drexler, a lawyer from St. Paul, was to act as co-justice and assist Mahoney in handling the trial.

None of the statutory requirements for impaneling a jury were followed, and it was later determined that most of the jurors were either clients, employees, or friends of Mr. Daly. (One of the jurors was Leo Zurn, who operates a car repair shop in Savage, who was involved with Daly in the matter concerning the writ of prohibition issued by the Supreme Court which gave rise to Daly's suspension and his hearing before this Referee.) At the close of the testimony, Daly submitted to the Justice written instructions to the jury, and over objection permitted the instructions to be given to the jury as an exhibit. In any event, the jury was out less than five minutes when a verdict was returned in favor of Daly. The matter was appealed to the District Court, but before the appeal was heard, Mahoney died. Strangely enough, Mahoney's files have disappeared along with the exhibits of this case, including the original mortgage and mortgage note of Daly's with the First National Bank of Montgomery. It is this Referee's opinion and Findings that this trial was a conspiracy between Daly, Mahoney and Drexler to defeat the ends of justice. It is the further conclusion of this Referee that the missing files of Justice Mahoney are indirectly or directly responsible to Jerome Daly.

II. Mr. Daly represented Leo Zurn, of Savage, Minnesota, in two proceedings wherein Roger D. Derrick obtained purchase money chattel mortgages from the First National Bank of Minneapolis and from the Northwestern National Bank of Minneapolis for the purchase of a Ford and Cadillac automobile. These vehicles were taken to Leo Zurn, who was a garage operator in Savage, who, in turn, claimed a possessory lien upon the vehicles for repairs. Leo Zurn, through Daly, commenced actions against the First National Bank and the Northwestern National Bank in Justice Court before Martin V. Mahoney for a judgment declaring that the banks had no interest in the two vehicles upon the theory that no valid consideration had been paid by the banks to support their mortgages. Respondent refused, upon the request of the banks, to deliver possession of the vehicles or to disclose to the banks the location of the vehicles, and, in fact, gave misinformation concerning the location of one of them. Despite Orders of the District Court, Daly has not produced the vehicles, and when his deposition was taken, he claimed privilege concerning the location of them. Daly caused proceedings to proceed in Justice Court concerning the vehicles despite an Order of Justice C. Donald Peterson of the Supreme Court of the State of Minnesota, enjoining further proceedings. Said Order required Martin V. Mahoney, Justice of the Peace, and Daly to show cause to the Supreme Court why proceedings instituted in the Justice Court should not be permanently suspended by reason of lack of jurisdiction. Refusal of Daly to comply with the Order of Justice Peterson resulted in the finding of contempt and his suspension ordered by the Opinion of the Supreme Court entered September 5, 1969.

III. Respondent appeared as attorney for Carl R. Anderson in the United States District Court in a criminal proceeding wherein Carl R. Anderson was charged with a number of violations generally categorized by the term "mail fraud." Despite several

pre-trial conferences in which Judge Miles Lord indicated that he would enforce the prohibition of Judge Stephenson's Order forbidding Daly to raise the question of the constitutionality of our monetary system, he began the defense of the defendant by questioning a witness concerning the monetary system. Judge Lord found Respondent in contempt and ordered him confined in jail. After his release, the trial continued to its conclusion.

IV. Respondent's attitude was expressed in the following testimony before this Referee:

"Q Mr. Daly, you have claimed in the petition in this contempt proceeding that the Supreme Court had no jurisdiction to enter its order dated September 5, 1969, Exhibit One?

"A Suspending me from the practice of law.

"Q You have made the claim that the Court had no jurisdiction to do so and it is an invalid order, is that right?

"A That is right.

"Q And you also claim that the order of Judge Lord, holding you in contempt, was an invalid order?

"A I think that is right.

"Q And you have indicated that the order of Judge Stephenson --

"A That is not a lawful order.

"Q Restraining you from doing anything further or arguing further the constitutionality of the Federal Reserve System, was not valid?

"A Not a lawful order.

"Q You have indicated that the Justices of the Supreme Court of Minnesota have executed orders relating to the adoption of Rules of Civil Procedure, which are not lawful orders?

"A Yes. It is just like that order that came from the chain of high command to massacre those people in My Lai, that wasn't a lawful order.

"Q Will you explain to the Court, Mr. Daly, whether it is your belief that an order is lawful only if you think it is lawful?

"A No, no, it is lawful if it squares with the law.

"Q And if it squares with the law in your opinion or in whose opinion?

"A Well, I think any citizen or any person walking the face of the earth has a right to be guided by his own conscience, within the bounds of reason. And I can look at an order and I can make a determination in my mind whether it is lawful or not.

"Q And whether or not you will follow it?

"A That is right; it is just like if I were in My Lai and I were ordered to massacre all of those innocent women and children and if I were ordered to do that; that, as far as the army is concerned, might be a lawful order; but I sure as hell won't follow it."

(T.v. 1, p. 133)

* * * * *

"A Do you want to know if I would follow the order of the Supreme Court of the United States if they said that the banks had authority to manufacture money and credit out of nothing; you are asking me if I would follow that?

"Q Yes, sir.

"A I would not.

"Q Mr. Daly, do you agree that the Constitution indicates that the Supreme Court of the United States, in regard to all federal questions, is the supreme authority of the Constitution?

"A It does not; it does not; the supreme authority in this country are the people.

"Q But from the standpoint of federal questions, isn't the Supreme Court or its decisions conclusive and binding upon all of the people of this country?

"A Well, let's take for instance, the action with reference to the question of the possession of real property. I say that if the Supreme Court of the United States perpetrates a fraud upon the people of the Unites States, I say that that, in an action to recover the possession of the property; the fraud of the Court can be tried to a jury, a jury of twelve of the peers of the people, in the location where the property is."

(T. v. 1, pp. 136 - 137)

C. Proceedings were commenced, first by inquiry of the Internal Revenue Service, and then in a proceeding before the

United States District Court, to require Mr. Daly to disclose his earnings in income tax returns for the year 1965. (In the course of these discipline proceedings, Mr. Daly testified that he had filed returns without disclosure of any figures indicating his income for the years 1965, 1966, 1967 and 1968.) In that inquiry, Daly refused to answer questions concerning his earnings upon the ground that he had not received gold and silver coin and, therefore, had no earnings that were taxable; further, that the Constitution did not authorize the Federal Government to impose criminal sanctions as a collection method but only had a right of civil action against him for the tax which was due. Objection was made to questions relative to his income. He was found in contempt of Court, which was reversed by the Court of Appeals for the Eighth Circuit with instructions to the Trial Judge to determine whether he made his objection upon the basis of the Fifth Amendment to the United States Constitution. Upon inquiry after the matter was remanded, such an objection was made, the proceedings dismissed, and no current disclosure has been made by Mr. Daly of earnings for the years 1965 and thereafter.

5. Mr. Daly has filed Affidavits inflammatory in their language against varous Judges of the District Court. An example of such affidavits is the affidavit filed against Judge John B. Friedrich, reciting the following:

> "Further, I believe and so state that Judge Friedrich has a Prejudice against the Declaration of Independence and the Constituion of the United States and the Constitution of Minnesota and a bias in favor of that element advocating the nullification and overthrow of it. That this case involves a dispute with the Lutheran Church, Missouri-Synod which is composed of preachers arrogating attributes of Diety to themselves in association with Papal Jewish Hegemony, all of whom are in vortex with each other rotating and operating on a common axis sited in Hell. That Judge Friedrich is in sympathy with this combination and their activity all of which makes him incompotent to act in the above entitled action."

Other tactics used by Respondent have been to demand jury trials where no jury trials are authorized by law; to demand hearings by a three Judge Court on trivial issues; to conduct proceedings before Justices of the Peace in violation of Court orders and in violation of the Statutes provided for the regulation of proceedings before Justices. Illustrations of such conduct are the demand for a jury trial without furnishing a list of jurors to the opponent and without notice to the opponent of such a demand; the introduction in evidence of requested instructions, the prosecution of cases involving questions of title where, according to Statute, no such questions are to be determined by Justices of the Peace; and the trial of a case to a jury in which his handyman and a number of his clients were impaneled as jurors without disclosure of relationship between himself and the jurors, all of which this Referee finds were a conspiracy between Respondent and the Justice of the Peace to defeat the ends of justice and to make a mockery of our judicial system.

Respondent has delayed the hearing to determine disposition of trust assets at a time when he knew, or should have known, that the trust funds were being removed from the jurisdiction of the Court in violation of an Order of the Court (Faye V. Peterson vs. Palmer A. Peterson). Respondent has permitted the secreting of accounts receivable payments in conspiracy with his fellow attorney, William Drexler, in a post office box in violation of an Order of the Court sequestering those assets, all of which this Referee finds was a conspiracy to defeat a lawful order of the District Court.

Other practices of Respondent have been to initiate unfounded lawsuits containing immaterial and unnecessarily inflammatory language for his own personal purposes and not for the purpose of having any legal question actually determined. As an example of such an action, Mr. Daly served as attorney in an action commenced in the United States District Court, Third Division, in which he

brought an action naming all of the Justices of the Minnesota Supreme Court, and other Judges and Courts in the State of Minnesota, wherein the following language was included:

> "That plaintiff is satisfied, to a moral certainty, that the Justices of said Supreme Court harbor a subsisting prejudice against the Declaration of Independence, Constitution of the United States and the State of Minnesota, and bias in favor of the annulment, avoidance and nullification thereof. That Chief Justice Knutson has refused to honor Affidavits of Prejudice made in good faith and upon substantial grounds in matters where Helen A. Peterson was involved and effectuated decisions against her. That he has openly come out for the unqualified abolition of the ancient and scared right to trial by Jury in the United States. That there are other instances of denial of Constituional Rights, too numerous to mention here. That therefore, it is apparent and clear that further application to said Court or the Justices thereof is useless." (T. v. 1, pp. 115 - 116)

In response to a question whether he made the statement, Respondent made the following answer:

> "A Well, I signed the complaint that had that statement in there and I believe it or I believed it at the time. I think they have shaped up quite aways since then. * * * * (T. v. 1, p. 116)

Respondent was asked:

> "Q Couldn't you just have made your pleading in those words? Why was it necessary to castigate them in the terms that you used, Mr. Daly?
>
> "A I thought they needed to be shaped up." (T. v. 1, p. 119)

Upon inquiry concerning an action brought against the Minnesota State Bar Association by Mr. Daly, he responded to the following question:

> "Q What was the purpose of this proceeding?
>
> "A Oh, I thought the Bar Association and George Ramier and whoever else is listed, Patrick Foley and Miles Lord, the main purpose of it was to -- I think they should shape up, too. And I really mean this." (T. v. 1, p. 120)

Another example of tactics which have caused delay and have wasted the time of lawyers and Courts is Mr. Daly's failure to appear at pre-trial conferences and at the trial of matters as described by the Assignment Clerk of Municipal Court for Hennepin County.

6. Respondent has attempted, through advertising and publicity, to circulate his views through a publication, The Daly Eagle, and through certain newspaper ads which refer to the Credit River Township case wherein Justice of the Peace Martin V. Mahoney declared Respondent's mortgage obligation void. Respondent has made personal appearances in a number of places to espouse his theory (based upon that decision) and to induce other proceedings in other Courts throughout the United States based upon the decision in that case. He has caused untold numbers of hours of effort on the part of clients, Judges, lawyers, and others, to defend these spurious claims, and has circularized, through sympathetic subscribers, the Congress of the Unites States, the Federal Reserve Board and member banks, Judges of the United States Courts and others. Respondent knows his publication (based upon the conclusion of the Credit River Township case) to be unsupported by the decision of any Court of record, and its circulation by Respondent is for the purpose of creating and fostering litigation.

7. Following the entry of the Opinion of the Supreme Court on September 5, 1969, Respondent attempted to appear before the Juvenile Court of Hennepin County, the Hennepin County Municipal Court, and the District Court at Hastings, Minnesota, without having first secured the permission of the Supreme Court as required in that Opinion, upon the basis of a Power of Attorney secured by him for his clients. He solicited an accepted a retainer from Raymond Salfer for defense of a criminal proceeding in which Salfer was charged with driving under the influence, failed to make an appearance at the appointed time for pre-trial of that proceeding, and, after inquiry from Judge Chester Durda, returned the retainer to

Salfer. That case was accepted after the time of the Order of the Supreme Court and without permission of the Court.

8. During the course of the hearing in this proceeding, Respondent called a number of witnesses for the sake of harassment or embarrassment including Justice C. Donald Peterson, Justice Walter Rogesheske, Chief Justice Oscar R. Knutson, Sidney P. Abrahamson, Judge Miles Lord, Hubert Humphrey, and Hyman Edelman. Upon demand for offer of proof regarding relevant testimony to be given by such witnesses, Respondent failed to make offers acceptable to the Court wherein relevant testimony could be adduced from those witnesses. The largest part of Respondent's examination of the witnesses recited above was totally unrelated to the issues before the Referee in this proceeding.

CONCLUSIONS:

The Referee determines, upon the basis of his Findings, the evidence offered and received, the attitude and demeanor of the Respondent, and upon all the proceedings herein, that Respondent has failed to conduct himself in a manner consistent with the ethical principles of the legal profession, has deliberately and intentionally disregarded those ethical principles in the conduct of his practice, has taken unconscionable advantage of his position as a lawyer of this state, has flaunted his disregard for the authority of Judges, Courts, Statutes, and the ethical rules governing conduct required of attorneys, and has offered no persuasive evidence or excuse for his conduct.

IT IS THEREFORE THE RECOMMENDATION OF THE REFEREE that Respondent be disbarred from the practice of law and his license to practice law before the Courts of this State be withdrawn.

Dated this 16th day of October, 1970.

Donald C. Odden
Referee

(27)

42174

Findings of Fact
and Recommendation
Hon Odden

STATE OF MINNESOTA _ IN SUPREME COURT

IN RE JEROME DALY

STATE OF MINNESOTA
SS
COUNTY OF SCOTT

Nora V. Bergstreser and James J. Bergstreser, having been first duly sworn depose and state that they are residents and citizens of the State of Minnesota with address at 5045 Overlook Circle, Bloomington, Minnesota.

That prior to Sept. of 1969 your affiants had consulted and retained Jerome Daly of Savage, Minnesota as their Attorney in regard to various Tax matters. That on September 14, 1970 your affiants were each served with a Summons and Complaint by the State of Minnesota involking the jurisdiction of the Hennepin County District Court over the person and subject matter of affiants and a claimed Tax liability.

That it is your affiant's wish that Jerome Daly act as Agent and Attorney on their behalf in the defense thereof.

Wherefore, your affiants Petition the above entitled Court that it make an exception to its suspension Order in the above entitled action of Sept. 5, 1969 In Re Jerome Daly.

Nora V. Bergstreser
Nora V. Bergstreser

James J. Bergstreser
James J. Bergstreser
5045 Overlook Circle
Bloomington, Minnesota

Subscribed and sworn to before me this October 3, 1970

Jerome Daly
Jerome Daly, Notary Public
Dakota County, Minnesota
My Comm. Exp. 1-15-73

ORDER

IT IS HEREBY ORDERED, that Jerome Daly is given permission to represent Nora V. Bergstreser and James J. Bergstreser in the above entitled action refered to in Hennepin County.

BY THE COURT

Dated 10/8/1970

JUSTICE

(26)

42174

STATE OF MINNESOTA
IN SUPREME COURT
42174

In re Jerome Daly

O R D E R

WHEREAS a petition and accusation in the above entitled matter has been filed by the State Board of Law Examiners, and answer thereto filed by Jerome Daly, and

WHEREAS heretofore an Order was duly made and filed, suspending said Jerome Daly from the practice of law pending the further investigation of his conduct regarding a contempt of court and other possible misconduct, now, therefore,

IT IS HEREBY ORDERED that said petition of the State Board of Law Examiners and the proceeding pending upon the order of this court for an investigation into the conduct of said Jerome Daly be and the same hereby are consolidated for hearing.

IT IS FURTHER ORDERED that said matters as so consolidated be and they hereby are referred to the Honorable E. R. Selnes, a retired judge of the District Court of the Eighth Judicial District of the State of Minnesota, for hearing, with directions to said referee to hear and report all evidence in said consolidated matters and to make and report his findings of fact in reference thereto to this

court and make such recommendations as he shall deem advisable and appropriate for the disposition of the above entitled matter in accordance with the rules of this court in such case made and provided.

Dated November 14, 1969.

BY THE COURT

Chief Justice.

(14)

42174

SUPREME COURT
FILED
NOV 17 1969
JOHN McCARTHY
CLERK

Order of Consolidation
and Appointment
of Referee

IN THE SUPREME COURT OF THE UNITED STATES

Earl Guy, Petitioner,

vs.

Oscar Knutson, Chief Justice, and the Associate Justices of the Minnesota State Supreme Court.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes Earl Guy, the petitioner in the within action, and moves this Court for leave to proceed in forma paupers pursuant to 28 U.S.C., Section 1915, and to waive bond in the cause.

STATE OF MINNESOTA (
(SS AFFIDAVIT
COUNTY OF SCOTT (

Earl Guy, being duly sworn, deposes and says:

That he is the petitioner in the cause and is a citizen of the United States. That he is without funds to pay costs, fees or bonds to prosecute the action.

That he has a just and meritorious case.

Subscribed and submitted to before me
this 11 day of November, 1969

James M. Brady

Notary Public. My commission expires,

JAMES M. BRADY
Notary Public, Hennepin County, Minn.
My Commission Expires Feb. 19, 1970

Earl Guy
Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES

Earl Guy, Petitoner,

vs.

Oscar Knutson, Chief Justice, and the Associate Justices of the Minnesota State Supreme Court.

Motion for Leave to File Writ of Certiorari

Earl Guy, the petitioner in this cause, respectfully moves this Court for leave to file for a writ of certiorari to review the judgment and unsigned order of the Minnesota State Supreme Court in the matter of the suspension of Mr. Jerome Daly from the practice of law, entered September, _, 1969.

The Minnesota Supreme Court in suspending Mr. Daly from practice, ignored important due process issues in contravention ~~of~~ to the constitutional guarantees and privileges of both Mr. Daly and the petitioner, and in conflict with the applicable decisions of this Court. The petitioner presents what he believs are important constitutional questions.

JURISDICTIONAL STATEMENT

The petitioner invokes the jurisdiction of the Court under the provisions of Title 28, Section 1254 (1) and Section 1915. That he has complied as far as possible and to the best of his ability with the Rules of the Court.

The petitioner respectfully submits that the questions involved come within the scope of Rule 19 (1).

Wherefore, petitioner prays that the appended writ of certiorari be filed and decided.

Respectfully submitted,

Earl Guy

Earl Guy, petitioner pro se

JAMES M. BRADY
Notary Public, Hennepin County, Minn.
My Commission Expires Feb. 19, 1970

Subscribed and sworn to before me
this 11 day of November, 1969

James M. Brady

IN THE SUPREME COURT OF THE UNITED STATES

Earl Guy, Petitioner,	Petition for Writ of
vs.	Certiorari to the
Oscar Knutson, Chief Justice, and	Minnesota State Supreme
the Associate Justices of the	Court.
Minnesota State Supreme Court..	In re Jerome Daly.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Earl Guy, petitioner, prays that a writ of certiorari issue to review the unsigned order and decree of the Minnesota Supreme Court in the matter of the suspension of Mr. Jerome Daly from practice of law, entered September _, 1969.

Opinion Below

A copy of the unsigned order of the Minnesota Supreme Court is attached hereto as Exhibit 'A'.

Jurisdiction

The jurisdiction of the United States Supreme Court is invoked under the provisions of 28 U.S.C. Section 1254 (1) and Section 1915. The questions presented comply with Supreme Court Rule 19 (1).

The following questions are presented for the consideration of the Court:

1, May a state supreme court suspend an attorney from the practice of law on its own motion contrary to law and both state and federal constitutions when no complaint has been filed with either that court or the Bar Association, and when the action is part of a conspiracy to silence and destroy the petitioner as well as the attorney?

2, May the Supreme Court of the United States suspend the Constitution by denying certiorari upon a constitutional issue where appeal is not available?

Statement:

The order suspending Mr. Daly was issued by the state supreme court as an aftermath to a contempt citation which was dismissed, and no provision for appeal was made whatsoever. Indeed the order was purposely left unsigned. Nor would the court reconsider its order. Mr. Daly was informed, moreover, that whether or not the said action was constitutional, he had to be silenced one way or another, and it is a matter of record that Mr. Daly has earned the hostility of both the state and federal courts of Minnesota for his championship of unpopular causes. The petitioner can testify too that every effort has been made to compel him to discharge Mr. Daly as his attorney. Similarly, Mr. Daly has been subjected to pressure to drop the petitioner as a client.

Argument:

Amendments Five, Six and Fourteen to the Constitution of the United States declare that no man shall be deprived of life, liberty or property without due process of law, that he may peaceably assemble and petition his government, that freedom of speech shall not be denied him. It is established as fundamental also that every state official is bound by the Fourteenth Amendment. U.S.V. Raines, 362 U.S. 17. And the command of the Amendment is that no state shall deny to any person within its jurisdiction the equal protection of the law. Cooper v. Aaron, 358 U.S. 1. "Thus the prohibitions of the Fourteenth Amendment extend to all action of the state denying the equal protection of the law, whatever the agency of the state taking the action; see Virginia v. Rives, 100 U.S. 313; Pennsylvania v. Board of Directors of City Trusts of Philadelphia,

353 U.S. 230;or whatever the guise in which it is taken; see Darrington v. Plummer, 240 F2 922; Cooper v. Aaron, supra."

Mr. Jerome Daly has not had the equal protection of the law, nor due process of law. He has had no protection at all. He has not been served with a formal complaint. He has not been charged by legal presentment. He has not been allowed to question or face his accusers. He has simply been subjected to a Star Chamber proceeding which supposedly went out with the Stuarts, and in which the members of the supreme court acted as both accusers and judges. This is not permissable under the law and the Constitution.

Nonetheless, Mr. Daly has been suspended, and United States District Judge, Edward J. Devitt has used the state supreme court order to justify the further suspension of Jerome Daly without a hearing from the practice of law in the federal courts. Again there was no citing of a complaint, no investigation. Hence, the existence of a conspiracy seems to be evident. Federal judges do not normally jump in to destroy a lawyer until all the proof has been presented in accordance with law, particularly when a unilateral action originates in a state court.

And the truth is that a conspiracy does exist against both Mr. Daly and the petitioner. Indeed, the petitioner contends that the move to disbar Jerome Daly was hastened, if not inspired, by the fact that Mr. Daly represents the petitioner in a case now on appeal from the United States District Court for the Western District of Missouri, that it is an attempt to deny the petitioner his right to counsel of his choice, that it is intended to abrogate and destroy the petitioner's appeal. The record will show that the federal courts of Minnesota and Missouri have already interfered in the relationship between the petitioner and Mr. Daly. The record will also show that the petitioner's constitutional rights have been denied by Judge Devitt and by Judge Duncan from the Western District of Missouri, that the two judges have worked together to deny the petitioner due process of law, that both courts have shielded certain secret

service agents and Minneapolis detectives who have conspired to manufacture false evidence to convict the petitioner.

The record will further show that Mr. Jerome Daly has been threatened both in and out of court for daring to fight for the petitioner's constitutional rights.

2, If this Court can suspend the Constitution by denying ceritorari upon a constitutional issue where appeal is not available, then of course the Minnesota Supreme Court will have legitimatized its Star Chamber proceeding against Mr. Daly. There will be no redress at all for dissenters. State Supreme Courts everywhere can and will silence on their own motion every attorney who steps out to speak for the lowly and the oppressed, and freedom of speech itself will inevitably go down the same road, harassed by the political and judicial crows which already croak over the dead freedoms sacrificed to appease privilege of one kind or another. The hopes once held forth by the frontier will have been buried then, inexorably and forever. The final stride into dictatorship will have been taken.

Can America afford such a step? The petitioner does not think so.

And he does not believe that this Court will allow it to happen. He does not believe that the Court will permit the Minnesota Supreme Court to silence Jerome Daly and give momentum to a conspiracy which is out to destroy not only Mr. Daly and the petitioner but the United States of America. Justice, if it be justice, cannot forget what the Founders hoped for, what the settlers struggled for, what the ghosts, who search westward still, cry to our consciences from among the briars and weeds of forgotten graveyards along the way.

The vultures take over from the crows. "And wolves and jackals howl the trails, the wagon ruts, the pavements greasy with the lives and hopelessness of men...."

Wherefore, having shown just cause and jurisdictional prerequisites, your petitioner prays that the writ of certiorari be granted.

The petitioner, being a pauperis person, asks leave to proceed in forma pauperis, pursuant to his affidavit hereto attached.

Earl Guy, being duly sworn, deposes and says that he has subscribed to the foregoing and the contents are true and correct to the best of his knowledge and belief.

Respectfully submitted,

Earl Guy

Earl Guy,
Petitioner, pro se.

Subscribed and sworn to before me
this 4 day of November, 1969

James D. Brady

JAMES M. BRADY
Notary Public, Hennepin County, Minn.
My Commission Expires Feb. 19, 1970

Notary Public My commission expires _____

(13)

42174

SUPREME COURT
FILED
NOV 13 1969
JOHN McCARTHY
CLERK

Copy of Petition for
Writ of Certiorari in
US Supreme Court
"Guy v Knutson, et al"

(2)

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(2)

COPY

42174

"In re Jerome Daly"

STATE OF MINNESOTA

IN SUPREME COURT

SUPREME COURT
FILED
AUG 26 1969
JOHN McCARTHY,
CLERK

Leo Zurn,

Respondent,

-vs- 42088, 42117

Northwestern National Bank of Minneapolis and First National Bank of Minneapolis,

Relators,

T R A N S C R I P T

OF

PROCEEDING

on

(August 21, 1969)

Reported by:

Wayne O. Tschimperle

STATE OF MINNESOTA

IN SUPREME COURT

Leo Zurn,

Respondent,

-vs- 42088, 42117

Northwestern National Bank of Minneapolis and First National Bank of Minneapolis,

Relators,

The above-entitled matters came duly on for oral argument in the Supreme Court Chambers on August 21, 1969, at 2:00 p.m. on an Order to Show Cause why Jerome Daly and Martin V. Mahoney should not be held in constructive contempt of the Supreme Court of the State of Minnesota.

APPEARANCES:

JEROME DALY
28 E. Minnesota Street
Savage, Minnesota
Attorney for Respondent

FAEGRE & BENSON
By Gordon G. Busdicker and
Peter Kitchak
1300 North western Bank Building
Minneapolis, Minnesota
Attorneys for Relator
Northwestern National Bank

CHIEF JUSTICE KNUTSON: This is the matter of an Order to Show Cause why Jerome Daly and Martin V. Mahoney should not be held in constructive contempt of the Supreme Court.

Is Mr. Mahoney here?

MR. DALY: No, he is not, Your Honor.

CHIEF JUSTICE KNUTSON: Well, at the outset I want to advise you that a record is being made of this proceeding and whatever is said here will be recorded.

The question before us today is whether you or Mr. Mahoney or both of you intentionally disregarded the Order of this Court dated July 11, 1969, signed by Mr. Justice Peterson in the case of Zurn versus First National Bank of Minneapolis and Derrick, and, if you did so, what explanation have you for it.

MR. DALY: May I proceed?

CHIEF JUSTICE KNUTSON: Yes, you may proceed.

MR. DALY: Mr. Chief Justice of the State of Minnesota, Mr. Associate Justices of the Supreme Court of Minnesota;

At the outset I would like to inform the Court that I have authority to represent Justice of the Peace Martin V. Mahoney for a limited purpose here today. We are on my own behalf and his behalf objecting to the jurisdiction of this Court.

The papers that we have are entitled; (Reading) "In The Supreme Court, State of Minnesota, Leo Zurn versus The First National Bank of Minneapolis, Defendant-Petitioner, and Roger D. Derrick, Defendant; and Leo Zurn versus Roger D. Derrick

and Northwestern National Bank of Minneapolis;" and then there is an Order directed to myself to appear here to show cause.

We are not parties to this proceeding and the Court has no jurisdiction over us. That is Number One. That is backed up by 39 American Juris Prudence on Entitled Parties.

Now, Number Two, we take the position that if this is a contempt proceeding -- and, by the way, we are making a Special Appearance here to object to the jurisdiction of the Court.

Number Two, if this is a contempt proceeding we take the position that the only type of contempt there is is a criminal contempt and that we are entitled to be charged in the name of the State of Minnesota and to be informed of the nature and cause of the accusation against us in a regular criminal proceedings, that there is no such thing as a civil contempt proceedings.

The Thirteenth Amendment states that -- wait until I get it so I can read it. (Reading) "Neither slavery nor involuntary servitude except as a punishment for a crime whereof the parties shall have been duly convicted shall exist within the United States or anyplace subject to its jurisdiction."

Now, the statutes on contempt in this state provide for fine and imprisonment, and we take the position that the only time that one can be fined or imprisoned is on a regular criminal proceeding with criminal process.

Now, Number Three, there is no question about it we received this Order of the Supreme Court, Mahoney and I did,

and we looked it over very carefully and checked it very closely and decided to ignore it. That is the Order signed by Justice C. Donald Peterson, dated July 11, 1969.

Now, this Court, the only jurisdiction it has is to follow the Constitution of the United States and the State of Minnesota and all laws passed pursuant to it. This Court has no jurisdiction to proceed except pursuant to the constitutional laws enacted thereunder.

Now, the -- if I can find it.

CHIEF JUSTICE KNUTSON: Those pepole in the rear, if you wish you may take these seats down in front and be seated.

MR. DALY: Chapter 587.01 provides, (Reading) "Writs of Prohibition shall be issued only by the supreme court, and shall be applied for upon affidavit, by motion to the court, or to a judge thereof in vacation. If the cause shown appears to the court or judge to be sufficient, a writ shall be issued, commanding the court and party or officer to whom it is directed to refrain from any further proceeding in the action or matter specified until the next term of the supreme court, or its further order therein, and to show cause at the next term thereof, or on some designated day in the same term, if issued in term time, why they should not be absolutely restrained from any further proceedings therein."

And then I think it is 19 of the Rules of Procedure of the Supreme Court provides that, "A writ shall be tested under

the -- and seal of the Court shall issued by the Clerk."

Now, the moving papers for this so-called Writ of Prohibition were signed by Gordon Busdicker and it was not sworn to and the Order issued by Justice Peterson is not pursuant to 587.01. As I read 587.01 it says, (Reading) "Writs of Prohibition shall be issued only by the supreme court and shall be applied for upon affidavit, by motion to the court, or to a judge thereof in vacation."

Now, the Northwestern National Bank made no appearance before the Justice of the Peace. They totally ignored the Justice of the Peace and came to this bypass when they came to this Court. So this is a situation in which this Court's appellate procedures could not be invoked. The only procedure that could be invoked would be an original proceeding in this Court whereby Mahoney and the plaintiff would be named as a party to the action.

Now, Number One, we weren't served with any motion. Now, this Notice of Application by Motion and service upon Mahoney and myself and the plaintiff, Leo Zurn, in this matter must be implied into this statute because if it is not, if the statute does not imply notice and if they wanted to shorten the time for notice, they would have to get an order to show cause out of this Court.

Now, if you don't imply the requirement of notice into this statute then it has got to be unconstitutional. We were not notified of any application for relief before this Court

and, oh, they are proceeding completely outside of the law and without notice to us; and we just didn't think the Order required any further action on our part but to ignore it. So, that is it.

Unless the Court has any questions?

CHIEF JUSTICE KNUTSON: So you admit that you intentionally violated this Order?

MR. DALY: There is no question about it. We read that Order over very carefully, laid it alongside the Constitution and the statute and the law and examined it very carefully and determined that the Order was outside of Justice Peterson's jurisdiction and ignored it.

CHIEF JUSTICE KNUTSON: The Order was served upon you, was it not?

MR. DALY: There is no question about that.

CHIEF JUSTICE KNUTSON: And it was served upon the Justice of the Peace?

MR. DALY: There is no question about that, none whatsoever. But the bank made no appearance before the court. I showed the Justice of the Peace the law and he looked it over and he decided to ignore it.

CHIEF JUSTICE KNUTSON: Do you have anything to say?

MR. BUSDICKER: May I, Your Honor?

CHIEF JUSTICE KNUTSON: Yes.

MR. BUSDICKER: Gordon Busdicker. May it please the Court; I filed with the Court and have now given to Mr. Daly a copy of the

Memorandum of Law which we have submitted in suport of the citation of contempt in this proceeding for both Mr. Daly and Justice of the Peace Mahoney.

There has been filed in this proceeding numerous affidavits by myself and by others which I think adequately set forth the facts and the nature of the rather extreme difficulties which have been experienced by Defendant -Petitioner, Northwestern National Bank of Minneapolis in connection with this action.

If I may, however, briefly indicate that the action was commenced by service on the bank by summons and complaint out of Justice of the Peace Court, Justice Mahoney, as was originally set forth in the Petition for a Writ of Prohibition.

The purported action was wholly outside of the jurisdiction of Justice of the Peace Court for a number of reasons. Further, the Summons which was signed by Justice of the Peace Mahoney was wholly improper again for a number of reasons, both by way of the time in which the bank was required to appear, by reason of the fact that it was served outside of the county, by reason of the fact that it was served in a city of over 200,000 population. All of these facts are set forth.

On the basis of the very face of the Summons and Complaint and the impropriety of that action being brought in Justice of the Peace Court we sought and filed a Petition for a Writ of Prohibition.

Now, I would like to comment on several comments which Mr. Daly has made. He first points to the fact that we did not

appear in compliance with the improper, wholly improper summons in Credit River Township. That is quite right, we did not. If, however, Mr. Daly seeks to draw an inference we would not be here today, I suggest that it is proven false by virtue of the additional proceedings which has been consolidated with the Northwestern National Bank's proceedings, that being proceedings, "Zurn, Plaintiff, versus Derrick, car owner, and First National Bank." The First National Bank and Northwestern are in exactly the same situation today. The only distinction being that the First National Bank first went to Justice of the Peace Court and moved to dismiss for lack of jurisdiction. That motion was denied by Justice of the Peace Mahoney and then a Petition for a Writ of Prohibition was filed.

Mr. Daly makes reference to Chapter 587 which deals with the issuance of petitions for writ of prohibition. As the Court is well aware, this Chapter of the Minnesota Statutes has been specifically superceded by the Rules of Civil Appellate Procedure. I would refer you to Rule 147.02.

Further, Mr. Daly makes reference to Rule 19 in speaking about a writ of prohibition issuing from the Court of the Supreme Court. As is noted in the Memorandum of Law which we had submitted, Rule 19 has been superceded by the Appellate Rules. Further, even if Rule 19 were still applicable it has no relationship to the issue here. We are not discussing now the defiance of Daly and Mahoney of a Writ of Prohibition but rather an Order of the Supreme

Court.

The procedure for the issuance of writ of prohibition is not governed by Rule 120 of the Rules Civil Appellate Procedure. I would submit that in this proceeding Defendant-Petitioner, Northwestern National Bank, has followed completely and explicitly Rule 120. As is fully indicated by the Order of Justice Peterson it is not a writ of prohibition as such but rather an interim and temporary order issued for the purpose of allowing Mahoney and Daly to be heard. For that reason it has stayed all proceedings in Justice of the Peace Court. That is the Order that Mr. Daly and Mr. Mahoney choose to ignore.

Now, the reason for their ignoring this Order, I submit, are on their face specious. Mr. Daly speaks of there being no verification to the Petition for a Writ of Prohibition. There was a hearing on this Petition for a Writ of Prohibition. Mr. Daly had been notified prior to the hearing. He did not appear. Quite apart from that, there is no requirement in the Rules or in any applicable statute for a petition to be verified.

Mr. Daly likewise speaks of the fact that it did not issue out of the Clerk's office. I have already referred to that and there is no basis for that argument because we are not talking about a writ of prohibition *but* rather a interim order of this Court.

Finally we come to the more esoteric argument of Mr. Daly that this Court somehow lacks jurisdiction because, as I

gather, in the view of both Mr. Daly and Mr. Mahoney the Justice of the Peace Court in Credit River Township is the supreme judicial body not only in the State of Minnesota but apparently the world. He makes reference to the Unites States Constitution, the Minnesota Constitution as some justification for a Justice of the Peace Court being permitted to defy, knowingly defy the Supreme Court of the state. I am sure that Mr. Mahoney and Mr. Daly are aware that Justice of the Peace Courts are not constitutional courts. There is a long line of decisions in this state and elsewhere that such a court is strictly limited by way of its jurisdiction -- that imposed by the legislature.

This is not a theoretical difficulty with which the Court is faced today. It is a problem which is causing real and immediate harm to the Defendant-Petitioner, Northwestern National Bank, and I might add from the files of this proceeding to others as well.

The basic complaint here, and we can go back to the original Summons and Complaint issuing out of Justice of the Peace Court, is for a mechanics lien claim. It is for $680.00. It is in addition, however, for a declaration that the Bank's chattel mortage on the automobile is invalid, it's for a declaration that legal tender is only gold and silver. In that respect, the action might appear a small one. Nevertheless, in attempting to protect its rights the Defendant's Bank has been force to have expended on its behalf approximately seventy hours of legal time. This,

as is indicated in the affidavits on file is but one of a very broad pattern of this type of harassment. More important it is clearly an open defiance of this Court.

Now, it's one thing for a lawyer or for an inferior court to assert a position no matter how tenuous and how specious the arguments might be within the judicial system and it is quite another thing, however, to openly and brassily defy the judicial system and to act in direct contravention of it.

Now, like it or not, I would submit that Mr. Daly and Mr. Mahoney cannot by feint strike down the constitution of the United States and elevate a Justice of the Peace Court to the supreme judicial body in the state.

We cited in our briefs a number of authorities which we believe fully support the findings that both Mr. Daly and Mr. Mahoney acted in constructive contempt of this Court.

Mr. Daly makes reference to there being no civil contempt and only criminal contempt. I would simply refer the Court to the authority cited in the Memorandum showing very clearly that there is a distinction and that this type of proceedings is aptly one for application of civil contempt.

We believe and submit that these facts fully warrant a finding that both Mr. Daly and Mr. Mahoney are in contempt of this Court, that this contempt has prejudiced and injured Northwestern National Bank of Minneapolis, that by reason of that fact the purported Finding of Fact, Conclusions of Law and Judgment entered by Justice

Mahoney on motion and apparently testimony of Mr. Daly should be vacated, should be stricken and set aside for the nullity that they really are; and we submit further that Defendant-Petitioners, Northwestern National Bank should be awarded its costs, including attorneys' fees for the harassment that has gone on to date and we would submit that these reasonable attorneys' fees are in the amount of $2,000.00.

We urge the Court that this is not and should not be an exercising in futility by either the Supreme Court of Minnesota or by Defendant-Petitioner. That is exactly what Mr. Daly and Mr. Mahoney had made of the judicial system to date in this proceedings.

For these reasons, I would ask for the relief that I have indicated.

CHIEF JUSTICE KNUTSON: Do you have any rebuttal?

MR. DALY: Well, in the first place, they are trying to invoke the Rule of Appellate Procedure. Now, before they can take an appeal they have got to appear before some lower court and to make an application for a relief and then they can take an appeal, but not until then. But they choose to bypass the Justice of the Peace Court. They haven't made any appearance whatsoever before Justice Mahoney to ask for any relief whatsoever.

Now, the First National Bank made an appearance, filed certain papers in that before Justice Mahoney, and then asked for an opportunity for time to come to this Court for a Writ of

Prohibition, and he gave them time to come to this Court. But the Northwestern National Bank choose to just bypass and ignore the court completely. So these appellate rules that they cite are invalid.

Now, Number Two, they are trying to take the position here that the Justice of the Peace is not a constitutional court. Now, the Minnesota case of State ex rel Rox versus Gregor, decided January 26, 1906, and it's found in --

CHIEF JUSTICE KNUTSON: That case is --

MR. DALY: (Continuing) 97 Minnesota --

CHIEF JUSTICE KNUTSON: That case was decided before our constitution was amended in 1956 removing the Justice Court as a constitutional court.

MR. DALY: No. Now, just a minute now. This -- in 1956 the constitution did not remove the court -- Justice Court as a constitutional court. Now, this case here states that, "After a court is created by the legislature in the constitutional manner it is a constitutional court and in the exercise of its powers and jurisdiction it is governed by the same general principles as the other courts of the state."

Now, in 1956 the Minnesota Constition was ammended to read, "The judicial power of this state is hereby vested in a Supreme Court, a District Court, a Probate Court, and such other courts and as many judicial officers and commissioners with jurisdiction inferior to the District Court as the legislature

may establish."

Now, I have found no case anywhere that holds to the contrary to this proposition.

CHIEF JUSTICE KNUTSON: The legislature today can abolish all Justice of the Peace Courts.

MR. DALY: They can, that is true, but once the court is created its jurisdiction is derived from the constitution and not from the act creating the court. And I don't think that there is any question about that at least in the law.

CHIEF JUSTICE KNUTSON: What would you say was the purpose of amending the constitution so as to eliminate Justice of the Peace Courts from the specific language of the constitution?

MR. DALY: I don't know what the purpose was but the effect of it was to remove any jurisdictional -- Common Law jurisdictional impediments or barriers to the Justice of the Peace Courts.

Now, a Justice of the Peace has authority to render a declaratory judgment. The Declaratory Judgment Act applies to all courts of record. Now, in the statutes, the Justice of the Peace Statutes, I think it is 530, it states the Justice of the Peace Court is a court of record. I have the specific citation which I will supply to the Court after this hearing, but the -- here it is right here. 16 American Juris Prudence 2nd, Section 219. (Reading) "When a court is created the judicial power is conferred by the constitution and not by the acts creating the court. It is well said that in the early period in American Law the judicial power in every

well-organized government ought to be coextensive with the legislative power so far at least as present rights are to be enforced by judicial proceedings. The rule is now well settled that under the various state governments the constitution confers on the judicial department all the authority necessary to exercise powers as a coordinate department of the government. Moreover, the independence of the judiciary is the means provided to maintain the supremacy of the constitution."

Now, if the State Legislature can limit the jurisdiction of the court then there is no reason why the State Legislature can say that the District Court, the Municipal Court, and the Justice Courts shall have any power to pass upon a question of constitutional law, none whatsoever.

I further take this position: the United States Constitution Article III states: (Reading) "The judicial power shall..." This is talking about the judicial power of the United States."The judicial power shall extend to all cases in the law and in equity arising under this constitution, the laws of the United States and treaties shall be made under their authority."

Now, Amendment VII states: (Reading) In suits of Common Law where the value in controversy shall exceed $20.00 the right of trial by jury shall be preserved and no facts tried by a jury shall be otherwise reexamined in any court of the United States and according to the rules of the Common Law."

Now, Amendment XlV states: (Reading) "No state shall make

or enforce any law but shall abridge the priveleges of citizens of the United States."

Now, it is one of the priveleges of the citizens of the United States to have the judicial power of the United States extend to all cases in law in equity and another privelege of the citizens of the United States is to in action in suits of Common Law where the value in controversy shall exceed $20.00, that the right of trial by jury shall be preserved. Now, that is a privelege of a citizen of the United States.

Now, the Minnesota Legislature is incompetent to infringe upon those priveleges. Furthermore, the Justice of the Peace is sworn by oath to support the Constitution of the United States first and then secondly the Constitution of Minnesota.

So, there is no question as far as the law is concerned and as far as I am concerned about the jurisdiction of the Court to render a complete justice. The same jury that would normally sit in a Justice of Peace Court sits in the Municipal Court, would sit in the District Court, would sit in the United States District Court. The people are made up of the same twelve people.

They don't have any complaint here. This Justice of the Peace was ready and willing to give them a jury trial whenever they were ready so they have no complaint here. They just want to bypass this Court and have this Court to act as kind of dictatorship dictating to the people of this state what they would like to have them do. They can stand here and talk about writing down this, that,

and the other thing but they sure have done a good job of butchering the Constitution of the United States, and especially Article 1, Section 10.

CHIEF JUSTICE KNUTSON: Well, the matter will be taken under advisement.

(Whereupon, the proceedings had on this date came to a close.)

* * * *

REPORTER'S CERTIFICATE

I Wayne O. Tschimperle, a Notary Public in and for the County of Ramsey, Minnesota, do hereby certify that the foregoing fifteen and a portion pages of typewritten material constitutes a true and correct transcript of my Stenograph notes, as they purport to contain, of the proceedings had in the aforementioned hearing, which was taken by me at the time and place hereinbefore mentioned.

Wayne O. Tschimperle
WAYNE O. TSCHIMPERLE

DATED: This 22nd day of
August, 1969

and the other thing but they sure have done a good job of butchering the Constitution of the United States, and especially Article I, Section 10.

CHIEF JUSTICE KNUTSON: Well, the matter will be taken under advisement.

(Whereupon, the proceedings had on this date came to a close.)

* * * *

REPORTER'S CERTIFICATE

I Wayne O. Tschimperle, a Notary Public in and for the County of Ramsey, Minnesota, do hereby certify that the foregoing fifteen and a portion pages of typewritten material constitutes a true and correct transcript of my Stenograph notes, as they purport to contain, of the proceedings had in the aforementioned hearing, which was taken by me at the time and place hereinbefore mentioned.

WAYNE O. TSCHIMPERLE

DATED: This 22nd day of August, 1969

~~ORIGINAL~~ Extra Copy

42174

"In re Jerome Daly"

STATE OF MINNESOTA

IN SUPREME COURT

Leo Zurn, Respondent, -vs- 42088, 42117 Northwestern National Bank of Minneapolis, and First National Bank of Minneapolis, Relators,	:

T R A N S C R I P T

OF

PROCEEDING

on

(August 21, 1969)

Reported by:

Wayne O. Tschimperle

STATE OF MINNESOTA

IN SUPREME COURT

Leo Zurn, Respondent,	
-vs- 42088, 42117	
Northwestern National Bank of Minneapolis and First National Bank of Minneapolis, Relators,	

The above-entitled matters came duly on for oral argument in the Supreme Court Chambers on August 21, 1969, at 2:00 p.m. on an Order to Show Cause why Jerome Daly and Martin V. Mahoney should not be held in constructive contempt of the Supreme Court of the State of Minnesota.

APPEARANCES:

JEROME DALY
28 E. Minnesota Street
Savage, Minnesota
Attorney for Respondent

FAEGRE & BENSON
By Gordon G. Busdicker and
Peter Kitchak
1300 Northwestern Bank Building
Minneapolis, Minnesota
Attorneys for Relator
Northwestern National Bank

CHIEF JUSTICE KNUTSON: This is the matter of an Order to Show Cause why Jerome Daly and Martin V. Mahoney should not be held in constructive contempt of the Supreme Court.

Is Mr. Mahoney here?

MR. DALY: No, he is not, Your Honor.

CHIEF JUSTICE KNUTSON: Well, at the outset I want to advise you that a record is being made of this proceeding and whatever is said here will be recorded.

The question before us today is whether you or Mr. Mahoney or both of you intentionally disregarded the Order of this Court dated July 11, 1969, signed by Mr. Justice Peterson in the case of Zurn versus First National Bank of Minneapolis and Derrick, and, if you did so, what explanation have you for it.

MR. DALY: May I proceed?

CHIEF JUSTICE KNUTSON: Yes, you may proceed.

MR. DALY: Mr. Chief Justice of the State of Minnesota, Mr. Associate Justices of the Supreme Court of Minnesota;

At the outset I would like to inform the Court that I have authority to represent Justice of the Peace Martin V. Mahoney for a limited purpose here today. We are on my own behalf and his behalf objecting to the jurisdiction of this Court.

The papers that we have are entitled; (Reading)"In The Supreme Court, State of Minnesota, Leo Zurn versus The First National Bank of Minneapolis, Defendant-Petitioner, and Roger D. Derrick, Defendant; and Leo Zurn versus Roger D. Derrick

and Northwestern National Bank of Minneapolis;" and then there is an Order directed to myself to appear here to show cause.

We are not parties to this proceeding and the Court has no jurisdiction over us. That is Number One. That is backed up by 39 American Juris Prudence on Entitled Parties.

Now, Number Two, we take the position that if this is a contempt proceeding -- and, by the way, we are making a Special Appearance here to object to the jurisdiction of the Court.

Number Two, if this is a contempt proceeding we take the position that the only type of contempt there is is a criminal contempt and that we are entitled to be charged in the name of the State of Minnesota and to be informed of the nature and cause of the accusation against us in a regular criminal proceedings, that there is no such thing as a civil contempt proceedings.

The Thirteenth Amendment states that -- wait until I get it so I can read it. (Reading) "Neither slavery nor involuntary servitude except as a punishment for a crime whereof the parties shall have been duly convicted shall exist within the United States or anyplace subject to its jurisdiction."

Now, the statutes on contempt in this state provide for fine and imprisonment, and we take the position that the only time that one can be fined or imprisoned is on a regular criminal proceeding with criminal process.

Now, Number Three, there is no question about it we received this Order of the Supreme Court, Mahoney and I did,

and we looked it over very carefully and checked it very closely and decided to ignore it. That is the Order signed by Justice C. Donald Peterson, dated July 11, 1969.

Now, this Court, the only jurisdiction it has is to follow the Constitution of the United States and the State of Minnesota and all laws passed pursuant to it. This Court has no jurisdiction to proceed except pursuant to the constitutional laws enacted thereunder.

Now, the -- if I can find it.

CHIEF JUSTICE KNUTSON: Those pepole in the rear, if you wish you may take these seats down in front and be seated.

MR. DALY: Chapter 587.01 provides, (Reading) "Writs of Prohibition shall be issued only by the supreme court, and shall be applied for upon affidavit, by motion to the court, or to a judge thereof in vacation. If the cause shown appears to the court or judge to be sufficient, a writ shall be issued, commanding the court and party or officer to whom it is directed to refrain from any further proceeding in the action or matter specified until the next term of the supreme court, or its further order therein, and to show cause at the next term thereof, or on some designated day in the same term, if issued in term time, why they should not be absolutely restrained from any further proceedings therein."

And then I think it is 19 of the Rules of Procedure of the Supreme Court provides that, "A writ shall be tested under

the -- and seal of the Court shall issued by the Clerk."

Now, the moving papers for this so-called Writ of Prohibition were signed by Gordon Busdicker and it was not sworn to and the Order issued by Justice Peterson is not pursuant to 587.01. As I read 587.01 it says, (Reading) "Writs of Prohibition shall be issued only by the supreme court and shall be applied for upon affidavit, by motion to the court, or to a judge thereof in vacation."

Now, the Northwestern National Bank made no appearance before the Justice of the Peace. They totally ignored the Justice of the Peace and came to this bypass when they came to this Court. So this is a situation in which this Court's appellate procedures could not be invoked. The only procedure that could be invoked would be an original proceeding in this Court whereby Mahoney and the plaintiff would be named as a party to the action.

Now, Number One, we weren't served with any motion. Now, this Notice of Application by Motion and service upon Mahoney and myself and the plaintiff, Leo Zurn, in this matter must be implied into this statute because if it is not, if the statute does not imply notice and if they wanted to shorten the time for notice, they would have to get an order to show cause out of this Court.

Now, if you don't imply the requirement of notice into this statute then it has got to be unconstitutional. We were not notified of any application for relief before this Court

and, oh, they are proceeding completely outside of the law and without notice to us; and we just didn't think the Order required any further action on our part but to ignore it. So, that is it.

Unless the Court has any questions?

CHIEF JUSTICE KNUTSON: So you admit that you intentionally violated this Order?

MR. DALY: There is no question about it. We read that Order over very carefully, laid it alongside the Constitution and the statute and the law and examined it very carefully and determined that the Order was outside of Justice Peterson's jurisdiction and ignored it.

CHIEF JUSTICE KNUTSON: The Order was served upon you, was it not?

MR. DALY: There is no question about that.

CHIEF JUSTICE KNUTSON: And it was served upon the Justice of the Peace?

MR. DALY: There is no question about that, none whatsoever. But the bank made no appearance before the court. I showed the Justice of the Peace the law and he looked it over and he decided to ignore it.

CHIEF JUSTICE KNUTSON: Do you have anything to say?

MR. BUSDICKER: May I, Your Honor?

CHIEF JUSTICE KNUTSON: Yes.

MR. BUSDICKER: Gordon Busdicker. May it please the Court; I filed with the Court and have now given to Mr. Daly a copy of the

Memorandum of Law which we have submitted in suport of the citation of contempt in this proceeding for both Mr. Daly and Justice of the Peace Mahoney.

There has been filed in this proceeding numerous affidavits by myself and by others which I think adequately set forth the facts and the nature of the rather extreme difficulties which have been experienced by Defendant -Petitioner, Northwestern National Bank of Minneapolis in connection with this action.

If I may, however, briefly indicate that the action was commenced by service on the bank by summons and complaint out of Justice of the Peace Court, Justice Mahoney, as was originally set forth in the Petition for a Writ of Prohibition.

The purported action was wholly outside of the jurisdiction of Justice of the Peace Court for a number of reasons. Further, the Summons which was signed by Justice of the Peace Mahoney was wholly improper again for a number of reasons, both by way of the time in which the bank was required to appear, by reason of the fact that it was served outside of the county, by reason of the fact that it was served in a city of over 200,000 population. All of these facts are set forth.

On the basis of the very face of the Summons and Complaint and the impropriety of that action being brought in Justice of the Peace Court we sought and filed a Petition for a Writ of Prohibition.

Now, I would like to comment on several comments which Mr. Daly has made. He first points to the fact that we did not

appear in compliance with the improper, wholly improper summons in Credit River Township. That is quite right, we did not. If, however, Mr. Daly seeks to draw an inference we would not be here today, I suggest that it is proven false by virtue of the additional proceedings which has been consolidated with the Northwestern National Bank's proceedings, that being proceedings, "Zurn, Plaintiff, versus Derrick, car owner, and First National Bank." The First National Bank and Northwestern are in exactly the same situation today. The only distinction being that the First National Bank first went to Justice of the Peace Court and moved to dismiss for lack of jurisdiction. That motion was denied by Justice of the Peace Mahoney and then a Petition for a Writ of Prohibition was filed.

Mr. Daly makes reference to Chapter 587 which deals with the issuance of petitions for writ of prohibition. As the Court is well aware, this Chapter of the Minnesota Statutes has been specifically superceded by the Rules of Civil Appellate Procedure. I would refer you to Rule 147.02.

Further, Mr. Daly makes reference to Rule 19 in speaking about a writ of prohibition issuing from the Court of the Supreme Court. As is noted in the Memorandum of Law which we had submitted, Rule 19 has been superceded by the Appellate Rules. Further, even if Rule 19 were still applicable it has no relationship to the issue here. We are not discussing now the defiance of Daly and Mahoney of a Writ of Prohibition but rather an Order of the Supreme

Court.

The procedure for the issuance of writ of prohibition is not governed by Rule 120 of the Rules Civil Appellate Procedure. I would submit that in this proceeding Defendant-Petitioner, Northwestern National Bank, has followed completely and explicitly Rule 120. As is fully indicated by the Order of Justice Peterson it is not a writ of prohibition as such but rather an interim and temporary order issued for the purpose of allowing Mahoney and Daly to be heard. For that reason it has stayed all proceedings in Justice of the Peace Court. That is the Order that Mr. Daly and Mr. Mahoney choose to ignore.

Now, the reason for their ignoring this Order, I submit, are on their face specious. Mr. Daly speaks of there being no verification to the Petition for a Writ of Prohibition. There was a hearing on this Petition for a Writ of Prohibition. Mr. Daly had been notified prior to the hearing. He did not appear. Quite apart from that, there is no requirement in the Rules or in any applicable statute for a petition to be verified.

Mr. Daly likewise speaks of the fact that it did not issue out of the Clerk's office. I have already referred to that and there is no basis for that argument because we are not talking about a writ of prohibition but rather a interim order of this Court.

Finally we come to the more esoteric argument of Mr. Daly that this Court somehow lacks jurisdiction because, as I

gather, in the view of both Mr. Daly and Mr. Mahoney the Justice of the Peace Court in Credit River Township is the supreme judicial body not only in the State of Minnesota but apparently the world. He makes reference to the Unites States Constitution, the Minnesota Constitution as some justification for a Justice of the Peace Court being permitted to defy, knowingly defy the Supreme Court of the state. I am sure that Mr. Mahoney and Mr. Daly are aware that Justice of the Peace Courts are not constitutional courts. There is a long line of decisions in this state and elsewhere that such a court is strictly limited by way of its jurisdiction -- that imposed by the legislature.

This is not a theoretical difficulty with which the Court is faced today. It is a problem which is causing real and immediate harm to the Defendant-Petitioner, Northwestern National Bank, and I might add from the files of this proceeding to others as well.

The basic complaint here, and we can go back to the original Summons and Complaint issuing out of Justice of the Peace Court, is for a mechanics lien claim. It is for $680.00. It is in addition, however, for a declaration that the Bank's chattel mortage on the automobile is invalid, it's for a declaration that legal tender is only gold and silver. In that respect, the action might appear a small one. Nevertheless, in attempting to protect its rights the Defendant's Bank has been force to have expended on its behalf approximately seventy hours of legal time. This,

as is indicated in the affidavits on file is but one of a very broad pattern of this type of harassment. More important it is clearly an open defiance of this Court.

Now, it's one thing for a lawyer or for an inferior court to assert a position no matter how tenuous and how specious the arguments might be within the judicial system and it is quite another thing, however, to openly and brassily defy the judicial system and to act in direct contravention of it.

Now, like it or not, I would submit that Mr. Daly and Mr. Mahoney cannot by feint strike down the constitution of the United States and elevate a Justice of the Peace Court to the supreme judicial body in the state.

We cited in our briefs a number of authorities which we believe fully support the findings that both Mr. Daly and Mr. Mahoney acted in constructive contempt of this Court.

Mr. Daly makes reference to there being no civil contempt and only criminal contempt. I would simply refer the Court to the authority cited in the Memorandum showing very clearly that there is a distinction and that this type of proceedings is aptly one for application of civil contempt.

We believe and submit that these facts fully warrant a finding that both Mr. Daly and Mr. Mahoney are in contempt of this Court, that this contempt has prejudiced and injured Northwestern National Bank of Minneapolis, that by reason of that fact the purported Finding of Fact, Conclusions of Law and Judgment entered by Justice

Mahoney on motion and apparently testimony of Mr. Daly should be vacated, should be stricken and set aside for the nullity that they really are; and we submit further that Defendant-Petitioners, Northwestern National Bank should be awarded its costs, including attorneys' fees for the harassment that has gone on to date and we would submit that these reasonable attorneys' fees are in the amount of $2,000.00.

We urge the Court that this is not and should not be an exercising in futility by either the Supreme Court of Minnesota or by Defendant-Petitioner. That is exactly what Mr. Daly and Mr. Mahoney had made of the judicial system to date in this proceedings.

For these reasons, I would ask for the relief that I have indicated.

CHIEF JUSTICE KNUTSON: Do you have any rebuttal?

MR. DALY: Well, in the first place, they are trying to invoke the Rule of Appellate Procedure. Now, before they can take an appeal they have got to appear before some lower court and to make an application for a relief and then they can take an appeal, but not until then. But they choose to bypass the Justice of the Peace Court. They haven't made any appearance whatsoever before Justice Mahoney to ask for any relief whatsoever.

Now, the First National Bank made an appearance, filed certain papers in that before Justice Mahoney, and then asked for an opportunity for time to come to this Court for a Writ of

Prohibition, and he gave them time to come to this Court. But the Northwestern National Bank choose to just bypass and ignore the court completely. So these appellate rules that they cite are invalid.

Now, Number Two, they are trying to take the position here that the Justice of the Peace is not a constitutional court. Now, the Minnesota case of State ex rel Rox versus Gregor, decided January 26, 1906, and it's found in --

CHIEF JUSTICE KNUTSON: That case is --

MR. DALY: (Continuing) 97 Minnesota --

CHIEF JUSTICE KNUTSON: That case was decided before our constitution was amended in 1956 removing the Justice Court as a constitutional court.

MR. DALY: No. Now, just a minute now. This -- in 1956 the constitution did not remove the court -- Justice Court as a constitutional court. Now, this case here states that, "After a court is created by the legislature in the constitutional manner it is a constitutional court and in the exercise of its powers and jurisdiction it is governed by the same general principles as the other courts of the state."

Now, in 1956 the Minnesota Constition was ammended to read, "The judicial power of this state is hereby vested in a Supreme Court, a District Court, a Probate Court, and such other courts and as many judicial officers and commissioners with jurisdiction inferior to the District Court as the legislature

may establish."

Now, I have found no case anywhere that holds to the contrary to this proposition.

CHIEF JUSTICE KNUTSON: The legislature today can abolish all Justice of the Peace Courts.

MR. DALY: They can, that is true, but once the court is created its jurisdiction is derived from the constitution and not from the act creating the court. And I don't think that there is any question about that at least in the law.

CHIEF JUSTICE KNUTSON: What would you say was the purpose of amending the constitution so as to eliminate Justice of the Peace Courts from the specific language of the constitution?

MR. DALY: I don't know what the purpose was but the effect of it was to remove any jurisdictional -- Common Law jurisdictional impediments or barriers to the Justice of the Peace Courts.

Now, a Justice of the Peace has authority to render a declaratory judgment. The Declaratory Judgment Act applies to all courts of record. Now, in the statutes, the Justice of the Peace Statutes, I think it is 530, it states the Justice of the Peace Court is a court of record. I have the specific citation which I will supply to the Court after this hearing, but the -- here it is right here. 16 American Juris Prudence 2nd, Section 219. (Reading) "When a court is created the judicial power is conferred by the constitution and not by the acts creating the court. It is well said that in the early period in American Law the judicial power in every

well-organized government ought to be coextensive with the legislative power so far at least as present rights are to be enforced by judicial proceedings. The rule is now well settled that under the various state governments the constitution confers on the judicial department all the authority necessary to exercise powers as a coordinate department of the government. Moreover, the independence of the judiciary is the means provided to maintain the supremacy of the constitution."

Now, if the State Legislature can limit the jurisdiction of the court then there is no reason why the State Legislature can say that the District Court, the Municipal Court, and the Justice Courts shall have any power to pass upon a question of constitutional law, none whatsoever.

I further take this position: the United States Constitution Article III states: (Reading) "The judicial power shall..." This is talking about the judicial power of the United States."The judicial power shall extend to all cases in the law and in equity arising under this constitution, the laws of the United States and treaties shall be made under their authority."

Now, Amendment VII states: (Reading) In suits of Common Law where the value in controversy shall exceed $20.00 the right of trial by jury shall be preserved and no facts tried by a jury shall be otherwise reexamined in any court of the United States and according to the rules of the Common Law."

Now, Amendment XIV states: (Reading) "No state shall make

or enforce any law but shall abridge the priveleges of citizens of the United States."

Now, it is one of the priveleges of the citizens of the United States to have the judicial power of the United States extend to all cases in law in equity and another privelege of the citizens of the United States is to in action in suits of Common Law where the value in controversy shall exceed $20.00, that the right of trial by jury shall be preserved. Now, that is a privelege of a citizen of the United States.

Now, the Minnesota Legislature is incompetent to infringe upon those priveleges. Furthermore, the Justice of the Peace is sworn by oath to support the Constitution of the United States first and then secondly the Constitution of Minnesota.

So, there is no question as far as the law is concerned and as far as I am concerned about the jurisdiction of the Court to render a complete justice. The same jury that would normally sit in a Justice of Peace Court sits in the Municipal Court, would sit in the District Court, would sit in the United States District Court. The people are made up of the same twelve people.

They don't have any complaint here. This Justice of the Peace was ready and willing to give them a jury trial whenever they were ready so they have no complaint here. They just want to bypass this Court and have this Court to act as kind of dictatorship dictating to the people of this state what they would like to have them do. They can stand here and talk about writing down this, that,

and the other thing but they sure have done a good job of butchering the Constitution of the United States, and especially Article 1, Section 10.

CHIEF JUSTICE KNUTSON: Well, the matter will be taken under advisement.

(Whereupon, the proceedings had on this date came to a close.)

* * * *

REPORTER'S CERTIFICATE

I Wayne O. Tschimperle, a Notary Public in and for the County of Ramsey, Minnesota, do hereby certify that the foregoing fifteen and a portion pages of typewritten material constitutes a true and correct transcript of my Stenograph notes, as they purport to contain, of the proceedings had in the aforementioned hearing, which was taken by me at the time and place hereinbefore mentioned.

Wayne O. Tschimperle
WAYNE O. TSCHIMPERLE

DATED: This 22nd day of
August, 1969

and the other being but they sure have done a good job of butchering the Constitution of the United States, and especially Article I, Section 10.

CHIEF JUSTICE KNUTSON: Well, the matter will be taken under advisement.

(Whereupon, the proceedings had on this date came to a close.)

* * * *

REPORTER'S CERTIFICATE

I Wayne O. Teschimperis, a Notary Public in and for the County of Ramsey, Minnesota, do hereby certify that the foregoing [illegible] constitutes a true and correct transcript of my Stenograph notes, as they purport to contain, of the proceedings had in the aforementioned hearing, which was taken by me at the time and place hereinbefore mentioned.

Wayne O. Teschimperis
WAYNE O. TESCHIMPERIS

DATED: This 22nd day of August, 1969

STATE OF MINNESOTA

IN SUPREME COURT

Leo Zurn, Respondent,

vs. 42088

Northwestern National Bank of Minneapolis,
Relator.

ORDER

IT IS ORDERED that the items listed below shall be transferred from this file to a new file entitled "In re Jerome Daly" whose number shall be 42174:

1. Order to Show Cause Why Jerome Daly and Martin V. Mahoney Should Not Be Held in Constructive Contempt of the Supreme Court of the State of Minnesota, filed 8-19-69;
2. Transcript of Proceeding on 8-21-69, filed 8-26-69;
3. Affidavit of Gordon G. Busdicker, filed 8-21-69.

Dated: September 4, 1969.

BY THE COURT

ROBERT J. SHERAN

Associate Justice

Filed: Sept. 4, 1969

John McCarthy, Clerk

(4)

42174

SUPREME COURT
FILED
SEP 4 1969
JOHN McCARTHY
CLERK

Order Authorizing
Transfer of Files

IN THE SUPREME COURT

STATE OF MINNESOTA

Leo Zurn, Plaintiff, vs. First National Bank of Minneapolis, Defendant-Petitioner, and Roger D. Derrick, Defendant.	
Leo Zurn, Plaintiff-Respondent, vs. Roger D. Derrick, Defendant, and Northwestern National Bank of Minneapolis, Defendant-Petitioner.	AFFIDAVIT OF GORDON G. BUSDICKER No. 42088

GORDON G. BUSDICKER, being first duly sworn on oath, deposes and says:

1. I am one of the attorneys for Northwestern National Bank of Minneapolis (hereinafter "Northwestern") and am familiar with the facts concerning the captioned action and the amount of legal time expended by myself and my partners and associates in connection therewith.

2. Seventy and one-half hours of attorneys' time have been expended through August 20, 1969, on behalf of defendant-petitioner Northwestern in connection with the captioned proceeding.

This amount of time does not include time of officers and employees of Northwestern.

3. Of this total, 34 hours have been expended subsequent to receipt by affiant of the purported Findings of Fact, Conclusions of Law and Judgment of Justice Mahoney and in connection with the contempt proceedings.

4. Of the total 70 1/2 hours, approximately 12 hours have been expended in connection with the attempt by defendant-petitioner to regain possession of the automobile by a replevin action commenced in District Court, Scott County.

5. A reasonable charge for the attorneys' time expended in connection with these proceedings is $2,000.

6. Further affiant sayeth not.

Dated: August 21, 1969

Gordon G. Busdicker
GORDON G. BUSDICKER

Subscribed and sworn to before me
this 21 day of August, 1969.

Kate M. Sorvig
Notary Public

KATE M. SORVIG
Notary Public, Hennepin County, Minn.
My Commission Expires Aug. 26, 1971

(3)

~~42088~~

42174

"In re Jerome Daly"

8/21/69

SUPREME COURT
FILED
AUG 21 1969
JOHN McCARTHY
CLERK

Affidavit of Gordon Busdicker

FAEGRE & BENSON
LAWYERS
1300 NORTHWESTERN BANK BUILDING
MINNEAPOLIS, MINN. 55402

7/14

[redacted]

Form No. 1749—Return for Personal Service Exhibition Judge's Signature. (Rev. 1959.) ☆☆☆ BLANK VOUCHER

State of Minnesota,

County of Scott } ss.

I Hereby Certify and Return, That at the Township of Credit River in County and State aforesaid, on the 15th day of August 1969 I served the hereunto attached Order To Show Cause, Affidavit Of Facts Constitution Constructive Contempt upon the within named Martin V. Mahoney personally by then and there handing to and leaving with Martin V. Mahoney a true and correct copy thereof, and at the same time and place exhibiting to Martin V. Mahoney so that he could see and read the same, the original signature of Honorable Robert J. Sheran, Judge of the ~~District Court of~~ Supreme Court, State Of ~~County~~, Minnesota, to said original.

Dated this 15th day of August 1969.

Sheriff Fees—Service, $4.00

Travel, $4.50

Total, $8.50

W. B. Schroeder

Sheriff of Scott County, Minn.

By [signature] Deputy Sheriff

Form No. 1749—Return for Personal Service Exhibition Judge's Signature. (Rev. 1959.)

☆☆☆ BLANK POUCHER MINNEAPOLIS

State of Minnesota,

County of Scott } ss.

I Hereby Certify and Return, That at the Village of Savage in County and State aforesaid, on the 15th day of August 1969 I served the hereunto attached Order To Show Cause, Affidavit Of Facts Constitution Constructive Contempt upon the within named Jerome Daly personally by then and there handing to and leaving with Jerome Daly a true and correct copy thereof, and at the same time and place exhibiting to Jerome Daly so that he could see and read the same, the original signature of Honorable Robert J. Sheran, Judge of the ~~District Court of~~ Supreme Court, State Of ~~County~~, Minnesota, to said original.

Dated this 15th day of August 1969.

Sheriff Fees—Service, $4.00

Travel, $

Total, $4.00

W. B. Schroeder

Sheriff of Scott County, Minn.

By Deputy Sheriff

8-69
GGB:nb

IN THE SUPREME COURT

STATE OF MINNESOTA

Leo Zurn, Plaintiff, vs. First National Bank of Minneapolis, Defendant-Petitioner, and Roger D. Derrick, Defendant.	No. 4/52088 ~~42117~~ ORDER TO SHOW CAUSE WHY JEROME DALY AND MARTIN V. MAHONEY SHOULD NOT BE HELD IN CONSTRUCTIVE CONTEMPT OF THE SUPREME COURT OF THE STATE OF MINNESOTA
Leo Zurn, Plaintiff-Respondent, vs. Roger D. Derrick, Defendant, and Northwestern National Bank of Minneapolis, Defendant-Petitioner.	

1. Pursuant to Motion of Petitioner Northwestern National Bank of Minneapolis and based on the attached Affidavit of Gordon G. Busdicker and all of the documents, pleadings and files herein,

IT IS HEREBY ORDERED

that on the ~~18th~~ 21st day of August 1969, at 2 p.m., Messrs. Jerome Daly and Martin V. Mahoney shall appear before this Court to show cause why they should not be held in constructive contempt of this Court as a result of facts arising out of the above-captioned action and set forth in the attached Affidavit of Gordon G. Busdicker.

2. IT IS FURTHER ORDERED that Messrs. Daly and Mahoney shall be personally served with a copy of this Order and the attached Affidavit on or before August ~~13~~ 16, 1969.

DATED: August 12, 1969.

BY THE COURT:

Robert J. Sherman
Justice

8-69
GGB:nb

IN THE SUPREME COURT

STATE OF MINNESOTA

* * * * * * * * * * * * * * * * * * * *	No. 42088
Leo Zurn, *	
Plaintiff, *	
vs. *	
First National Bank of Minneapolis, *	AFFIDAVIT OF FACTS
Defendant-Petitioner, *	CONSTITUTING
and *	CONSTRUCTIVE CONTEMPT
Roger D. Derrick, *	
Defendant. *	
* * * * * * * * * * * * * * * * * * * *	
Leo Zurn, *	
Plaintiff-Respondent, *	
vs. *	
Roger D. Derrick, *	
Defendant, *	
and *	
Northwestern National Bank of Minneapolis, *	
Defendant-Petitioner.	
* * * * * * * * * * * * * * * * * * * *	

STATE OF MINNESOTA:
: SS
COUNTY OF HENNEPIN:

GORDON G. BUSDICKER, being first duly sworn on oath, deposes and says that:

1. I am the attorney for Northwestern National Bank of Minneapolis (hereinafter "Northwestern"), defendant-petitioner in the captioned proceeding.

2. On or about July 3, 1969, Northwestern was served with a Summons and Complaint in the above-captioned action. The Summons demanded an appearance by Northwestern on Friday, July 11, 1969, at 7:00 p.m. in the Court House of Justice of the Peace, Martin V. Mahoney, in Credit River Township, Scott County, a

true and correct copy of said Summons and Complaint being attached hereto as "Exhibit A" and hereby made a part hereof. The Complaint in said action sought a declaratory judgment as to what was sufficient legal tender in payment and discharge of an alleged debt for service performed on an automobile owned by Roger D. Derrick and also sought judgment that defendant-petitioner Northwestern, which had loaned money to Roger D. Derrick and was the holder of a conditional sales contract on said vehicle, has no right, title, lien, interest or mortgage on said automobile. The Complaint also sought a money judgment against defendant Roger D. Derrick in the sum of $680.

3. Thereafter, defendant-petitioner Northwestern filed a Petition for Writ of Prohibition with this Court. Upon motion and after hearing, the Court, by the Honorable C. Donald Peterson, Associate Justice, issued an Order staying all further proceedings in the Justice Court of Martin V. Mahoney, Justice of the Peace, Township of Credit River, County of Scott, State of Minnesota, until further order of this Court. Said Order also quashed the Summons in the aforementioned action. Copies of said Petition and Order are attached hereto as "Exhibit B" and "Exhibit C", respectively, and are hereby made parts hereof.

4. Copies of said Petition and Order were personally served on Jerome Daly and Martin V. Mahoney on the afternoon of July 11, 1969.

5. On July 11, 1969, contrary to the Order issued by the Supreme Court of the State of Minnesota, and after service of the aforementioned Order, Jerome Daly proceeded to have the captioned action brought on for hearing before Justice of the Peace, Martin V. Mahoney, for judgment by default. Thereafter, on or about July 14, 1969, said Martin V. Mahoney, individually

8-69
GGB:nb

and, on information and belief, in conspiracy with Jerome Daly, caused to be issued Findings of Fact, Conclusions of Law and Judgment and Memorandum in the captioned action, a copy of said Findings, which were first served on affiant on or about August 5, 1969, being attached hereto as "Exhibit D" and hereby made a part hereof.

6. Said Findings of Fact, Conclusions of Law and Judgment are in direct contravention of the previous Order of this Court, constitute extreme harassment of defendant-petitioner Northwestern, and, on information and belief, will be utilized by Martin V. Mahoney and Jerome Daly to the further detriment of Northwestern.

7. As a result of the foregoing acts of Messrs. Daly and Mahoney, Northwestern has been subjected to undue harassment and expense. Said expense includes attorneys' fees and expenses, filing fees, loss of value of the aforementioned automobile by depreciation and the value of employee time.

Further, Affiant saith not.

Gordon G. Busdicker

SWORN TO BEFORE ME and subscribed in my presence this 12th day of August 1969.

David M. Beadie
Notary Public

DAVID M. BEADIE
Notary Public, Hennepin County, Minn.
My Commission Expires Jan. 8, 1974

(SEAL)

My Commission Expires:

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn, Plaintiff,

vs. SUMMONS

Northwestern National Bank of Minneapolis and Roger Derrick, Defendants.

THE STATE OF MINNESOTA, UNITED STATES OF AMERICA, TO THE SHERIFF OR ANY CONSTABLE OF THE STATE OF MINNESOTA; or PLAINTIFF"S ATTORNEY

SIR:

Pursuant to the authority vested in me by the Declaration of Independence, The Northwest Ordinance of 1787, The Constitution of the United States, The Louisania Purchase Treaty of April 30,1803 and the Constitution of the State of Minnesota, You are hereby Commanded to Summon the Defendants above named to be and appear before the undersigned and to file your Answer herein or otherwise pleade to and before the undersigned, one of the Justices of the Peace in and for said County on July 11,1969 at 7:00 P.M. at my Court House located on my farm in the Farm Yard thereof in Section 9, Township 114 North, Range 21 West, Credit River Township, Scott County, Minnesota, located on the East side of County Road 68 2 Miles N.E. of the Township Hall in a Civil Action wherein Plaintiff claims and asks for relief prayed for in the Complaint dated June 30,1969 which is attached hereto and made a part hereof by reference, and have you then and there this Summons and Complaint with proof of service thereupon.

Given under my hand and seal this 1st day of July,1969, at Credit River Township, Scott County,Minnesota.

Martin V. Mahoney

Martin V. Mahoney
Justice of the Peace
Credit River Township
Scott County, Minnesota

EXHIBIT A

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn, Plaintiff,

vs. COMPLAINT

Roger Derrick and
N.W.National Bank of Minneapolis,
Defendants.

Plaintiff, for his cause of action herein states and alleges:

I.

That Plaintiff, at the request of Roger Derrick, the legal owner and possessor of a certain 1967 Ford 2 Door Mustang Automobile bearing Minn. License Plates 5 DT 676 and serial No. 7fo2c212104, did on or about April 4,1969 and thereafter expend Labor, Skill and Material in the repair, caring for, keeping and storing the same in the reasonable sum of N.C.Pace

II.

That Plaintiff is in actual possession of said CAr and claims a Mechanics lien thereon; that Plaintiff has made demand upon said Derrick for payment in Cold and Silver Coin, the lawful money of the United States which demand for payment is wholly refused by said Roger Derrick.

III.

That Defendant Northwestern National Bank of Minneapolis claims a purchase money mortgage and lien against said carin the sum of about $1,900.00 or thereabouts. That in obtaining said purported lien said Bank did, upon the general leger books of said Bank, create out of nothing, by bookeeping entry all the money and credit that it used as the money consideration for the purchase of said car and the acquisition of said Note and iortgage from Derrick. That said bookeeping created money and credit is in contemplation of Law a forgery, is not a lawful consideration with which to support said Note and Mortgage and the same is therefore void.

IV.

That Defendant Northwestern National Bank of Minneapolis is in the practice, for many, many years, of forging and creating money and credit upon the books of said Bank contrary to law and by virtue of said activity claims some right, title, interest or lien in and to said Automobile whereas it has none.

Wherefore, Plaintiff demands Judgment as follows:

1. Judgment against Defendant Roger Derrick in the sum of #680.00

2. Declaratory Judgment declaring what, specifically constitutes a legal tender in the payment and discharge of the Debt.

3. Judgment that said Automobile be sold at a Judicial Sale in the manner prescribed by Law.

4. Judgment that the Defendant Northwestern National Bank of Minneapolis has no right, title, lien, interest or mortgage on said Automobile.

5. Costs and Disbursments against any Defendant appearing and answering herein.

Jerome Daly
Plaintiff's Attorney
28 East Minnesota Street
Savage, Minnesota

June 30,1969

VERIFICATION

STATE OF MINNESOTA

COUNTY OF SCOTT

Leo Zurn, being first duly sworn deposes and states that he is the Plaintiff herein, that he has read the foregoing Complaint, and the same is true to the best of his knowledge information and belief.

Leo Zurn

Subscribed and sworn before me this

1st Day of July 1969

Jerome Daly

Notary Public Dakota County, Minnesota My commission Expires January 15, 1973

STATE OF MINNESOTA

IN SUPREME COURT

Northwestern National Bank of Minneapolis, Defendant-Petitioner,	:	
-vs.	:	
Leo Zurn, Plaintiff-Respondent,	:	PETITION FOR
and	:	WRIT OF PROHIBITION
Honorable Martin V. Mahoney, Respondent,	:	
and	:	
Jerome Daly, Esq., Respondent.	:	

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA:

Petitioner, NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, requests a Writ of Prohibition on the following grounds:

1. On Thursday, July 3, 1969, there was served on George C. Adam, personal banking officer of Petitioner, a Summons and Complaint in the form attached, said Summons issuing out of Justice Court, Martin V. Mahoney, Justice of the Peace, and signed by Martin V. Mahoney.

2. The issuance and service of said Summons is invalid and in violation of statute and contrary to law for the following reasons:

a) Said Summons was personally served on defendant in the City of Minneapolis, County of Hennepin, contrary to the provisions of Minnesota Statutes §531.04, which prohibit service outside of the county in which it is issued (in the instant case, Scott County) except pursuant to the provisions of Minnesota Statutes §532.29, which require a continuance of proceedings for a period

EXHIBIT B

not exceeding 20 days, which continuance has not been provided for;

b) The issuance of said Summons is contrary to the provisions of Minnesota Statutes §531.03 for the reason that it is returnable at 7 p.m.;

c) The issuance of said Summons is contrary to the provisions of Minnesota Statutes §531.03 for the reason that said Summons does not contain a statement of the amount claimed by plaintiff;

d) The issuance of said Summons is contrary to the provisions of Minnesota Statutes §531.04 for the reason that it was personally served upon Northwestern National Bank of Minneapolis in the City of Minneapolis, a city having a population of in excess of 200,000;

e) The issuance of said Summons and the maintenance of the action contemplated therein is beyond the jurisdiction of Justice Court and contrary to the provisions of Minnesota Statutes §530.05.

3. Petitioner is one of a number of banking institutions which have been subjected to repeated harassment by Respondents, both collectively and individually, and forced repeatedly to defend actions involving, as does the instant proceeding, allegations that the Federal Reserve Act is unconstitutional, that Federal Reserve Notes are not legal tender and that such banking institutions are in some undefined manner guilty of unlawfully creating money and credit. Petitioner submits that further harassment of the type involved herein should be prohibited.

WHEREFORE, Petitioner prays for a Writ of Prohibition quashing the Summons heretofore issued by Justice of the Peace Martin V. Mahoney and restraining respondents from attempting

further proceedings in Justice Court outside of the jurisdiction thereof and for such other relief as may be just and equitable.

DATED: July 11, 1969.

FAEGRE & BENSON

By /s/ Gordon G. Busdicker
Gordon G. Busdicker
1300 Northwestern Bank Bldg.
Minneapolis, Minnesota 55402
FEderal 8-7571
Attorneys for Defendant-Petitioner

STATE OF MINNESOTA

IN SUPREME COURT

Northwestern National Bank of Minneapolis,	:	
Defendant-Petitioner,	:	
vs.	:	
Leo Zurn,	:	
Plaintiff-Respondent,	:	
and	:	ORDER
Honorable Martin V. Mahoney,	:	
Respondent,	:	
and	:	
Jerome Daly, Esq.,	:	
Respondent.	:	

Upon the Petition of Northwestern National Bank of Minneapolis for a Writ of Prohibition, IT IS HEREBY ORDERED:

1. All further proceedings in Justice Court, Martin V. Mahoney, Justice of the Peace, Township of Credit River, County of Scott, State of Minnesota, are stayed until further order of this Court.

2. The Summons heretofore issued in the action entitled Leo Zurn v. Northwestern National Bank of Minneapolis and Roger Derrick, brought in Justice Court, Township of Credit River, County of Scott, State of Minnesota, Martin V. Mahoney, Justice of the Peace, be and hereby is quashed and set aside.

3. Respondent Martin V. Mahoney be and hereby is directed to vacate and set aside the aforementioned Summons and to take no further proceedings in the aforementioned action in Justice Court until further order of this Court.

4. Petitioner shall forthwith serve copies of this Order on Jerome Daly, attorney for Plaintiff-Respondent Leo Zurn, and on Martin V. Mahoney, Justice of the Peace.

EXHIBIT C

5. The Petitioner shall file and serve a written brief and such affidavits as may be appropriate on or before August 1, 1969. Respondents shall serve and file an answer to the petition, a written brief, and such affidavits as may be appropriate on or before August 18, 1969. No oral argument will allowed.

DATED: July 11, 1969.

THE SUPREME COURT OF
THE STATE OF MINNESOTA

By /s/ C. Donald Peterson
C. Donald Peterson
Associate Justice

UNITED STATES OF AMERICA

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn, Plaintiff,

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

vs.

Defendants,
Northwestern National Bank of Minneapolis and Roger Derrick,

The above entitled action came on before the Court before the undersigned on July 11,1969 at 7:00 P.M. on said day. Jerome Daly Esq. appeared on behalf of Plaintiff. There was no appearance on behalf of either Defendant. At 5:30 P.M. on July 11,1969 the undersigned was served with a Petition for Writ of Prohibition directed to the Supreme Court of Minnesota and an Order purported to be signed by C. Donald Peterson, Associate Justice of the Supreme Court of Minnesota. The unverified Petition and Order are attached hereto by copy and made a part of these findings.

The Court waited one hour and then proceeded to take the testimony of Plaintiff's Attorney Jerome Daly on his application for a Judgment by default.

It appears that personal service of the Summons and Complaint was made upon both Defendants on July 3,1969. The Bank was served by serving one of its Banking Officers' George C. Adams. Now therefore upon all the files, records and proceedings herein and upon the testimony and evidence received, The Court makes the fillowing findings of fact:

FINDINGS OF FACT

1. That at all times herein material the Defendant Roger Derrick is the legal owner of a certain 1967 Ford 2 door Mustang Automobile bearing Minnesota License Plates No. 5 DT 676 and Serial No. 7F02C212104.

2. That in the year 1967 the Defendant Northwester National Bank of Minneapolis did create money and credit on the books of their Bank, by false bookeeping entry, by which the said Bank did acquire a purported purchase money mortgage on said automobile in a sum in excess of $2,000.00 and filed said mortgage. That the Defendant Roger Derrick executed a purchase money mortgage back to said back along with a Note. That the act of creating said money and credit upon the books of said Bank is unlawful and void for any purpose and does not constitute a lawful consideration to support said Note and Mortgage.

3. That on or about April 4,1969 Plaintiff, at the request of Defendant Roger Derrick performed and expended certain Labor, Skill and Material in the repair, preservation and storage of said automobile in the sum of $680.00, which sum is the reasonable vaule of said repair and storage charges.

4. That the Defendant Northwestern National Bank claims some right, title or interest in said automible whereas it has none.

5. That said Defendant Bank is in the practice, for many years, of forging and creating money and credit upon the Books of said Bank contrary to Law along with the Federal Reserve Bank of Minneapolis. That both Banks are United States Corporations. That the creation of money and credit upon the books of said Banks and the honoring and issuing of checks, bank drafts and notes for the said falsely created money and credit is not authorized by the Constitution of the United States, The Constitution of Minnesota, The N.W.

EXHIBIT D

Ordinance of 1787, The Treaty of Cession of Lousiania of April 30,1803 and the Common Law relative to the validity of Consideration for Contracts and Notes, and is therefore null and void.

6. The Court further finds that the Standard Silver Dollar coined under the Act of February 28,1878, Ch 20, 20 Statutes 25,26 containing 412 1/2 grains Troy, Standard Silver constitutes the Legal Tender Silver Dollar in payment of Debt. Further that the Act of Congress of February 12,1873, 17 Statutes 426 fixing the Standard Gold Dollar at 25.8 grains of gold, 9/10 fine sets the content of weights and measures for the Standard Legal Tender Gold Dollar in the United States.

NOW THERFORE, THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW AND JUDGMENT HEREIN:

1. That Plaintiff is entitled to and is granted Judgment against Roger Derrick, Defendant herein, in the sum of $680.00.

2. It is further Ordered, adjudged and decreed that the Standard Legal Tender Silver Dollar is the one coined under the Act of Congress of February 28,1878 and all acts prior thereto containing at least 412 1/2 grains of Silver Troy weight; further that the Standard Gold Dollar which is legal Tender is the one coined under Act of Congress of February 12,1873 refered to above containing 25.8 grains of Gold Troy weight, 9/10 fine.

3. It is further Ordered, Adjudged and Decreed that the Defendant Northwestern National Bnak of Minneapolis has no right, title or interest in or lien on on the certain 1967 Mustang Automobile described herein.

4. It is further Ordered that said 1967 Mustang be sold at a Judicial Sale in the manner prescribed by law to satisfy the mechanics lien of Plaintiff unless Plaintiff satisfies this Judgment before said sale with legal tender gold and silver coin.

This Judgment is given pursuant to the authority vested in me pursuant to the Declaration of Independence, The Constitution of the United States, The Northwest Ordinance of 1787, The Treaty of Cession of Lousiania of April 30,1803 and the Constitution of Minnesota, pursuant to Judicial proceedings according to the course of the Common Law, under my hand and seal this 14th day of July,1969.

BY THE COURT

Martin V. Mahoney

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY,MINNESOTA
UNITED STATES OF AMERICA

MEMORANDUM

The publication "THE DALY EAGLE" which contains a copy of this Court's decision of February 6,1969 is attached hereto and made a part of these findings.

This Court has had occasion to rule upon the same questions at that time and has been shown no reason or facts upon which a change of the conclusions reached herein should be in any way changed.

The Petition for prohibition which is attached hereto is not verified. It is directed to the Supreme Court of Minnesota but no Writ of Prohibition was issued by the Clerk of the Supreme Court pursuant to MSA 480.04 and Rule 19 of the Rules of Practice of the Supreme Court of Minnesota. Supreme Court Justice Peterson may Order the Clerk of the Supreme Court to issue a Writ of Prohibition but this was not done. The Justices' personal Order to this Court is outside of his authority and void and of no effect.

Nothing in the Constitution of Minnesota restricts or limits the jurisdiction of this Court. This Court is proceeding according

to the State and Federal Constitutions and the N.W. Ordinance of 1787. Justice is to be granted promptly and without delay, completely and without denial freely and without purchase, conformable to the laws.

Minnesota Statutes 531.04, 532.29, 531.03 and 530.05 are unconstitutional and void as they tend to unreasonable and unconstitutionally restrict the establishment of Justice by the People thru their State and Federal Constitutions. This Court proceeded according to the Course of the Common Law. No application for relief was made to this Court by the Defendants.

This Court, or rather the undersigned is not on a salary and is not dependent upon the Federal Reserve and National Banking fraud for its sustinance and therefore, is not motivated by self interest in any way shape or form. Any Judge who is on a salary paid by this illegal money and banking system is disabled by self interest to that extent and has no Jurisdiction. This included Justice Peterson of the Supreme Court. See Payne vs. Lee 222 Minnesota 269.

This memorandum is made a part of the above decision.

BY THE COURT

Martin V. Mahoney

July 14,1969

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY,MINNESOTA

(1) ~~#2088~~ 42174

~~42147~~ "In re Jerome Daly"

SUPREME COURT
FILED
AUG 19 1969
JOHN McCARTHY
CLERK

"In Re Jerome Daly"

RECEIVED
B. SCHROEDER
SHERIFF SCOTT COUNTY, MINN.
SHAKOPEE, MINN.
AUG 12 1969
AM 7,8,9,10,11,12,1,2,3,4,5,6
PM 7,8,9,10,11,12,1,2,3,4,5,6

Order to
Show Cause

HERBERT C. DAVIS
ATTORNEY AT LAW
6100 EXCELSIOR BOULEVARD
ST. LOUIS PARK, MINNESOTA 55416
929-8541

August 12, 1971

John McCarthy, Clerk of the Supreme Court
State Capitol
St. Paul
Minnesota

Dear Mr. McCarthy:

Enclosed please find photocopy of the Opinion filed July 16, 1971, in the matter of In re Jerome Daly, with Affidavit of Service of the Hennepin County Sheriff's Office attached.

Will you please file this document in Supreme Court File No. 42174?

Thank you for your cooperation in this matter.

Very truly yours,

Herbert C. Davis

HCD/drr
encl.

No. 153-3/4 Supreme Court

Per Curiam
Took no part, Knutson, C.J.

In re Jerome Daly.

42174

Endorsed
Filed July 16, 1971
John McCarthy, Clerk
Minnesota Supreme Court

Heard and considered en banc.

O P I N I O N

PER CURIAM.

This is a disciplinary proceeding conducted in accordance with the rules of this court governing professional responsibility of members of the bar of Minnesota admitted and licensed to practice as attorneys at law.

Upon our decision in In re Daly, 284 Minn. 567, 171 N. W. (2d) 818, adjudging respondent, Jerome Daly, to be guilty of contempt of this court and ordering his temporary suspension from the practice of law, an investigation into his fitness and competence to continue to practice before courts of this state was made by the State Board of Law Examiners.[1] Thereupon, a petition and accusation filed by the board for respondent's disbarment, together with his answer, were, as authorized by our rules,[2] referred to the Honorable Donald C. Odden, Judge of the District Court of the Sixth Judicial District, who was appointed as referee to hear and report the evidence.[3] Following an

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[1] During the pendency of these proceedings, the functions of the State Board of Law Examiners were transferred to the State Board of Professional Responsibility and the State Administrative Director on Professional Conduct.

[2] Rule I, Rules of the Supreme Court for Discipline and Reinstatement of Attorneys (283 Minn. ix), now Rule 8, Minnesota Supreme Court Rules on Professional Responsibility, adopted December 16, 1970.

[3] The Honorable E. R. Selnes, retired judge of the District Court of the Eighth Judicial District, was originally appointed referee. Upon his request, after respondent filed an affidavit of prejudice, Judge Selnes was relieved of the assignment and Judge Odden was appointed.

8-day evidentiary hearing and submission of an 808-page verbatim transcript of the testimony, the referee, in compliance with the rules and the order of appointment, filed comprehensive findings of fact, conclusions, and a recommendation that respondent be disbarred. We have examined the evidence with care and are constrained to adopt the fully supported findings of the referee and to order respondent disbarred for numerous acts of unprofessional conduct.

As covered in detail in In re Daly, supra, respondent, without justifiable explanation or excuse, intentionally and defiantly disregarded an order of this court prohibiting him and a justice of the peace from further proceedings in a declaratory judgment action, then pending before the justice of the peace, which was obviously, and for numerous reasons outlined in our decision, beyond the limits of jurisdiction of a justice of the peace. In finding respondent in contempt and ordering his temporary suspension from practice because of the extraordinary nature of his professional behavior, we recognized that a conviction of contempt of court ordinarily does not reflect on an attorney's fitness, trustworthiness, or competence. Accordingly, we authorized respondent to apply for limited exceptions to the suspension order so that he might complete matters pending in his office. Further, we stated:

> "We reserve jurisdiction of this matter to permit further proceedings, the object of which will be to determine whether this contumacious conduct of Jerome Daly is or is not an isolated instance of impropriety. * * *
>
> * * * * *
>
> "* * * Final resolution of the matter must depend on whether the acts of this attorney are a part of a persistent and continuing effort to defy the authority of the courts and in part on whether there is any disposition to amend the contumacious behavior demonstrated." 284 Minn. 568, 571, 171 N. W. (2d) 820, 823.

Contrary to respondent's fanciful assertions that these proceedings are a conspiracy by banks and their directors to put an end to his persistent attacks upon the constitutionality of the monetary

system of the United States, disciplinary proceedings, including this one, are not designed to punish an attorney or to prevent him from, in good faith, espousing a legal cause, however unpopular or seemingly untenable, but rather to discharge this court's responsibility to protect the public, the administration of justice, and the profession by imposing disciplinary sanctions, including removal from practice, upon those attorneys who, after careful investigation, proper notice, and hearing, are found to have demonstrated that they do not possess the "qualities of character and the professional competence requisite to the practice of law." Baird v. State Bar of Arizona, 401 U. S. 1, 7, 91 S. Ct. 702, ___, 27 L. ed. (2d) 639, 647. See, also, Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U. S. 154, 91 S. Ct. 720, 27 L. ed. (2d) 749; Schware v. Board of Bar Examiners, 353 U. S. 232, 77 S. Ct. 752, 1 L. ed. (2d) 796; Hallinan v. Committee of Bar Examiners, 65 Cal. (2d) 447, 453, 55 Cal. Rptr. 228, 233, 421 P. (2d) 76, 81. The United States Supreme Court and all courts recognize that--

> "* * * [t]he power of disbarment is necessary for the protection of the public in order to strip a man of the implied representation by courts that a man who is allowed to hold himself out to practice before them is in 'good standing' so to do." Theard v. United States, 354 U. S. 278, 281, 77 S. Ct. 1274, 1276, 1 L. ed. (2d) 1342, 1345.

Although disciplinary proceedings have been described in the context of the requirement of procedural due process as "adversary proceedings of a quasi-criminal nature" (In re Ruffalo, 390 U. S. 544, 551, 88 S. Ct. 1222, 1226, 20 L. ed. [2d] 117, 122), we have noted that they are not considered in the same light as an ordinary adversary action but are proceedings sui generis:

> "A disciplinary proceeding is not the trial of an action or suit between adverse parties, but an investigation or inquiry by the court into the conduct of one of its officers in order to determine his fitness to continue as a member of his profession." In re Application for Discipline of Peterson, 260 Minn. 339, 344, 110 N. W. (2d) 9, 13.

Since lawyers are granted a monopoly to perform legal services for hire, it is self-evident that they, like all monopolies, must be

subject to strict regulation with respect to admission to practice and to the performance of professional services, as well as to public accountability for adherence to the rule of law, canons of ethics, and standards of professional responsibility.[4] The formulation of ethical principles and standards of professional conduct, as well as the procedures for enforcement, is, and must be, under our constitutional system, the responsibility of the judicial branch of government. The ultimate determination governing admission, supervision, and discipline of attorneys in this state, including their removal from practice before our courts, is vested in this court. In re Disbarment of Tracy, 197 Minn. 35, 266 N. W. 88, 267 N. W. 142.

The ancient and fundamental standards of professional conduct are well established. These standards are taught as a required subject in the law schools of this state. Questions concerning them are included in examinations for admission to practice. They are set forth in the Canons of Professional Ethics and, as recently revised, in the Code of Professional Responsibility adopted by the American Bar Association and by this court.[5] As in all disciplinary proceedings, the canons, and now the new code, encompass the standards by which respondent's conduct must be judged in determining his fitness to continue in the practice of law.

An overall view of the voluminous record compels us to agree with the referee's conclusions that respondent--

> "* * * has failed to conduct himself in a manner consistent with the ethical principles of the legal profession, has deliberately and intentionally disregarded those ethical principles in the conduct of his practice, has taken unconscionable advantage of his position as a lawyer of this state, has flaunted his

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[4] See, A. B. A., Code of Professional Responsibility, Preamble.

[5] Canons of Professional Ethics were adopted May 2, 1955, (241 Minn. xvii) and the Code of Professional Responsibility on August 4, 1970 (286 Minn. ix). Most of respondent's misconduct occurred while the former were in force. The new code, however, retains and reaffirms as disciplinary rules, mandatory in character, the same proscriptions in the older one with which respondent's behavior is equally at odds. Where appropriate, therefore, references to both are cited in this opinion.

> disregard for the authority of Judges, Courts, Statutes, and the ethical rules governing conduct required of attorneys, and has offered no persuasive evidence or excuse for his conduct."

Moreover, given every opportunity to explain or justify alleged misconduct as not "a persistent and continuing effort to defy the authority of the courts" (284 Minn. 571) but occasioned by inadvertence, misconception of professional responsibilities, or compelled by circumstances not of his making or beyond his capacity to control, respondent exhibited indifference to these proceedings and undertook to use the hearing before the referee as a forum for expounding his own views concerning the constitutionality of the Federal Reserve System and the validity of Federal Reserve notes, as well as the constitutionality of our Rules of Civil Procedure and those governing the conduct and discipline of attorneys. By his conduct in representing himself before the referee and upon oral argument before this court, respondent has, at best, demonstrated a perverted misconception of the role and function of an attorney and the necessity for strict regulation and accountability of attorneys or, at worst, a deliberate and defiant rejection of any judicial control of his professional activities.[6] While such a misconception, if it exists, provokes our perplexity and commiseration, it, no less than respondent's intentional, persistent, and habitual misconduct as found by the referee, and his declared intention before this court that he will continue to disobey any court orders or rules governing his professional conduct which he regards as harsh, oppressive, or unconstitutional in the future, leaves us no choice but to order his disbarment.

The ultimate factual findings of the referee, supported by

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[6] At oral argument, respondent not only questioned the constitutional authority of courts to license attorneys or to establish and enforce rules regulating professional conduct but, in expressing his indifference to these proceedings and to the consequences of an order disbarring him, insisted that the right to represent persons in a legal matter derives from the client, not from the courts, and a lawyer's accountability for services rendered should be governed only by faithfulness to his client, his "conscience," and obedience to laws proscribing criminal conduct.

specific and detailed instances and ample evidence, are, in essence, that respondent has "persistently and perniciously" used his position as a licensed attorney, for himself and as counsel for others, to subvert the processes of justice by (1) initiating unfounded lawsuits for the purposes of harassing numerous named banking institutions, public officials, and private persons, and to avoid legal obligations of himself and his clients, thereby depriving parties involved of property to which they were lawfully entitled, causing them very substantial expense, and occupying the time and efforts of courts in nearly all levels of jurisdiction;[7] (2) by advancing in such cases by "immaterial and unnecessarily inflammatory" allegations his personal theory of the unconstitutionality of the monetary system of the United States;[8] (3) by continuing to espouse his theory in spite of repeated rulings by courts of record that his contentions are untenable and unfounded and despite an order of the United States District Court for the District of Minnesota restraining him from relitigating the issue, and in contemptuous disregard thereof without seeking appeal of the lower court ruling and orders;[9] (4) by employing tactics in his professional activities deliberately intended to delay the timely and orderly disposition of cases such as failing to appear for hearings and trial,

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[7] Conduct violative of A. B. A., Canons of Professional Ethics, Canon 30, and of A. B. A., Code of Professional Responsibility, DR 7-102(A)(1).

[8] The United States Court of Appeals for the Eighth Circuit, in affirming a dismissal of a complaint in a purported conspiracy action, characterized the complaint filed by respondent as "16 printed pages of disconnected, incoherent and rambling statements," observing, "At best the complaint represents a euphoric harassment of bank officials, lawyers and federal courts." Koll v. Wayzata State Bank (8 Cir.) 397 F. (2d) 124, 125.

[9] Referee's findings 4, 4A, 4B, and 4B-III. See, prohibiting "[s]tirring up strife and litigation," A. B. A., Canons of Professional Ethics, Canon 28, made more specific by A. B. A., Code of Professional Responsibility, DR 7-106A, requiring obedience to a ruling of a tribunal.

indiscriminately filing affidavits of prejudice, often containing scandalous accusations, against numerous judges;[10] abusing the assertion of the attorney-client privilege, conspiring to conceal and divert assets under the control of a court;[11] and willfully refusing to follow lawful rulings and orders of the courts of the United States and of this state.[12]

We regard as most serious and intolerable respondent's willful, persistent, and continuing unprofessional behavior in defying the authority, rules, and orders of courts. The finding of the referee confirms a pattern of conduct indicated by respondent's contumacious behavior before this court which resulted in his temporary suspension from practice. Indeed, throughout these proceedings, he does not contest his disregard of rules and court orders which he views as unlawful. The following testimony before the referee unmistakably reflects his philosophy of an attorney's obligation in this respect and his disposition to continue such behavior.

> "Q. * * * Mr. Daly, you have claimed in the petition in this contempt proceeding, that the Supreme Court had no jurisdiction to enter its order dated September 5, 1969, Exhibit One?
>
> "A. Suspending me from the practice of law.

---

10 For example, respondent filed one such affidavit stating as follows: "* * * Further, I believe and so state that [he] has a prejudice against the Declaration of Independence and the Constitution of the United States and the Constitution of Minnesota and a bias in favor of that element advocating the nullification and overthrow of it. That this case involves a dispute with the Lutheran Church, Missouri-Synod, which is composed of preachers arrogating attributes of Diety [sic] to themselves in association with Papal Jewish Hegemony, all of whom are in vortex with each other rotating and operating on a common axis sited in Hell." See, A. B. A., Canons of Professional Ethics, Canon 1, and A. B. A., Code of Professional Responsibility, DR 8-102(B).

11 See, Peterson v. Bartels, 284 Minn. 463, 170 N. W. (2d) 572, and In re Application for Discipline of Drexler, ___ Minn. ___, ___ N. W. (2d) ___, filed June 18, 1971.

12 See, referee's findings 4B, 4B-II, 4B-III, 5, and 7; A. B. A., Canons of Professional Ethics, Canons 21 and 22; A. B. A., Code of Professional Responsibility, DR 7-101(A)(1) and DR 1-102(A)(4, 5, 6).

"Q. You have made the claim that the Court had no jurisdiction to do so and it is an invalid order, is that right?

"A. That is right.

"Q. And you also claim that the order of Judge Lord, holding you in contempt, was an invalid order?

"A. I think that is right.

"Q. And you have indicated that the order of Judge Stephenson--

"A. That is not a lawful order.

"Q. Restraining you from doing anything further or arguing further the constitutionality of the Federal Reserve System, was not valid?

"A. Not a lawful order.

"Q. You have indicated that the Justices of the Supreme Court of Minnesota have executed orders relating to the adoption of Rules of Civil Procedure, which are not lawful orders?

"A. Yes. * * *

"Q. Will you explain to the Court, Mr. Daly, whether it is your belief that an order is lawful only if you think it is lawful?

"A. No, no, it is lawful if it squares with the law.

"Q. And if it squares with the law in your opinion or in whose opinion?

"A. Well, I think any citizen or any person walking the face of the earth has a right to be guided by his own conscience, within the bounds of reason. And I can look at an order and I can make a determination in my mind whether it is lawful or not.

"Q. And whether or not you will follow it?

"A. That is right * * *.

* * * * *

"Q. Now, Mr. Daly, if an order was issued out of the Supreme Court of the United States determining that the Federal Reserve System was a constitutionally appropriate system, would you follow that order?

* * * * *

"A. Not if they are going to perpetrate a fraud on the people.

"Q. Let's assume that what they do is to declare the Federal Reserve System is a constituional system.

* * * * *

"A. Do you want to know if I would follow the order of the Supreme Court of the United States if they said that the banks had authority to manufacture money and credit out of nothing; you are asking me if I would follow that?

"Q. Yes, Sir.

"A. I would not."

Because it is elementary that our system of justice is founded on the rule of law, a willful disobedience to a single court order may alone justify disbarment. Minn. St. 481.15, subd. 1(3); In re Application for Discipline of Joyce, 242 Minn. 427, 65 N. W. (2d) 581, certiorari denied, 348 U. S. 883, 75 S. Ct. 124, 99 L. ed. 694.

No useful purpose would appear to be served by repeating the detail of the instances supporting the foregoing summary of ultimate findings, all of which are adopted as the basis for respondent's removal from practice. It should be noted, however, that respondent's persistent and continuing attacks on our national monetary system can hardly be regarded as zealous advocacy or a good-faith effort to test the validity of repeated decisions of courts of record. For, as found by the referee, up to the time of his findings and recommendations respondent had avoided payment of any Federal income tax for 1965 and subsequent years on the asserted ground that he has not received gold and silver coin and, therefore, had no earnings that were taxable.[13] Also, he has taken personal advantage of the system he attacks by borrowing money from a bank to purchase lakeside property, only to subsequently defeat the bank's repossession after mortgage foreclosure

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[13] Respondent's testimony confirms this finding: "Q. Mr. Daly, the exhibits [respondent's amended tax returns for 1965, 1966, 1967, and 1968] disclosed no figures in which any income was reported by you, is that correct?

"A. Well, they use the sign dollar, which I understand means dollar. And there were no figures disclosed with reference to income, that is right; dollars, as such.

"Q. You interpreted the word dollars to mean gold and silver coins, received by you?

"A. Or their equivalent.

"Q. Which would be a certificate redeemable in gold or silver?

"A. Freely and readily available."

by taking the position that the bank's extension of credit was unlawful, obligating him neither to pay the debt nor to surrender possession following expiration of the time to redeem. As detailed in the referee's finding, we regard the tactics employed by respondent in the unlawful detainer proceedings before the justice of the peace as not only unprofessional but reprehensible.

The misconduct found by the referee, and demonstrated by respondent's oral declarations before this court in violation of the Canons of Professional Ethics, reflects professional irresponsibility to such a degree as to render respondent totally unfit to continue to discharge the duties of an attorney.

Let judgment of disbarment be entered.

MR. CHIEF JUSTICE KNUTSON took no part in the consideration or decision of this case.

(38)

146157

42174

SUPREME COURT
FILED
AUG 13 1971
JOHN McCARTHY
CLERK

RECEIVED
'71 JUL 26 AM 9:30
DONALD J. OMODT
SHERIFF
HENNEPIN CO. MINN.

R 2

HC 6171

STATE OF MINNESOTA
County of Hennepin } ss.

I HEREBY CERTIFY AND RETURN, That at the City of Minneapolis, County and State aforesaid, on the 9 day of August, A. D. 19 71 I served the Opinion hereto attached upon the within named Jerome Daly personally by then and there handing to, and leaving with Him a true and correct copy thereof.

Dated this 9 day of August, 19 71

Sheriff's Fee—Service, $ 2 00
Copy - - $
Travel - - $ 3 00
Total - - $ 5 00

DONALD J. OMODT
Sheriff of Hennepin County, Minn.

By J M Carroll
Deputy Sheriff.

42174

STATE OF MINNESOTA IN SUPREME COURT

IN RE JEROME DALY AFFIDAVIT OF PREJUDICE

STATE OF MINNESOTA
SS
COUNTY OF SCOTT

Jerome Daly, having been duly sworn deposes and states that he is the object of the above entitled proceedings.

That he has good reason to believe, does believe and so states that by reason of bias and prejudice on the part of Chief Justice Oscar R. Knutson, Associate Justices James C. Otis and Fallon Kelly, and Judge C.A. Rolloff, sitting as Associate Justice by assignment that a fair hearing in the above entitled matter cannot be obtained before said Justices and therefore, makes this affidavit to disqualify said Justices and Judges for all purposes.

Further, that all 6 members of the Minnesota State Board of Law Examiners, who are the nominal Petitioners herein, are either on the Boards of Directors of Banks or they are Attorneys and Counsel for various Banks. The names and addresses of the Banks represented by John W. Padden, Gerald S. Rufer, Donald D. Harries, C. Allan Dosland, Kenneth M. Anderson and James Reitz are set out on pages 55 and 56 of Respondent's brief filed herein. Upon information and belief Affiant states that the facts are true from an investigation of Polk's Bank Directory and from information obtained from these men

personally. That 28 out of 36 members of the Minnesota State Bar Association are on the Board of Directors or are Counsel for Banks. That 10 out of the 19 members on the State Board of Ethics are on the Board of Directors or are Counsel for Banks.

That affiant was candidate for election against Chief Justice Oscar R. Knutson in the last election; that your affiant has good reason to believe that Knutson solicited and obtained the support of the Banks in this State to support him. Said Banks are an enemy of the People of this State and more especially your affiant. That said Banks are stealing U.S. Securities all to the knowledge of the State Board of Law Examiners and their Counsel Herbert C. Davis. To use Davis' own words to affiant during the hearing held in February of 1970, after Miles Lord and Hubert Humphrey had finished testifying in the Courtroom in the Flour Exchange Building in Minneapolis, Davis volunteer the statment "The whole Bar Association is in trouble". I concluded that he meant because of the stealing that was going on by the Banks forging credit upon their books and in acquiring U.S. and State Securities and the action of the National and International Bankers in being both accessories both before and after the fact to the assination of John F. Kennedy. I ~~made~~ made no reply but thought to myself;"If you only knew the half of it". Later after Chief Justice Oscar R. Knutson testified, the Referee, C. Donald Odden related to affiant how Knutson had called Odden over the phone from St. Paul to Duluth to enlist Odden as Referee in this action after E.R.Selness had been disqualified by affidavit of prejudice and after Knutson

had been disqualified by affidavit of prejudice filed by affiant. When asked to be the Referee herein Odden related that he had objected to taking on the job because of press of other matters whereupon Knutson roared at Odden "You get down here and accept this appointment as Referee". Odden stated, "He didn't need a telephone for me to hear him." This only goes to show the violent and uncontrolable nature of Knutson's panic and prejudice. The Order appointing Odden was signed by Otis. That I have good reason to believe and suspect that James C. Otis is the go between in the treacherous liason between the Bankers and the members of the Supreme Court responsible for knowingly trafficking with these subversives who have been effectively able to overturn and resist the express prohibitions contained in the Constitution of the United States and the State of Minnesota.

That Fallon Kelley, Associate Justice, was before his appointment on the Baord of Directors of the American National Bank and the Drovers State Bank of So. St. Paul and was counsel for these Banks. Further he is one of the Defendants in a suit named by Alfred M. Joyce vs. Commodity Credit Corp which is a part of the subject matter herein. That affiant cannot obtain a fair trial with said Justice on the case.

That C.A.Rolloff has been prejudiced against affiant and affiant's friend Alfred M. Joyce ever since affiant has known Rolloff which is 17 years.

That affiant is satisfied that Richey B. Reaville, Chairman and Executive Director of the State Board of Ethics is also a part of this conspiracy. Reaville heads up a firm of Attorneys in Duluth which represents the First American National Bank of Duluth, Duluth's largest Bank. Affiant is satisfied that he was appointed to this position to keep the Lawyers of the State of Minnesota whipped into line so that they will be afraid to step out and support the Constitution of the United States and the State of Minnesota against the National and International Banking Establishment. Reaville is going around the State encouraging Lawyers to make complaints so that he can have a file on any one who steps out of line in order to dispose of him quickly.

That your affiant is satisfied that there is an express or implied understanding between Knutson, Otis, Kelley and Rolloff on the one side and this National and INternational Banking Mob on the other to overthrow the Constitution of the United States.

That therefore, a fair trial or hearing of any kind cannot result with these Justices participating.

Jerome Daly
Jerome Daly

Subscribed and sworn to before me
May 11, 1971

David R. Barton

DAVID R. BARTON
Notary Public, Hennepin County, Minn.
My Commission Expires July 21, 1971

(34)

42174

SUPREME COURT
FILED
MAY 12 1971
JOHN McCARTHY
CLERK

Affidavit of Prejudice

September 9, 1969

Honorable E. R. Selnes
Glenwood, Minnesota

Dear Judge Selnes:

In re Jerome Daly, No. 42174

Enclosed please find a certified copy of the opinion in this case which appoints you referee for subsequent investigation. You will also find enclosed our original files which includes:

1. Order to Show Cause, filed 8-19-69;
2. Copy of Transcript of Supreme Court Proceedings, filed 8-26-69;
3. Affidavit of Gordon Busdicker, filed 8-21-69;
4. Order Authorizing Transfer of File, filed 9-4-69.

When you have completed your investigation, please return these items, together with your findings, conclusions and recommendations to this office. If you need anything else, please let us know.

Respectfully,

John McCarthy, Clerk

42174
(Copy)

September [illegible], 1959

Honorable [illegible] Nelson
Glenwood, Minnesota

Dear Judge Nelson:

In re [illegible], No. 42174

Enclosed please find a certified copy of the opinion in this case which appoints you referee for subsequent investigation. You will also find enclosed our original files which includes:
1. Order to Show Cause, filed [illegible]-59;
2. Copy of Transcript of Supreme Court Proceedings, filed 8-26-59;
3. Affidavit of Gordon [illegible], filed [illegible]-59;
4. Order Authorizing Transfer of File, filed 9-[illegible]-59.

When you have completed your investigation, please return these items, together with your findings, conclusions and recommendations to this office. If you need anything else, please let us know.

Respectfully,

John McCarthy, Clerk

Jerome Daly
28 East Minnesota Street
Savage, Minn. 55378
612-890-2274
August 11,1969

To: The members of the Supreme Court O Minnesota
State Capitol Building
St.Paul,Minnesota

Sirs:

When can I appear and peaceably assemble before the Supreme Court of the State of Minnesota to Petition the Judicial Branch of the Government of the State of Minnesota for a redress of grievances in the matter of "In Re Jerome Daly"?

Respectfully yours,

Jerome Daly

h/

42174

Miscellaneous

Unfiled

Material

No. Sp. Supreme Court Per Curiam

In re Jerome Daly.

42174

Endorsed
Filed September 5, 1969
John McCarthy, Clerk
Minnesota Supreme Court

O P I N I O N

PER CURIAM.

On July 11, 1969, Mr. Justice C. Donald Peterson, acting for the Minnesota Supreme Court, directed Martin V. Mahoney, Justice of the Peace of Credit River Township, Scott County, Minnesota, and Jerome Daly, counsel for plaintiff in an action brought by one Leo Zurn against one Roger D. Derrick and the Northwestern National Bank of Minneapolis, to show cause why they should not be permanently restrained from further proceedings in the justice court. In addition, Justice Peterson ordered a stay of all further proceedings before the justice of the peace pending final determination of the questions raised by Northwestern National Bank's petition for writ of prohibition.

Although the stay order of Justice Peterson was served on the justice of the peace and Mr. Daly on July 11, 1969, they intentionally and deliberately disregarded it in this way: On July 14, 1969, the justice of the peace, upon motion of Mr. Daly, entered findings of fact, conclusions of law, and an order for judgment in favor of Zurn. In response to our order of August 12, 1969, directing the justice of the peace and Mr. Daly to show cause why they should not be held in constructive contempt of the Supreme Court of Minnesota for this conduct, Mr. Daly appeared personally in his own behalf before this court on August 21. He advised the court that he had

been authorized to represent the justice of the peace in the proceedings. After noting that he was making a special appearance, Mr. Daly, an attorney at law admitted to practice in this state, acknowledged that both he and the justice of the peace intentionally violated the order of Justice Peterson because in their opinion neither this court nor Justice Peterson had jurisdiction to issue it.

Although the death of the justice of the peace on August 22, 1969, has rendered the proceedings as against him moot, it is our judgment that the conduct of Jerome Daly was contumacious. It is the order of this court that he be temporarily suspended from the practice of law in the courts of this state effective October 1, 1969.

We reserve jurisdiction of this matter to permit further proceedings, the object of which will be to determine whether this contumacious conduct of Jerome Daly is or is not an isolated instance of impropriety. Final determination of the disciplinary measures to be invoked will be made after such hearing has been conducted. Reasonable notice of any charges of misconduct and a full opportunity to be heard shall be afforded in these contemplated hearings.

The rationale of our determination is as follows:

(1) The Supreme Court of the State of Minnesota by the terms of our Constitution has power to issue writs of prohibition restraining a court of limited jurisdiction from exceeding its power. Minn. Const. art. 6, § 2, provides that the Supreme Court "shall have original jurisdiction in such remedial cases as may be prescribed by law." By the terms of Minn. St. 480.04, the legislature has provided:

> "The court shall have power to issue to all courts of inferior jurisdiction and to all corporations and individuals, writs of error, certiorari, mandamus, prohibition, quo warranto and all other writs and processes, whether especially provided for by statute or not, that are necessary to the execution of the laws and the furtherance of justice. It shall be always open for the issuance and return of such writs and

> processes and for the hearing and determination of all matters involved therein and for the entry in its minutes of such orders as may from time to time be necessary to carry out the power and authority conferred upon it by law, subject to such regulations as it may prescribe. Any justice of the court, either in vacation or in term, may order the writ or process to issue and prescribe as to its service and return."

(2) In Minnesota, the justice of the peace court is a court of inferior jurisdiction.[1] Since the constitutional amendment of the judicial article in 1956 justice of the peace courts exist in this state only to the extent permitted by the legislature. Minn. Const. art. 6, §§ 1, 8, and Schedule. The legislature has fixed narrow limits to the jurisdiction which may be exercised by justices of the peace in this state. (Minn. St. 530.01, 530.05, 530.06, 531.03, 531.04, 532.37.) Acts in excess thereof by such justices of the peace are a nullity and subject to control by a writ of prohibition. Smith v. Tuman, 262 Minn. 149, 114 N. W. (2d) 73.

(3) The power to prohibit an improper exercise of jurisdiction embraces the power to issue ex parte an order designed to maintain the status quo pending a hearing upon an application for a writ of prohibition. See, Minn. St. 480.04. In the case of In re Lord, 255 Minn. 370, 378, 97 N. W. (2d) 287, 292, under similar circumstances, we stated that--

> "* * * this court had full authority to issue a preliminary order to show cause why such peremptory writ should not issue, and, in order to maintain the status quo until both sides of the controversy could be heard, to issue a restraining order to prevent any further action from being taken, either affirmatively or by inaction such as we have here."

See, also, 21 C. J. S., Courts, § 88, p. 136, and cases cited in footnote 13.

(4) The order executed by Justice Peterson, acting in the name of this court, was a proper exercise of the court's authority. Any justice of the supreme court, either in vacation or in term, may

---

[1] For a definition of the term "inferior courts" see 21 C. J. S., Courts, § 7, p. 21.

execute orders in behalf of the court pursuant to § 480.04. See, 48 C. J. S., Judges, § 48, and particularly cases cited in footnote 94; 30A Am. Jur., Judges, § 35.

We find no essential requirement that such orders be issued by or through the office of the clerk of this court. To impose such a requirement would unnecessarily curtail the capacity of this court to respond in emergency situations. It would be unreasonable to make the performance of a clerical act a necessary condition to the exercise of judicial authority which must be asserted promptly to be effective. The signature of a justice of this court is adequate assurance of the authenticity of any order to which such signature is affixed.

Although the verification of statements of fact submitted to this court in ex parte matters is to be preferred, there is no jurisdictional requirement that a petition for temporary relief or for a writ of prohibition be verified. See, Dean v. First Nat. Bank, 217 Ore. 340, 341 P. (2d) 512; 73 C. J. S., Prohibition, § 26. In the matter before us it was evident from an examination of the summons and complaint in the proceedings sought to be restrained that Justice of the Peace Mahoney was undertaking to act in a matter with respect to which he had no jurisdiction. The representation of an attorney at law authorized to practice before this court that a copy of this summons and complaint attached to the petition seeking the writ of prohibition was a true and correct copy of the process served on his client formed in itself an adequate factual basis for the issuance of the temporary order directed to Justice of the Peace Mahoney and Jerome Daly.

(5) The refusal of the justice of the peace to respect the July 11 order of this court was not justified. The justice of the peace would be bound to obey our intermediary order regardless of whether the actions restrained by our order were in excess of his

jurisdiction. In re Lord, supra. Apart from this principle, it is clear that the proceedings restrained were beyond the limits of the jurisdiction of the justice of the peace in a number of respects, including these:

> (a) The summons, being returnable at 7 p. m. rather than between the hours of 9 a. m. and 5 p. m. as specified by Minn. St. 531.03, was a nullity.
>
> (b) The summons did not contain a statement of the amount claimed by plaintiff as required by § 531.03.
>
> (c) Contrary to the provisions of § 531.04, the summons was personally served upon Northwestern National Bank of Minneapolis in the city of Minneapolis, a city having a population in excess of 200,000.
>
> (d) This service was performed outside of the county of issuance, Scott County, in violation of the provision of § 531.04 that such service must satisfy the requirements of Minn. St. 532.29. One of the requirements of Minn. St. 532.29 is a continuance of proceedings for a period not exceeding 20 days, and no such continuance was provided in this case.
>
> (e) The amount in controversy exceeded the $100 jurisdictional limitation of the justice of the peace courts under § 530.05.
>
> (f) The relief sought, a declaratory judgment, was not within the granted powers of a justice of the peace. See, § 530.05. It has been the law ever since the 1861 case of Fowler **v.** Atkinson, 6 Minn. 350 (503), that a justice of the peace has no jurisdiction over equitable proceedings. See, Smith v. Tuman supra.

(6) We are satisfied from the record that the justice of the peace acted upon the advice and at the instance of attorney Jerome Daly. Mr. Mahoney was not admitted to practice as a lawyer. An attorney who intentionally and deliberately advises and encourages a justice of the peace or any other person to disregard an order of the Minnesota Supreme Court is guilty of contempt. See, Minn. St. 588.01, subd. 3(1, 2, 3, 7); In re Lord, supra; State v. Leftwich, 41 Minn. 42, 42 N. W. 598; In re Green, 172 Ohio St. 269, 175 N. E. (2d) 59. The fact that such advice is prompted by fanciful notions that justice of the peace courts have a constitutional status giving them immunity from the jurisdiction of the supreme court of this state cannot excuse or justify this conduct. This is especially

the case in the present situation where the jurisdiction of this court to prohibit acts beyond the jurisdiction of a justice of the peace was clearly delineated by our decision in Smith v. Tuman, supra, published in 1962. See, also, State ex rel. Meister v. Stanway, 174 Minn. 608, 219 N. W. 452.

(7) The supreme court has inherent power to discipline an attorney guilty of contempt. In re Cary, 165 Minn. 203, 206 N. W. 402. In exercising this authority no attempt is made to impose the sanctions of the criminal law. A principal purpose of the exercise of disciplinary authority is to assure respect for the orders of this court by attorneys, who, as much as judges, are responsible for the orderly administration of justice in this state. In disciplinary proceedings the formal requisites of criminal procedure, including the right to a jury trial, have no application. In re Williams, 221 Minn. 554, 23 N. W. (2d) 5; In re Rerat, 232 Minn. 1, 44 N. W. (2d) 273; In re Joyce, 242 Minn. 427, 65 N. W. (2d) 581, certiorari denied, 348 U. S. 883, 75 S. Ct. 124, 99 L. ed 694; In re Discipline of Tracy, 197 Minn. 35, 266 N. W. 88, 267 N. W. 142.

DISPOSITION

Jerome Daly is adjudged to be guilty of contempt of this court. We are not prepared to determine with finality at this time the appropriate form of discipline to be prescribed. Final resolution of the matter must depend on whether the acts of this attorney are a part of a persistent and continuing effort to defy the authority of the courts and in part on whether there is any disposition to amend the contumacious behavior demonstrated.

Rule 1 of the Rules of the Supreme Court for Discipline and Reinstatement of Attorneys, adopted November 14, 1961,(27B M. S. A. p. 21) which prescribes the procedure to be followed in cases where unproved complaints involving alleged unprofessional conduct are

leveled against an attorney, was not intended to apply to situations where an attorney has been found in contempt of this court and an inquiry is needed to aid us in determining the kind of discipline to be imposed. To meet the problem posed by this case, we herewith refer further proceedings in this matter to the Honorable E. R. Selnes, Judge of the District Court of the State of Minnesota, who will act as a referee of the Minnesota Supreme Court in order to consider such evidence as may be presented to him bearing on the fitness and competence of Jerome Daly to serve as a practicing attorney in the courts of this state. The State Board of Law Examiners (see, In re McDonald, 204 Minn. 61, 282 N. W. 677, 284 N. W. 888) is hereby assigned the duty and responsibility of conducting a thorough investigation of the fitness and competency of Jerome Daly to continue as a member of the bar of this state. So far as applicable, proceedings shall be in conformity with the rules of this court promulgated November 14, 1961. Due notice of such charges of unfitness and incompetence as may be warranted by the evidence secured, together with due and proper notice of the time and place of such hearings as may be held with respect to such charges as may be filed, shall be afforded the said Jerome Daly. The Practice of Law Committee of the Minnesota State Bar Association is authorized to intervene and become a party to these proceedings if it so elects. Upon the evidence presented and received, together with such evidence as may be presented by the said Jerome Daly in his own behalf, the Honorable E. R. Selnes in his capacity as a referee of this court shall make findings of fact and conclusions and recommendations for disposition of this matter as shall be justified by the evidence. Such determination shall be conclusive subject to the right of any party aggrieved to secure a review of the referee's determination in the manner outlined in said rules of November 14, 1961.

Because of the deliberate and aggravated nature of the

contumacious conduct on the part of the said Jerome Daly and his failure or refusal to present any reasonable justification for his effort to frustrate the processes of the Minnesota Supreme Court, his privilege to practice law in the courts of this state is suspended effective October 1, 1969; provided, however, that this court will consider such application as the said Jerome Daly may make prior to October 1, 1969, for such limited exceptions to this order of temporary suspension as may be proved necessary in order to protect the interests of clients now represented by the said Jerome Daly and involved in litigation pending in the courts of this state.

This matter is herewith referred to the Honorable E. R. Selnes, designated as referee herein, for further proceedings consistent with this opinion, which proceedings shall be entitled "In re Jerome Daly."

STATE OF MINNESOTA

IN SUPREME COURT

In re Jerome Daly.

No. 42174

O R D E R

IT IS ORDERED that this case be and is re-set from May 7, 1971 to Friday, May 14, 1971 for an en banc hearing as the second case on that day. Court convenes at 10:00 a. m.

Dated: April 15, 1971.

BY THE COURT

Martin A. Nelson

Associate Justice

(33)

42174

SUPREME COURT
FILED
APR 15 1971
JOHN McCARTHY
CLERK

STATE OF MINNESOTA
IN SUPREME COURT

In Re Jerome Daly

ORDER DENYING PETITION

No. 42174

The above entitled matter comes before the court on the petition of Jerome Daly dated June 25, 1980, a copy of which is attached, seeking an order striking and removing from the record the order of this court dated May 13, 1953, which admitted him to practice, as well as all other proceedings in connection therewith.

It appearing that petitioner was disbarred from the practice of law in Minnesota by this court on July 16, 1971, 291 Minn. 488, 185 N.W.2d 176,

IT IS ORDERED that the petition be and the same is in all respects denied.

Dated: November 13,1980.

BY THE COURT

Associate Justice

SUPREME COURT
FILED
NOV 13 1980
JOHN McCARTHY
CLERK

IN RE JEROME DALY

NO. 42174 Reported in 284 Minnesota Reports 567, 171 N.W.2d 818 and in 291 Minnesota Reports 488, 189 NW2d 176.

TO THE SUPREME COURT OF MINNESOTA:

YOU WILL PLEASE TAKE NOTICE, that Jerome Daly hereby Petitions the Justices of the Supreme Court of Minnesota to direct and order the Clerk of the Supreme Court of Minnesota to strike and remove from the record, with the same effect as though it had never occurred, the Order admitting Jerome Daly to practice law in the Courts of Minnesota entered on or about May 14, 1953 and all proceedings had in connection therewith including the oath to support the Constitution of the United States and the State of Minnesota.

This Petition is based upon the Declaration of Independence, the N.W. Ordinance of 1787, The Constitution of the United States and the Constitution of Minnesota; and upon the grounds that the Justices of the Supreme Court of Minnesota had no constitutional authority to license Jerome Daly to practice law before the Courts of Minnesota. The license must come from the people who peaceable assemble before the Courts in the exercise of their 1st and 14th Amendment rights.

Furthermore, Jerome Daly did not know of the treacherous trap he was steping into, but does now.

This Petition is a companion Petition to one filed in the United States District Court for Declaratory Judgment restoring first class citizenship and rights and privileges secured by the Bill or Rights of the Constitutions of Minnesota and the United States.

If necessary, Jerome Daly hereby also Petitions the Supreme Court of Minnesota for a hearing on this Petition.

June 25, 1980

Jerome Daly

Jerome Daly
Box 1708, T.C.Airport, Minnesota
55111

I certify I mailed 15 copies of this Petition to the Clerk of the Supreme Court of Minnesota, State Capitol, St.Paul,Minnesota on June 25, 1980 by U.S.Mail.

Jerome Daly

42174

In Re Jerome
Daly

28

ORIGINAL

42174

State of Minnesota,
In Supreme Court.

IN RE JEROME DALY

PETITIONER'S BRIEF

STATE BOARD OF LAW EXAMINERS
BY: HERBERT C. DAVIS
6100 Excelsior Boulevard
St. Louis Park, Minnesota
Attorney for Petitioner

JEROME DALY
28 East Minnesota Street
Savage, Minnesota 55378
Respondent

333-3539 Hayward Legal Publishing Co., Div. of Typographic Arts Inc. 333-3539

Service is hereby admitted this ..... day of

....., 1970

.....

Attorney (s) for .....

AFFIDAVIT OF SERVICE BY MAIL

In re Jerome Daly

vs.

Gerald Steeber, of Hayward-Court Brief Printing Company, being first duly sworn, on oath says that on the 14 day of December, 1970, he served the attached Petitioner's Brief upon Jerome Daly of counsel for ——— therein named, by enclosing a true copy thereof in an envelope, properly sealed and with postage prepaid, addressed to 28 East Minnesota Street, Savage, Minnesota 55378, and depositing the same in the United States mail at the City of Minneapolis, in Hennepin County, Minnesota.

Affiant further states that on the —— day of ———, ———, he served the attached ——— upon ———, of counsel for ——— the ——— therein named, by enclosing a true copy thereof in an envelope, properly sealed and with postage prepaid, addressed to ———, and depositing the same in the United States mail at said City of Minneapolis.

Gerald Steeber

Subscribed and sworn to before me this 14 day of December, 1970.

Wm. F. Klotz Jr.

WM. F. KLOTZ, JR.
Notary Public, Hennepin County, Minn.
My Commission Expires Dec. 17, 1973.

AFFIDAVIT OF SERVICE BY MAIL

In re Jerome Daly

vs.

Gerald Steeher

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PETITIONER'S BRIEF

PROCEDURAL HISTORY OF CASE

Respondent was admitted to practice law in the State of Minnesota on May 14, 1953, following his graduation from the St. Paul College of Law. He has practiced law since 1962 in Savage, Minnesota.

On September 5, 1969, the Supreme Court filed its Opinion in the case *In re Jerome Daly*, Supreme Court File No. 42174, in which the Court adjudged respondent to be guilty of contempt of court, referred further proceedings to a Referee, and directed the State Board of Law Examiners to conduct an investigation of the fitness and competency of the respondent to continue as a member of the Bar of this State. The State Board of Law Examiners, after investigation, directed that a Petition and Accusation be filed requesting that the respondent be disciplined by disbarment from the practice of law, which Petition and Accusation was filed with the Clerk of the Supreme Court on September 17, 1969. On January 20, 1970, the Supreme Court appointed The Honorable Donald C. Odden, District Judge, to serve as Referee in place of The Honorable E. R.

Selnes, who had originally been appointed by the Court in its Opinion referred to above. The substitution of Referees was upon the request of the respondent.

A hearing was held on February 9, 1970, in the Flour Exchange Building, Minneapolis, Minnesota, upon matters contained in the Petition and Accusation, as amended upon Motion of the Petitioner. The hearing was concluded on February 18, 1970. A Transcript of the Proceedings was prepared by the reporter assigned to report the hearing. Proposed Findings of Fact were submitted by the petitioner on June 11, 1970; respondent submitted his Proposed Findings on July 7, 1970; and the Referee filed his Findings of Fact and Recommendation, dated October 16, 1970, on October 20, 1970.

LEGAL ISSUE OR QUESTION INVOLVED

Has petitioner made a sufficient showing to support a finding by the Supreme Court that respondent should be subjected to discipline?

STATEMENT OF FACTS

Except as amplified in this Statement of Facts, the petitioner adopts the facts included in the Findings of Fact of the Referee in this proceeding. Petitioner invites the Court's attention to the following comments which it feels particularly significant in support of its position that the respondent should be disciplined by disbarment by this Court.

The Findings of Fact of the Referee can be separated into the following categories:

1) The repeated efforts of the respondent to harass

banking institutions, public officials, and Courts by barratrous proceedings in State and Federal Courts in which respondent asserted in his own behalf and on behalf of clients the position that the monetary system of the United States, as administered through the Federal Reserve Banks of the United States, is unconstitutional and void, despite repeated rulings by State and Federal Courts, and the United States Court of Appeals for the Eighth Circuit that such position was untenable.

2) The conduct of the respondent in his professional capacity as a lawyer has been in direct violation of unchallenged Orders of this Court and of the Federal District Court for the State of Minnesota.

3) Business dealings of the respondent, individually and in concert with others, have resulted in losses of funds and property to banking institutions in transactions entered into by those institutions in the ordinary course of business.

4) The repeated assertion by respondent of the Fifth Amendment protection against self-incrimination has been used to avoid the payment of Federal and State Income Taxes.

5) The respondent, by his failure to appear for trial, his promiscuous and indiscriminate filing of Affidavits of Prejudice, and repeated assertion of the attorney-client privilege, has caused delays in the administration of the orderly business of the courts in this state.

In assessing the facts found by the Referee, the Court should be cognizant that the same persons, purportedly clients of the respondent, appear in various roles in many of the categories above discribed. These persons may be generally identified as follows:

William Wildanger was a nominal plaintiff in one of the actions against the Federal Reserve Bank and other defendants. He was also one of the original jurors called in the action brought by the First National Bank of Montgomery to recover possession of a lake property purchased by respondent with mortgage funds secured from the First National Bank of Montgomery. He was also the janitor in Mr. Daly's Savage, Minnesota, office.

Leo Zurn was a nominal plaintiff in the actions against the Federal Reserve Banks and was also involved in actions brought by the Northwestern Bank of Minneapolis and the First National Bank of Minneapolis to recover possession of automobiles purchased with funds acquired by placing chattel mortgages on automobiles, later delivered to Leo Zurn supposedly for repairs in his Savage, Minnesota, garage, and then secreted so that their possession could not be recovered by the banks upon their foreclosure proceedings. Leo Zurn was a member of the jury in the First National Bank of Montgomery proceeding to recover the possession of lake property from Mr. Daly.

Alfred M. Joyce, a disbarred attorney, appears as plaintiff in several of the procedings brought by Mr. Daly, as attorney, to test the validity of the monetary system.

Carl Anderson was a juror in the case tried to Justice of the Peace Martin V. Mahoney involving Mr. Daly's lake property. His name is the same as the defendant charged with mail fraud in connection with the Ridge Lutheran Home transactions.

Your petitioner claims that the appearance of these same persons throughout this record is more than coincidence and is part of a deliberate plan of the respondent to attempt to gain, through improper procedures, that which he has been denied by the unanimous opinion of all Judges who have considered his position. Respondent has not, at any time, attempted to seek a final determination by the Supreme Court of the United States of the question which he has continued to raise in courts of original jurisdiction despite the injunction of this Court and the Federal District Court of Minnesota.

ARGUMENT

While the common law offense of barratry has passed from our criminal statutes, *Laws of Minnesota 1963*, Chapter 753, Article II, Section 17, there remains a Canon of Professional Ethics (incorporated in Disciplinary Rule No. 7-102(A)(1)). The Rule is stated in the *Code of Professional Responsibility* as follows:

> "(A) In his representation of a client, a lawyer shall not:
>
> "(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another."

Under the old Minnesota statute making barratry a misdemeanor, proof was required that three instances of "exciting actions or legal proceedings" were necessary for conviction (Section 613.75, *Minnesota Statutes Annotated,* now repealed). The respondent has to his discredit many more than the three causes required by the old statute. Not only has the respondent commenced, on behalf of clients who have a doubtful interest in the litigation, actions in the State Courts, but in the Federal District Courts and in Justice Courts, as well. His selection of defendants is probably best illustrated in the action which he commenced in the District Court for Scott County, Minnesota (later removed to the United States District Court, Fourth Division). A listing of these defendants is contained on page 5 of the Findings of the Referee.

The Court of Appeals for the Eighth Circuit, in considering one of respondent's cases on appeal, stated:

> "At best, the complaint represents a euphoric harassment of bank officials, lawyers and federal courts. It is difficult to accept that the complaint has been drafted by a person licensed to practice law."
>
> *Bernard E. Koll v. Wayzata State Bank, et al.*, 397 F.2d 124, C.A. 8th Cir. (1968).

Respondent has extended his litigious efforts not only in the State of Minnesota but in other states of the country as well, on the same foundation and with the same result as he has had here.

On June 20, 1968, Judge Roy L. Stephenson, Chief Judge of the United States District Court for the Southern District of Iowa, serving by special assignment in the United States District Court for the District of Minnesota, entered his Order, a copy of which is recited at Paragraph 4(B), on page 6 of the Referee's Findings, enjoining and restraining respondent from reasserting claims regarding the unlawful creation of money and credit. Respondent, in contravention of the Order, has continued to litigate these issues in Justice Court and in the District Courts of Minnesota. He has also attempted to raise the issue at the trial of the criminal proceeding involving Carl Anderson and the Ridge Lutheran Home bond issue. Disciplinary Rule No. 7-106(A) of the *Code of Professional Responsibility* adopted by this Court February 24, 1970, states the following:

> "(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling."

Respondent, despite the fact that he has consistently ignored the Order of Judge Stephenson, has taken no action of any nature to attempt to secure a review of the validity of Judge Stephenson's Order or to cause it to be amended or vacated. Petitioner refers the Court to pages 10 and 11 of the Referee's Findings in which respondent's testimony is cited relative to his obedience of Orders of this and other Courts, including the Order of Judge Stephenson.

In addition to his persistent practice to attempt to raise the issue of the constitutional validity of the monetary system in this country, and his disobedience of Orders of the United States District Court and of this Court, Mr. Daly has

made frequent and flagrant use of invective chacterizing courts, Judges, Bar Associations, lawyers, and political and banking officials in his pleadings, affidavits of prejudice, and letters, contrary to the requirements of Disciplinary Rule 7-106(C)(6). That the abusive quality of the language employed was intentional and deliberate is clearly evidenced by his testimony recited at page 14 of the Findings, wherein respondent stated that his use of the vituperative language employed was because he thought "they needed to be shaped up". See *In re Prigge*, 129 Minn. 540, 152 N.W. 1103 (1915); *State Board of Examiners in Law v. Hart*, 104 Minn. 88, 116 N.W. 212, 17 L.R.A. (NS) 585, 15 Ann. Cas. 197 (1908); *In re Cary*, 112 Minn. 101, 127 N.W. 466 (1910); *State Board of Law Examiners v. Bensel*, 119 Minn. 532, 137 N.W. 1115 (1912); *In re Joyce*, 242 Minn. 427, 65 N.W.2d 581, Cert. Denied, 348 U.S. 883, 75 S.Ct. 124, 99 L.Ed. 694 (1954).

In 1965 and in every year after that time, Jerome Daly has filed Federal and State Income Tax Returns indicating that he has not received any income. He attached a copy of *The Daly Eagle*, containing a dissertation on the Justice Court proceeding before Justice Martin V. Mahoney regarding the action against Daly for recovery of lake property after foreclosure by the First National Bank of Montgomery.

Mr. Daly was found guilty of contempt by Judge Miles Lord for refusing to answer questions of Revenue Agents put to him. His conviction was reversed by the Court of Appeals upon the grounds that Daly asserted those answers might tend to incriminate him. Daly has paid no income tax to either the Federal or the State Governments for the

taxable years after 1964 based upon this contention. This Court has found that willful failure to file a Tax Return or failure to report income is a misdemeanor involving moral turpitude. See *In re Deisen*, 173 Minn. 297, 217 N.W. 356 (1928); see, also, *In re Williams*, 221 Minn. 544, 23 N.W.2d 4 (1946).

In *In re Williams, op. cit. supra,* this Court stated the following:

> "Respondent asserts that no consideration should be given to the income tax matter, since in preparing her personal tax returns she 'was in no way acting as an attorney'. Her contention is without merit. We have heretofore held:
>
> " '* * * "The weight of authority holds that misconduct of an attorney outside his professional dealings may afford good ground for disbarment." * * * "Professional honesty and honor are not to be expected as the accompaniment of dishonesty and dishonor in other relations. So it is that we, in common with other courts, hold, as did Lord Mansfield more than a century ago, that misconduct, indicative of moral unfitness for the profession, whether it be professional or nonprofessional, justifies dismissal as well as exclusion from the bar." ' "

See, also, *In re Disbarment of Cary*, 146 Minn. 80, 177 N.W. 801, 9 A.L.R. 1272.

Perhaps respondent's most flagrant misconduct is illustrated by the history of his appearances in the Credit River Township Justice of the Peace Court before Justice Martin V. Mahoney. In May, 1964, respondent purchased a lake lot on Spring Lake in Scott County. Part of the con-

sideration paid to the seller was a bank money order for $14,000.00 borrowed by Mr. Daly from the First National Bank of Montgomery. The seller transferred the property to Daly when the bank money order was delivered. Daly defaulted on the mortgage, forcing foreclosure. After the year of redemption, the Bank brought an unlawful detainer action to recover possession of the property. The action was tried in Justice Court in Credit River Township and a recitation of facts is contained in the Findings of Fact commencing on page 7. Not only has the Bank been prevented from securing an Order for the possession of the property, but all of the original records of the Bank have been lost or destroyed. In these proceedings, Daly, contrary to the statute governing Justice Court procedure, failed to give a proper notice of a jury trial, failed to have the Court impanel the number of jurors necessary to permit the peremptory strikes authorized, conducted the hearing with William E. Drexler serving as associate or assistant to the Justice of the Peace (Drexler had been a client of respondent), and failed to inform the court or the opposing attorney that a number of the jurors impaneled were clients, associates, employees, or close friends of the respondent.

In the *Zurn* cases (those cases eventually resulted in the Order of the Supreme Court suspending respondent from practice), Daly, by claiming his attorney-client privilege, has refused to disclose the location of two vehicles and has secured Orders signed by Justice Martin V. Mahoney, which entirely exceed the jurisdiction of Justice Court, declaring mortgages upon the vehicles to be invalid, in violation of Disciplinary Rule No. 7-106(B) and (C).

The Referee has found that respondent has delayed hear-

ings to permit disposition of trust assets, contrary to an Order of the Court; has participated in a conspiracy with his fellow attorney, William E. Drexler, in directing accounts receivable payments due Dr. Palmer A. Peterson to a post office box in an effort to frustrate an Order of the District Court sequestering those assets; has failed to keep court appointments for trial and hearings; has filed affidavits of prejudice for the purpose of delaying proceedings; and has called witnesses in this proceeding to testify only for the purpose of harassing those witnesses.

CONCLUSION

This Court has stated:

> "Courts are charged with the duty of controlling the qualification and conduct of attorneys at law in order that there may be no compromise whatever of the moral and ethical standards upon which the functioning of our legal system depends."
>
> *In re Hanson,* 258 Minn. 231, 103 N.W.2d 863 (1960)

Also, in *Application of Peterson,* 260 Minn. 339, 110 N.W.2d 9 (1961), the Court stated:

> "The real question before the court in such disciplinary matters is the fitness of the attorney to continue as a member of the legal profession. The test is whether the conduct of the attorney comes up to the standards set by the canons of ethics."

In this case, the Findings of the Referee are supported by the evidence. His recommendation that the respondent

be disbarred from the practice of law is well supported by the facts as he found them to exist. Respondent is currently under suspension by this Court. He has continued to practice without the permission of this Court in this and other states, in direct contravention of the Order of the Court. The Court may consider disbarment after suspension based upon occurrences prior to the time of suspension, *In re Byrnes*, 97 Minn. 534, 105 N.W. 965 (1906).

Respondent has amply illustrated, by numerous offenses, that he has no regard for the ethics of the profession, for respect due to the Courts which administer them, and has demonstrated by his conduct that he is not qualified to continue to practice law in this state.

Respectfully submitted,

STATE BOARD OF LAW EXAMINERS
BY: HERBERT C. DAVIS
6100 Excelsior Boulevard
St. Louis Park, Minnesota
Attorney for Petitioner

42174

State of Minnesota,
In Supreme Court.

IN RE JEROME DALY

RESPONDENTS' BRIEF

Appendix to

STATE BOARD OF LAW EXAMINERS
BY: HERBERT C. DAVIS
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Savage, Minnesota 55378
Respondent

Service Admitted 5/13/71
Herbert C. Davis
Attorney for State Board of Professional Responsibility

/

NO NOTICE OF THE ORDER OF DECEMBER 16, 1970 was served upon Respondents although Respondents are directly affected by it.

No Notice of the Order appointing a State Board of Professional Responsibility was ever served upon Drexler or Daly although they are directly affected by it

The Real Party in interest in these proceedings must be the State of Minnesota. Neither the State Baord of Law Examiners nor the Board of Professional Responsibility are the Real Parties in interest. The Real Party in interest has not appeared nor been substituted.

If Drexler and Daly are to be subjected to the whims of an Administrative Dictatorship at least they are entitled to Notice and a hearing.

Likewise, we have had no Notice of the Order of August 4, 1970 adopting the American Bar Association CAnnons of Ethics and Professional Conduct, which are not binding upon Respondent and amount to an attempt to enact an ex-post facto Law. Davis relys upon them for authority in his brief.

On a cause of action in favor of the public, a member of the public cannot sue in his own anme. See 39 Am Jur,Parties Sec. 11.

§ 11. —Enforcement of Public Rights and Duties; Statutory Duties.—Public wrongs or neglect or breach of public duty cannot be redressed at a suit in the name of an individual or individuals whose interest in the right asserted does not differ from that of the public generally, or who suffers injury in common with the public generally,[1] even, it seems, though his loss be greater in degree,[2] unless such right of action is given by statute.[3] The broad general principle is asserted that in the absence of a statute imposing liability, an action will not lie in behalf of an individual who has sustained a private injury by reason of the neglect of a public corporation to perform a public duty.[4] When the duty of taking appropriate action for the enforcement of a statute is intrusted solely to a named public officer, private citizens cannot intrude upon his functions.[5] In cases of purely public concern and in actions for wrongs

One who owns the equitable title to real property and is in possession of same may maintain an action for permanent injuries thereto. Foster Lumber Co. v. Arkansas Valley & W. R. Co. 20 Okla 583, 95 P 224, 100 P 1110, 30 LRA(NS) 231.

As to right of vendee as equitable owner, see VENDOR AND PURCHASER [Also 27 RCL p. 554, § 292].

[16] Nashville, C. & St. L. R. Co. v. Heikens, 112 Tenn 378, 79 SW 1038, 65 LRA 298.

[17] See TRESPASS [Also 26 RCL p. 955, §§ 32 et seq.].

[18] Unincorporated associations in the absence of enabling statutes cannot sue or be sued in the association's name, but the suit must be in the names of the several persons constituting the association. See 4 Am Jur 485, ASSOCIATIONS AND CLUBS, §§ 46 et seq.

See 18 Am Jur 63, EJECTMENT, §§ 68 et seq.

[19] See 2 Am Jur 941, APPEAL AND ERROR, §§ 149 et seq.

[20] See 16 Am Jur 328, DECLARATORY JUDGMENTS, § 57.

[1] Ex parte Levitt, 302 US 633, 82 L ed 493, 58 S Ct 1; Zoercher v. Agler, 202 Ind 214, 172 NE 186, 907, 70 ALR 1232 (member of public cannot sue in own name on cause of action in favor of municipality); Baltimore v. Employers' Asso. (Harlan v. Employers' Asso.) 162 Md 124, 159 A 267, 81 ALR 342; Hanley v. Fireproof Bldg. Co. 107 Neb 544, 186 NW 534, 24 ALR 382; House v. Houston Waterworks Co. 88 Tex 233, 31 SW 179, 28 LRA 532.

A particular individual suffering injury is not entitled to redress for the violation of a duty imposed to protect the public generally. Strait v. Yazoo & M. Valley R. Co. (CCA 6th) 209 F 157, 49 LRA(NS) 1068.

A plaintiff must show that some duty owing to him is violated before he can maintain a suit because a city is exceeding its charter powers. Belcher Sugar Ref. Co. v. St. Louis Grain Elevator Co. 101 Mo 192, 13 SW 822, 8 LRA 801.

Where the provisions of an ordinance impose upon property owners the performance of a part of the duty of the municipality to the public, and are for the benefit of the municipality as an organized government, and not for the benefit of the individuals comprising the public, a breach of such ordinance is remediable only at the instance of the municipal government, and no right of action accrues to an individual citizen especially injured thereby. Hanley v. Fireproof Bldg. Co. 107 Neb 544, 186 NW 534, 24 ALR 382.

[2] Davis v. Hampshire County, 153 Mass 218, 26 NE 848, 11 LRA 750.

Interference with common right does not of itself afford a cause of action by an individual. Alexander v. Wilkes-Barre Anthracite Coal Co. 254 Pa 1, 98 A 794, LRA 1917B 310.

[3] Bulger v. Eden, 82 Me 352, 19 A 829, 9 LRA 205.

[4] Buckalew v. Middlesex County, 91 NJL 517, 104 A 308, 2 ALR 718; Sussex County v. Strader, 18 NJL 108, 35 Am Dec 530, holding that in the absence of a statute imposing liability, a public corporation, charged with the performance of a public duty, is not liable to an individual either for neglect to perform or negligence in the performance of such duty, whereby a public wrong has been done for which indictment will lie, although such individual has suffered special damage.

[5] New Rochelle v. Beckwith, 268 NY 315,

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See Sections 66 and 67 of 33 Am Jur on Licenses.
Where a license is granted pursuant to some Statutory authority it cannot be revoked upon any ground other than the causes specified The method of revocation of a license or right must be set by statute and must provide for notice or proceedings according to due process of Law which would include Parties, Notice, Hearing and Judgment.

§ 66. Authority, and Delegation of Authority, to Revoke.—A license granted by a board under statutory authority cannot be revoked by such board in the absence of statutory authority, or some provision in the license itself for revocation;[8] and where a statute or ordinance authorizes the revocation of a license for causes enumerated, such license cannot be revoked on any ground other than the causes specified.[9]

The generally accepted principle is that license legislation which vests in public officials a discretion to revoke a license to carry on an ordinarily lawful business, profession, or activity without prescribing definite rules and conditions for the guidance of the officials in the execution of their discretionary power is invalid.[10] If, however, it is impractical or difficult to lay down a definite or comprehensive rule for the revocation of licenses, or where the discretion relates to the administration of a police regulation and necessary to protect the public morals, health, safety, or welfare, some discretion may be left to the public boards or officials intrusted with the power of revoking licenses, and such discretion may be exercised under a general rule of action to guide them in such cases.[11] Thus, as bearing upon the revocation of licenses, administrative boards or officials may be invested with the power to determine whether the facts or conditions comprehended by such a general law or rule of action exist,[12] and may be given power to determine the unfitness or incompetency of a licensee.[13] It has been held, however, that even in the case of the revocation of a license for the unfitness of the licensee, some rule of action should be prescribed where practical.[14]

[6] Stone v. Fritts, 169 Ind 361, 82 NE 792, 15 LRA(NS) 1147, 14 Ann Cas 295.

[7] Hawker v. New York, 170 US 189, 42 L ed 1002, 18 S Ct 573; State Medical Bd. v. McCrary, 95 Ark 511, 130 SW 544, 30 LRA(NS) 783, Ann Cas 1912A 631; Klafter v. State Examiners, 259 Ill 15, 102 NE 193, 46 LRA(NS) 532, Ann Cas 1914B 1221; Daniel v. Clovis, 34 NM 239, 280 P 260, citing RCL.

[8] Lowell v. Archambault, 189 Mass 70, 75 NE 65, 1 LRA(NS) 458 (license granted by the board of health, under statutory authority, for the erection of a stable, without any limit as to time).

[9] Stone v. Fritts, 169 Ind 361, 82 NE 792, 15 LRA(NS) 1147, 14 Ann Cas 295; Wheeling & E. G. R. Co. v. Triadelphia, 58 W Va 487, 52 SE 499, 4 LRA(NS) 321; Peterson v. Guernsey, 26 Wyo 272, 183 P 645, citing RCL.

[10] Hewitt v. State Medical Examiners, 148 Cal 590, 84 P 39, 3 LRA(NS) 896, 113 Am St Rep 315, 7 Ann Cas 750; Baltimore v. Radecke, 49 Md 217, 33 Am Rep 239; Thompson v. Smith, 155 Va 367, 154 SE 579, 71 ALR 604; State ex rel. Makris v. Superior Ct. 113 Wash 296, 193 P 845, 12 ALR 1428.
Anno: 12 ALR 1436, s. 54 ALR 1104 and 92 ALR 401.

[11] Stone v. Fritts, 169 Ind 361, 82 NE 792, 15 LRA(NS) 1147, 14 Ann Cas 295; Thompson v. Smith, 155 Va 367, 154 SE 579, 71 ALR 604; State ex rel. Bluemound Amusement Park v. Milwaukee, 207 Wis 199, 24 NW 847, 79 ALR 281.
Anno: 12 ALR 1447, s. 54 ALR 1110 and 92 ALR 410.

[12] Stone v. Fritts, 169 Ind 361, 82 NE 792, 15 LRA(NS) 1147, 14 Ann Cas 295; Thompson v. Smith, 155 Va 367, 154 SE 579, 71 ALR 604.

[13] Klafter v. State Examiners, 259 Ill 15, 102 NE 193, 46 LRA(NS) 532, Ann Cas 1914B 1221; Stone v. Fritts, 169 Ind 361, 82 NE 792, 15 LRA(NS) 1147, 14 Ann Cas 295; Nelsen v. Tilley, 137 Neb 327, 289 NW 38, 126 ALR 729 (holding that the power of an official to revoke a license upon proof of unfitness does not confer arbitrary power where provision is made for an adequate appeal to the courts); Thompson v. Smith, 155 Va 367, 154 SE 579, 71 ALR 604; Swearingen v. Bond, 96 W Va 193, 122 SE 539, 36 ALR 1500 (statute giving insurance commissioner power to revoke license of insurance agent for violation of insurance laws or where he is incompetent or untrustworthy); State ex rel. Bluemound Amusement Park v. Milwaukee, 207 Wis 199, 240 NW 847, 79 ALR 281.
Anno: 123 ALR 1029 (revocation of detectives' licenses).

[14] Matthews v. Murphy, 23 Ky L Rep 754

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§ 67. Method of Revoking License; Review of Officials' Action.—Licenses from the public are in all cases granted under statutory enactments or municipal ordinances, and where these provide a method of revocation, that method must be followed. If notice and a hearing are provided for, a revocation without these is a nullity. If it is expressly provided that no notice is necessary, the licensee cannot claim it of right. Where the enactment is silent as to notice or hearing on revocation, the necessity of whether it should be given must be determined from the character of the case and the local practice.[16] Where there is reason to believe that a business is a nuisance, a menace to public health, or detrimental to peace or morals, a license of such business may be revoked even before the expiration of the time for which it has been granted, and without notice to the licensee, provided only that statutory authority and conditions be pursued.[17] Again, the revocation, without notice and hearing, of a motor vehicle fuel distributor's license for making a false return to the state treasurer, does not deprive it of property without due process where no penalties are imposed for conducting the business of a distributor without a license and the state has not sought to prevent the distributor from continuing business.[18]

Where the prescribed administrative procedure is followed, the action of the revoking board or official is ordinarily not subject to review, nor is a statute delegating power to revoke unconstitutional because no appeal from an administrative decision to revoke a license is provided for.[19] The determination of the officer or official body intrusted with the duty of revocation of licenses should not be set aside by the courts except for clear and manifest abuse of discretion.[20] If, however, the action of the board or official is arbitrary, unreasonable, or capricious, or based on false information, the person whose license has been revoked may have resort to the courts.[1] The remedy in such case is mandamus.[2]

63 SW 785, 54 LRA 415 (holding invalid a statute which authorized the state board of health to revoke a physician's license for "grossly unprofessional conduct, of a character likely to deceive or defraud the public," because it prescribed no rule of action).

Anno: 12 ALR 1451, s. 54 ALR 1113 and 92 ALR 416.

15 See 5 Am Jur 428, ATTORNEYS AT LAW, §§ 279 et seq.; 5 Am Jur 593, AUTOMOBILES, § 157 and Supp.; 17 Am Jur 845, DRUGS AND DRUGGISTS, § 7; 30 Am Jur 316, INTOXICATING LIQUORS, § 111; PHYSICIANS AND SURGEONS [Also 21 RCL p. 362, § 9].

16 People ex rel. Lodes v. Department of Health, 189 NY 187, 82 NE 187, 13 LRA (NS) 894.

Anno: 13 LRA(NS) 894.

17 Wallace v. Reno, 27 Nev 71, 73 P 528, 63 LRA 337, 103 Am St Rep 747; Child v. Bemus, 17 RI 230, 21 A 539, 12 LRA 57; State ex rel. Nowotmy v. Milwaukee, 140 Wis 38, 121 NW 658, 133 Am St Rep 1060.

18 Monamotor Oil Co. v. Johnson, 292 US 86, 78 L ed 1141, 54 S Ct 575.

19 State ex rel. Williams v. Whitman, 116 Fla 196, 156 So 705, 95 ALR 1416; Stone v. Fritts, 169 Ind 361, 82 NE 792, 15 LRA(NS) 1147, 14 Ann Cas 295; Wallace v. Reno, 27 Nev 71, 73 P 528, 63 LRA 337, 103 Am St Rep 747; Cofman v. Ousterhous, 40 ND 390, 168 NW 826, 18 ALR 219; State ex rel. Zugravu v. O'Brien, 130 Ohio St 23, 196 NE 664, citing RCL; Child v. Bemus, 17 RI 230, 21 A 539, 12 LRA 57.

Anno: 14 Ann Cas 298.

20 State ex rel. Bluemound Amusement Park v. Milwaukee, 207 Wis 199, 240 NW 847, 79 ALR 281.

If upon any reasonable view of the evidence it will support the decision of public authorities that a license should be revoked, such decision cannot be disturbed by the courts. Ibid.

1 Klafter v. State Examiners, 259 Ill 15, 102 NE 193, 46 LRA(NS) 532, Ann Cas 1914B 1221; Hanson v. Michigan State Bd. of Registration, 253 Mich 601, 236 NW 225 (writ of certiorari denied in 284 US 637, 76 L ed 542, 52 S Ct 19) citing RCL; Bainbridge v. Minneapolis, 131 Minn 195, 154 NW 964, LRA1916C 224; People ex rel. Lodes v. Department of Health, 189 NY 187, 82 NE 187, 13 LRA(NS) 894; Cofman v. Ousterhous, 40 ND 390, 168 NW 826, 18 ALR 219.

2 See MANDAMUS [Also 18 RCL p. 293, § 225].

See the Wisconsin case that was recently decided by the Supreme Court of the United States;

4.

The only causes for Removal or Suspension are set out in 481.15. In so far as Sub. 2. provides for proceedings without Notice it is unconstitutional and void.

481.15 Removal or suspension

Subdivision 1. Causes. An attorney at law may be removed or suspended by the supreme court for any one of the following causes arising after his admission to practice:

(1) Upon his being convicted of a felony, or of a misdemeanor involving moral turpitude, (in either of which cases the record of conviction shall be conclusive evidence). This clause shall not be construed to apply to a conviction for contempt of court;

(2) Upon a showing that he has knowingly signed a frivolous pleading, or been guilty of any deceit or wilful misconduct in his profession;

(3) For wilful disobedience of an order of court requiring him to do or forbear an act connected with or in the course of his profession;

(4) For a wilful violation of his oath, or of any duty imposed upon an attorney by law.

Subd. 2. Proceedings. Proceedings in such cases may be taken by the supreme court on its own motion, for matter within its knowledge, or upon accusation. No such proceeding for the removal or suspension of an attorney at law shall be instituted unless commenced within the period of two years from the date of the commission of the offense or misconduct complained of, or within one year after the discovery thereof. Accusations may be made to the clerk of the supreme court and shall be investigated, prosecuted, heard and determined in accordance with rules which may be made, from time to time, by the supreme court. The supreme court may refer any accusation to any person, and such person shall have all the powers of a referee under section 546.36; objections to such referee may be filed within ten days of the appointment and shall be heard and determined by the supreme court. The referee shall report the evidence and, if directed by the supreme court, shall make findings thereon. Persons designated by the supreme court under the authority of this section shall be paid their necessary expenses and such compensation as shall be fixed by the supreme court. Officers and witnesses necessarily employed or called by the prosecution shall receive the fees and mileage allowed by law and the supreme court shall fix a reasonable compensation for the reporter. All expenses, fees and compensation herein authorized shall be paid by the state out of any money in the general revenue fund not otherwise appropriated, upon itemized vouchers approved by one of the justices of the supreme court.

Daly was found in contempt without Notice and Hearing. IN an Ex Parte proceeding without parties his license was suspended without Notice or Hearing and his rights to life, liberty and property were condemned without trial.

The Statute states accusations may be made to the Clerk of the Supreme Court. This was not done in this case.

There has been a complete denial of due process of Law.

So far there is no procedural basis to even think about slandering the good names of Daly and Drexler.

May 13, 1971

William E. Drexler
1602 Selby Ave.
St. Paul, Minnesota

Jerome Daly
28 East Minnesota Street
Savage, Minnesota

ADDITIONAL MEMO BY DALY

As to the Salfer and Krull matters I am enclosing a copy of a brief that has been filed in another Jurisdiction outside of the State of Minnesota as to the right to Counsel

Pages 28 and 29 thereof sets out the impropriety in criminal cases in the Government passing any Law establishing the right to Counsel or prohibiting the free exercise thereof. As Congress can make no law respecting an Establishment of Religion, it cannot make any Law respecting the Establishment of the Right to Counsel in Criminal Cases. Congress can make no Law respecting or prohibiting the free exercise of Religion or personal association. Likewise, Congress, nor any State can make any Law respecting the Establishment of or prohibiting the free exercise of the right to choice of Counsel or freedon of personal association where ethics, morals and rights to life, liberty or property are involved. Whose rights are involved?

Are Criminal Defendants Krull's and Salfer's rights involved? Whose business is it who a Defendant hires in a criminal case? There is a positive command in the Constitution that a Defendant have assistance of Counsel. The State must provide Counsel for defendant's assistance if he wishes it or to avail himself of the Counsel provided by the State.

Irrespective of Defendant's right to have the assistance of Counsel appointed by the State; his right to be heard through his own Counsel is unqualified.

The granting of a License by the State means that the person has met certain qualifications. This cannot limit the right of individuals to associate together in matters affecting their Government and to select the best spokesman from amoung them to speak for them in Court.

The unlawful proceedings herein should be dismissed.

May 13, 1971

Jerome DAly
28 East Minnesota Street
Savage, Minnesota

Note: See State of Wisconsin v. Norma Grace Constantineau, U.S. Supreme Court case decided Jan. 19, 1971. It states in part; "Where the State attaches a "badge of infamy" to the citizen, due process comes intop play. It is set out in full immediately hereafter.

standards of constitutional law in upholding its admission in evidence. Accordingly, the District Court was in error in requiring a new trial of claims that were long ago fully fairly, and correctly determined in the courts of California.

The judgment is reversed.

MR. JUSTICE BLACK concurs in the judgment and substantially all of the opinion.

ROBERT R. GRANUCCI, Deputy Attorney General, State of California (THOMAS C. LYNCH, Attorney General, ALBERT W. HARRIS, JR., Assistant Attorney General, and WILLIAM D. STEIN, Deputy Attorney General, with him on the brief) for petitioner; CHARLES A. LEGGE, San Francisco, Calif. (ALEXANDER L. BRAINERD, CHARLES F. PREUSS, and BRONSON, BRONSON & McKINNON, with him on the brief) for respondent.

No. 95.—OCTOBER TERM, 1970

State of Wisconsin, Appellant, v. Norma Grace Constantineau. } On Appeal from the United States District Court for the Eastern District of Wisconsin.

[January 19, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Appellee is an adult resident of Hartford, Wis. She brought suit in a federal district court in Wisconsin to have a Wisconsin statute declared unconstitutional.[1] A three-judge court was convened, 28 U. S. C. § 2281. That court, by a divided vote, held the Act unconstitutional, 302 F. Supp. 861, and we noted probable jurisdiction. 397 U. S. 985.

The Act, § 176.26 Wis. Stat., provides that designated persons may in writing forbid the sale or gift of intoxicating liquors to one who "by excessive drinking" produces described conditions or exhibits specified traits, such as exposing himself or family "to want" or becoming "dangerous to the peace" of the community.[2]

The chief of police of Hartford without notice or hearing to appellee caused to be posted a notice in all retail liquor outlets in Hartford that sales or gifts of liquors to appellee were forbidden for one year. Thereupon this suit was brought against the chief of police claiming damages and asking for injunctive relief. The State of Wisconsin intervened as a defendant on the injunctive phase of the case and that was the only issue tried and decided, the three-judge court holding the Act unconstitutional on its face and enjoining its enforcement. The court said:

> "In 'posting' an individual, the particular city official or spouse is doing more than denying him the ability to purchase alcoholic beverages within the city limits. In essence, he is giving notice to the public that he has found the particular individual's behavior to fall within one of the categories enumerated in the statutes. It would be naive not to recognize that such 'posting' or characterization of an individual will expose him to public embarassement and ridicule, and it is our opinion that procedural due process requires that before one acting pursuant to State statute can make such a quasi-judicial determination, the individual involved must be given notice of the intent to post and an opportunity to present his side of the matter." 302 F. Supp., at 864.

We have no doubt as to the power of a State to deal with the evils described in the Act. The police power of the States over intoxicating liquors was extremely broad even prior to the Twenty-first Amendment. *Crane* v. *Campbell*, 245 U. S. 304. The only issue present here is whether the label or characterization given a person by "posting," though a mark of serious illness to some, is to others such a stigma or badge of disgrace that procedural

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[1] 28 U. S. C. § 1343 (3) provides: "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . . To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

[2] Section 176.26 reads as follows:

"(1) When any person shall by excessive drinking of intoxicating liquors, or fermented malt beverages misspend, waste or lessen his estate so as to expose himself or family to want, or the town, city, village or county to which he belongs to liability for the support of himself or family, or so as thereby to injure his health, endanger the loss thereof, or to endanger the personal safety and comfort of his family or any member thereof, or the safety of any other person, or the security of the property of any other person, or when any person shall, on account of the use of intoxicating liquors or fermented malt beverages, become dangerous to the peace of any community, the wife of such person, the supervisors of such town, the mayor, chief of police or aldermen of such city, the trustees of such village, the county superintendent of the poor of such county, the chairman of the county board of supervisors of such county, the district attorney of such county or any of them, may, in writing signed by her, him or them, forbid all persons knowingly to sell or give away to such person any intoxicating liquors or fermented malt beverages, for the space of one year and in like manner may forbid the selling, furnishing, or giving away of any such liquors or fermented malt beverages, knowingly to such person by any person in any town, city or village to which such person may resort for the same. A copy of said writing so signed shall be personally served upon the person so intended to be prohibited from obtaining any such liquor or beverage.

"(2) And the wife of such person, the supervisors of any town, the aldermen of any city, the trustees of any village, the county superintendent of the poor of such county, the mayor of any city, the chairman of the county board of supervisors of such county, the district attorney or sheriff of such county, may, by a notice made and signed as aforesaid, in like manner forbid all persons in such town, city or village, to sell or give away intoxicating liquors or drinks or fermented malt beverages to any person given to the excessive use of such liquors, drinks or beverages, specifying such person, and such notice shall have the same force and effect when such specified person is a nonresident as is herein provided when such specified person is a resident of said town, city or village."

Section 176.28 makes the sale or gift of liquor to such persons a misdemeanor.

due process requires notice and an opportunity to be heard. We agree with the District Court that the private interest is such that those requirements of procedural due process must be met.

It is significant that most of the provisions of the Bill of Rights are procedural, for it is procedure that marks much of the difference between rule by law and rule by fiat.

We reviewed in *Cafeteria Workers* v. *McElroy*, 367 U. S. 886, 895, the nature of the various "private interests" that have fallen on one side or the other of the line. See also *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337, 339–342. Generalizations are hazardous as some state and federal administrative procedures are summary by reason of necessity or history. Yet certainly where the State attaches "a badge of infamy" to the citizen, due process comes into play. *Wieman* v. *Updegraff*, 344 U. S. 183, 191. ". . . the right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Anti-Facist Committee* v. *McGrath*, 341 U. S. 123, 168 (concurring opinion).

Where a person's good name, reputation, honor, or integrity are at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. "Posting" under the Wisconsin Act may to some be merely the mark of illness, to others it is a stigma, an official branding of a person. The label is a degrading one. Under the Wisconsin Act, a resident of Hartford is given no process at all. This appellee was not afforded a chance to defend herself. She may have been the victim of an official's caprice. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented.

It is suggested that the three-judge court should have stayed its hand while the aggrieved person repaired to the state courts to obtain a construction of the Act or relief from it. The fact that Wisconsin does not raise the point does not of course mean that it lacks merit. Yet the suggestion is not in keeping with the precedents.

Congress could of course have routed all federal constitutional questions through the state court systems, saving to this Court the final say when it came to review of the state court judgments. But our First Congress [3] resolved differently and created the federal court system and in time granted the federal courts various heads of jurisdiction,[4] which today involve most federal constitutional rights. Once that jurisdiction was granted, the federal courts resolved those questions even when they were enmeshed with state law questions. In 1941 we gave vigor to the so-called abstention doctrine in *Railroad Commission* v. *Pullman Co.*, 312 U. S. 496. In that case an authoritative resolution of a knotty state law question might end the litigation and not give rise to any federal constitutional claim. *Id.*, at 501. We, therefore, directed the District Court to retain the suit pending a determination by a state court of the underlying state law question. We applied the abstention doctrine most recently in *Fornaris* v. *Ridge Tool*, 400 U. S. —, —, where a relatively new Puerto Rican statute, which had not been authoritatively construed by the Commonwealth's courts, "might be judicially confined to a more narrow ambit which would avoid all constitutional questions." We ordered the federal courts to stay their hands until the Puerto Rican courts had spoken. Speaking of *Reetz* v. *Bozanich*, 397 U. S. 82, we noted that the "three judge federal court should not have proceeded to strike down an Alaska law which, if construed by the Alaska Supreme Court, might be so confined as not to have any constitutional infirmity." *Id.*, at —. But the abstention rule only applies where "the issue of state law is uncertain." *Harman* v. *Forsenius*, 380 U. S. 528, 534. Thus our abstention cases have dealt with unresolved questions of state law which only a state tribunal could authoritatively construe. *Reetz* v. *Bozanich*, *supra*; *City of Meridian* v. *Southern Bell Tel. & Tel. Co.*, 358 U. S. 639.

In the present case the Wisconsin Act does not contain any provision whatsoever for notice and hearing. There is no ambiguity in the state statute. There are no provisions which could fairly be taken to mean that notice and hearing might be given under some circumstances or under some construction but not under others. The Act on its face gives the chief of police the power to do what he did to the appellee. Hence the naked question, uncomplicated by an unresolved state law, is whether that Act on its face is unconstitutional. As we said in *Zwickler* v. *Koota*, 389 U. S. 241, 251, abstention should not be ordered merely to await an attempt to vindicate the claim in a state court. Where there is no ambiguity in the state statute, the federal court should not abstain but proceed to decide the federal constitutional claim. *Id.*, at 250–251. We would negate the history of the enlargement of the jurisdiction of the federal district courts,[5] if we held the federal court should stay its hand and not decide the question before the state courts decided it.

Affirmed.

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE BLACKMUN joins, dissenting.

The Court today strikes down, as unconstitutional, a Wisconsin statute that has never been challenged or tested in the Wisconsin state courts. The judges of Wis-

[3] The First Judiciary Act is in 1 Stat. 73.

[4] 28 U. S. C. § 1343 (3) involved in the present case came into the statutes in 1871. 17 Stat. 13. In 1875 Congress enlarged federal jurisdiction by authorizing the "federal question" jurisdiction presently contained in 28 U. S. C. § 1331. See 18 Stat. 470. We recently reviewed this history in *Zwickler* v. *Koota*, 389 U. S. 241, 245–248.

[5] See n. 4, *supra*.

DOES THE ACCUSED IN A CRIMINAL PROSECUTION IN THE UNITED STATES DISTRICT COURT HAVE THE UNQUALIFIED RIGHT TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE? The Trial Court held NO.

See Amendment VI., U.S. Constitution:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.

The right to assistance of counsel is absolute. See Chandler v. Fretag, 348 US 3, 99 L ed 4, 75 SCt 1, (set forth in APPENDIX TO THE BRIEF /CITATIONS). In the Chandler Case, the Supreme Court holds that:

> . . . Regardless of whether petitioner would have been entitled to the appointment of counsel, his right to be heard through his own counsel is unqualified.

The word "unqualified" means exactly what it says, without exception or reservation.

The right to counsel is to the same effect whether the counsel chosen is licensed as a lawyer or not. The recent Court Decision: U.S. v. Tarlowski,who was denied the counsel of his accountant corroborates this argument, U.S. Dist. Ct., East Dist. N.Y., 68-CR-278, 7/22/69: (see Appendix p.23)

> The right to the assistance of counsel, guaranteed by the Sixth Amendment, is largely designed to secure to the accused a fair trial, "to assure that the accused's interest will be protected consistently with our adversary theory of criminal prosecution. United States v. Wade, 388 US 218, 227, 87 S.Ct. 1926, 1932 (1967). But this is not the only purpose of that protection offered by the Constitution. One reason for the guarantee is to enable an individual "with the whole power of the state against him," to defend against the loss of personal liberty. Powell v. Alabama, 287 U.S. 45,69,72, 53 S.Ct. 55, 64, 65 (1932). Another is to insure that other fundamental rights secured to the individual will receive adequate and effective enforcement. Id.;Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966); Escobedo v. Illinois, 378 U.S. 478, 84 S.Ct. 1758 (1964).

There is nothing in the Constitution which grants any lawful power or authority to the Government to delimit defendant's right to counsel See Francis H. Heller "The Sixth Amendment to the Constitution"(set forth in APPENDIX TO BRIEF/CITATIONS). Heller quotes the Fundamental Constitutions for the Province of East Jersey (1683) which states:

> . . . And in all courts persons of all perswasions(sic) may freely appear in their own way, and according to their own manner, and there personally plead their own causes themselves, or if unable, by their friends, no person being allowed to take money for pleading or advice in such cases.

It should be noted that many of Defendant's forefathers were settlers of Jersey - landing here in America in 1678.

> (Proof available from "Some Genealogical and Historical Notes of the Huelings family", A Paper Read Before The Historical Society of Burlington County - by Asa Matlack Stackhouse.)

Appellant's forefathers could have a friend plead their cause for them in 1679 and now nearly three hundred years later, there is still nothing Constitutional or lawful which has ever overthrown that right of the Defendant which was historically enjoyed without qualification.

The Courts of this land are properly charged with the power and authority to see that the citizen's rights are protected in any case properly brought before them. Courts must protect the citizen against the unlimited power of government such as denial of the right to counsel. See L.O. Cooke v. Samuel G. Iverson, 108 Minnesota Reports 388; 122 N.W.251 (set forth in APPENDIX TO BRIEF/CITATIONS)

> . . . for it must be remembered that the people act through the Courts just as well as through the executive or legislature. One department is just as representative as the other, and the judiciary is the department which

> is charged with the special duty of determining the limitations which the law places upon all official action.

What good is the Defendant's "right to freedom of assistance of Counsel" and the "right of the people to peaceably assemble" before the Judicial Branch of the Government of the United States if the Defendant cannot peaceably assemble with counsel of his own choice and in whom he has implicit confidence? The argument on this issue goes right to the heart of LIBERTY: Freedom of speech, Freedom of the press, Right to self defense, Freedom from having to take assistance of Counsel from the camp of the adversary or the enemy of the Constitution.

One has the same natural right to selection of Counsel that he has in the freedom of the right to select a religion of his own choice or no religion at all.

Lucille Moran discusses the subject of counsel in her book How to Refuse Income Taxes-Legally (Box 641 Tavernier, Florida) The author states:

> Before 1910 for example, when members of the bar were generally NOT organized, the language of Article VI of the Bill of Rights - "and to have the assistance of counsel for his defense", still meant that whoever you chose, could be your counsellor or spokesman. Your choice didn't have to be an enrolled member of the bar, any more than graduation from some "law school" was a presumption for judgeships.

E.F. Wildermuth, Constitution Attorney and Counsellor at Law (181-23 Dalny Rd., Jamaica Estates, N.Y.) states:

> When the Founding Fathers used the phrase "Assistance of Counsel", they referred to a trusted friend of the defendant because in those days there was no organized bar as it has come to be known. "Counsel" was advice at that time and not a member of the organized bar as we refer to "counsel" today. Millers, innkeepers, local merchants, etc. "counselled" people in those days.

> In any event, the Constitution is the supreme law of the land and not decisions of the courts or rules and regulations prescribing who may provide "the Assistance of Counsel" within the purview of the 6th Amendment.

If this fundamental right has, in fact, been eroded, by what authority has this erosion been carried out? Who would dare tamper with such a basic God-given right? This right to counsel is stated clearly in Amendment VI without exception or reservation. The choice of counsel obviously remains with the accused, whose life, liberty, and property are at stake.

On November 4, 1969, Appellant gave Jerome Daly his POWER OF ATTORNEY (see Appendix p.p.11,12) with full authority, and, that grant of authority to Daly has never been revoked. It is Appellant's position that the Constitution guarantees him this right to counsel. This construction of the Constitution can be further corroborated by the following Amendments to the Constitution:

> Amendment IX: The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.
>
> Amendment X: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
>
> Amendment I: Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

With the exception of age and residency requirements (see Art. I , Sec. 2, Par.2; Art. I , Sec. 3, Par. 3; and Art. II , Sec. 1, Par. 5) and place of birth requirement (see Art. II , Sec.1, Par. 5) and the provision that "Each house shall be the judge of the ...qualifications of its own members,..."(Art.I , Sec. 5, Par.1), the Constitution remains silent on the subject of any individual

qualifications for positions of public trust. For example: The President of the United States, although vested with the executive power, authorized to be the commander in chief of the army and navy, and delegated the power to make treaties does not have to be educated, graduated or even versed in Public Administration, Military Science, nor Treaty Law. The members of Congress who are vested with the sole power to legislate are not required to be lawyers or even versed in the Law. Furthermore, the members of the House of Representatives from which all bills for raising revenue shall originate, need not have a degree in Finance. The Senators who must ratify Treaties and confirm the nomination of ambassadors, etc. even judges, need no degrees in International or Treaty Law nor even be qualified as Personnel Directors. There is no requirement that Federal Judges must be lawyers or that they need to have past experience on the Bench. The best example of the compelling argument in this Case is the recently retire Chief Justice of the Supreme Court - Earl Warren - who had no previous judicial experience, whatsoever.

Those who do business with the Federal Government, who might have to qualify in some manner under the State Law doing State business, have no such licensing requirements placed upon them by the Federal Government. A good example is a General Building Contractor who needs no Federal license to build Government buildings. Another good example is the Capitol Architect who, in fact, is really not an architect at all!

It stands to reason, then that any "Rule" requiring a degree in law, a "certificate of good standing", a "license" or any other "qualification" for "counsel" must be considered null and void

because it violates the spirit and letter of the Constitution. Appellant hereby challenges any such "Rule" forbidding his free choice of counsel.

The organized Bar of Lawyers is a carryover from the old Judicial System in England. It was one of the "Divine Rights" of the King and his Judges to select what Lawyers he would allow to be admitted to the Bar of the King's Courts. At first the Clergy were the Lawyers, then, later other people were appointed at the King's pleasure. "Admission to the Bar" as represented by the "Certificate of Good Standing" which the Trial Court held to be prerequisite to appearance of Muncaster's Counsel must be examined in the light of the phrase "the Bar" as defined by The Encyclopedia Brittanica, 11th edition: (see Article,"The Bar")

> This term, as equivalent to the profession of barrister, originated in the partition of bar dividing the English law courts into two parts, for the purpose of separating the members and officials of the court from the prisoners or suitors, their advocates and the general public.

Obviously, the Advocates were not "members of the bar" for good and sufficient reason. If they had served as officers of the Court, they would have paid allegiance to the King's judge and not to their own client. No man can serve two masters: St.Matthew 6:24. Note the language of Art.I.,Sec.9,par.8 of the U.S.Constitution which provides:

No Title of Nobility shall be granted by the United States.

Note Art.I.,Sec.10,par.1 which states:

No State shall . . . grant any Title of Nobility.

Webster's Collegiate Dictionary, 5th ed. defines "Nobility":

1. Quality or state of being noble in character, ability, rank, etc.;

2. Collectively: Usually with those who are noble; the body of titled persons in a State; in Great Britain, the peerage.

"Esquire", the Title assumed by today's "American" lawyer, is defined as "A man of the English Rank of gentry next below a Knight."

An "Attorney" is defined very simply and clearly as "One who is legally appointed by another (meaning, of course, the client - not the Court) to transact any business for him."

The Courts have no more authority to grant a license to Lawyers than they do to grant a Title of "Prince". If they do, it is clearly a grant of a Title of Nobility that carries with it, or attempts to carry with it, special privileges, immunities and an exalted station. What was once the "Divine Right of Kings" has now become the"Divine Right of Judges". Everything in Thomas Jefferson's Statute of Religious Liberty (p.28A) that applies to Freedom of Religion, applies to Freedom of Counsel, only more so. These exclusive "licensing procedure" set up only habits of meanness, hypocrisy and eternal damnation.

Any purported requirement that Appellant must retain a lawyer with a "Certificate of Good Standing" - such as a King's Court would issue - is irrelevant, unlawful, and unConstitutional and void on it's face. The Trial Judge never even made a feeble attempt to cite any lawful authority for his arbitrary action in denying Counsel. The Trial Court denied the Defendant an opportunity to be represented by his own Advocate, or Counsel.

According to Webster's Collegiate Dictionary, 5th Ed, the the word "Advocate" is defined as follows:

1. One who pleads the cause of another, as before a tribunal or judicial court; a counselor.

VIRGINIA STATUTE OF RELIGIOUS LIBERTY *

(January 16, 1786)

An Act for establishing Religious Freedom.

I. WHEREAS Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of wordly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

II. *Be it enacted by the General Assembly,* that no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.

III. And though we well know that this assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies, constituted with powers equal to our own, and that therefore to declare this act to be irrevocable would be of no effect in law; yet as we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall hereafter be passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right.

2. One who defends or espouses any cause by argument: as an advocate of free trade; also, an intercessor.

The antonym (or opposite) of the word "advocate" is given as "opponent, antagonist", in essence, then, one's ADVERSARY!

The Encyclopedia derivation of the phrase "The Bar" clearly describes a great historical distinction between the members of the Bar (barristers or government lawyers) vs one's own Advocate (people's lawyer or Counsel). No less, the United States Constitution of today reflects this same separation. Standing alone - even without the Bill of Rights - the Constitution does not justify any requirements for "admission to the Bar" nor permit any Judge to "make rules" concerning counsel. If the separation of Constitutional Powers grants the Judge no authority over the Government's lawyer, e.g. U.S.Attorney, what lawful right do Judges have to exercise power over the Defendant's Attorney?

With the addition of the Bill of Rights, the Constitutional right to Counsel was further secured through Amendment VI. Our Forefathers feared not the common criminal as much as they feared the POWER OF GOVERNMENT. They knew that if this POWER OF GOVERNMENT should be used against the People - instead of for their benefit - it would be implemented through the runaway Courts and Judges (including their police force) and the Judgments rendered by them. They wanted to be no party to a government in which their major God-given rights were not specifically enumerated and protected. Thus, the Bill of Rights was added as an integral part of the U.S.Constitution in order to "insure Justice".

Defendant was arbitrarily deprived of his right to Counsel. The Federalist, Paper No.83 states: (p.543)

> . . . arbitrary methods of prosecuting pretended offences, and arbitrary punishments upon arbitrary convictions, have ever appeared to me to be the great engines of judicial despotism: and these have all relation to criminal proceedings.

Amendment VI. absolutely guarantees Defendant's right to be represented by an Advocate of his own free choice:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defence.

Webster's Collegiate Dictionary, 5th Ed. defines the word"enjoy":

> 1. To have satisfaction in experiencing, possessing, etc.
> 2. To have possession or use of; to have the benefit of.

Only the accused can decide who is best capable of providing a defense in the protection of his own life, liberty or property when "the whole power of the state (is) against him". See U.S. v Tarlowski, Appendix p.23.

The American Declaration of Independence set up an absolute cut off with England;and after that Declaration, the American Citizen became the recognized sovereign in his own natural right the same as if those rights had just been created and delivered to him by the hands of the CREATOR. See the particular language of the Declaration of Independence:

> When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.- We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. - That to secure these rights, Governments are instituted among Men, deriving their their just powers from the consent of the governed,- . . .

In spite of the fact that there is existent in America today a discernable and treasonous movement to restore the "The King's Law of England" through the efforts of the organized bench and bar, and in spite of the fact that many contemporary lawyers and officials claim that the American Government is the Sovereign, the simple Constitutional truth in America is that the People are Sovereign and the Constitution says so. Let those who claim that Government is our Master cite their lawful authority for their spurious claim.

The Court had a duty to see to it that Defendant was specifically advised of his right to Counsel at every stage of the proceedings, and to give him an opportunity to be represented by Counsel of his own choice, either his Father or anyone else that Defendant might choose at the very first appearance before the Court. Nothing in the Constitution of the United States requires that the Government is entitled to have Counsel, for instance, a U.S. Attorney. In contrast, the Constitution does contain in the 6th Amendment a very positive command that the Defendant or accused shall have the Counsel for his assistance available at every stage of the proceedings. The Trial Judge was obligated to protect this right, not destroy it. Defendant must also be advised of his right to assistance of Counsel of his own choice whether his choice be a licensed Attorney or not. That is, the Defendant must be advised that he has the right to have a friend represent him. Nothing in the Constitution of the United States requires that Counsel shall be a licensed Lawyer. Nowhere are there any qualifications set out. His right to be heard through his own Counsel was unqualified. See the Chandler v. Fretag. set forth in APPENDIX TO BRIEF/CITATIONS

The right to counsel is very precious and must not be arbitrarily denied with or without a hearing. See U.S. v. Mitchell, 246 F.supp. 874,877(1965) which states:

> The Constitutional right of Assistance of Counsel is too precious for such degenerate subversion.
> (underlining added)

The Court Trial Judge arbitrarily denied Defendant a hearing of any kind, on the subject of right to Counsel and arbitrarily refused to hear Appellant in any stage of the proceeding by Counsel of his own free choice, employed by and appearing for him.

BALLENTINE's LAW DICTIONARY, 3rd Ed. 1969 defines "arbitrary" as:

> Arbitrary:
> Arbitrary: According to notion or whim rather than according to law. Despotic; without reason. Fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances or significance. (citation follows)

The only complaint which the public servants in charge of the Judicial Branch and the Executive Branch of the Government of the United States had about Appellant's Counsel, Jerome Daly, of Savage, Minnesota, was that Daly had been suspended by the Minnesota Courts (because of alleged contempt), although the suspensions were entirely without due process fo law, which fact was pointed out to the Court by Affidavit, dated November 14,1969 (Appendix p.21). In spite of this knowledge the Court still refused to grant a hearing to the defendant on the issue.

Appellant filed a Power of Attorney in the Trial Court(Appendix p.11,12). See National Savings Bank v. Ward, 100,US 195,25 L ed.621. This case holds that a person acting professionally in legal formalities, negotiations or proceedings, by the Warrant of Authority of his client, is an Attorney at Law within the

usual meaning of the term.

See Powell v. Alabama, 287 U.S. 71,73,77 L ed. 172 where Defendants were deprived of assistance of Counsel of their own choice.

> Such a trial is not far removed from an Ex Parte Proceeding.
> All criminals should be admitted to the same privileges as their prosecutors.

See 16 Am Jur 2d Sections 353,354,and 355 on the right to Assemble Peaceably and to Petition the Government for a redress of grievances and the right to free association. It is equally fundamental with the right to free speech and must be given a liberal interpretation in favor of the rights of the Citizen.

> See Article 1,Sec.8 , U.S. Constitution:
> The Congress shall have power...To make all laws which shall be necessary and proper for carrying into execution...all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.

Title 28, Sec. 1654 USC gives or is merely declaratory of the Common Law right to parties in all Courts of the United States to plead and conduct their own causes personally or by Counsel. The Court can make no rules, regulations, or restrictions on this right by Court Rule or otherwise. Only Congress can make laws. Since a poll tax is not valid as a requirement to vote, so also a license to vote cannot be valid. The right to freedom in selection of one's own Counsel and the right to be free from any taxation or restriction on this right upon either the real party in interest or his Counsel is obvious.

Does one have to have a license to make a contract, to speak freely, to join or quit a religion, to freedom of the press, to freedom of association or any thing else to do with the government

of his own life, liberty, or property?

Out of one side of their mouth the Courts and the Executive branch of Government of the United States tell the Criminal Defendant that he has the right to have the assistance of Counsel of his own choice, and out of the other side of their mouth they tell the Defendant that, although he can have Counsel of his own choice, Defendant must select his Lawyer or Counsel from the group that are approved by the trial Judge (Appendix p.34) or the Government of the State or the United States; one who is licensed by the Bar Association to practice Law before the Court, one who is an officer of the Court, one who is under the control of the Court and the Bar Association.

This is a limitation on Liberty, Freedom of Association, Freedom of Self Defense, Freedom of Counsel. It is not authorized. And, what mischief are those members of the Board of Governors of the various Bar Associations and the various State Boards of Law Examiners up to? What are their motives for licensing Lawyers and keeping them under control and for bringing disciplinary proceedings against them?

No man can serve two masters. A Lawyer owes his undivided loyalty to his client in a criminal case. He has taken an oath to support the Constitution of the United States. The citizen is entitled to Counsel who <u>is not</u> an officer of the Court and who is absolutely fearless in his zeal to support the Constitution although confronted with a U.S. Attorney and/or Judge who is flouting the Constitution. Contempt of some individual office holder who is flouting the Law is no contempt of Court, even though the individual flouting the Law may exercise the lawless power to

summarily revoke the citizens "License" to practice law.

In the Federal Courts the Judges claim the right to comment upon the evidence, which, although illegal, gives them the right to make an argument. Picture, if you will, a resourceful, devious, oppressive Judge who, for political reasons or otherwise, is bent upon whipping some citizen into line. What Lawyer, an officer of the Court, dependent upon his license for his livelihood, who has spent his lifetime studying and practicing Law, who had built up good will, a good name, an honest reputation and who has others dependent upon him for support; what Lawyer is not going to fold up and lay down on the Job in regard to the duties and obligations he owes his client and the public generally?

At the very place where freedom of the right to peaceably assemble and to petition one's Government for a redress of grievancesis paramount, in the Judicial Branch, the Courts have choked off and stifled the right to freedom of petition by restricting the right to freedom of the right to Counsel

It is no wonder the Country is in a state rebellion. Only the rich who can afford to go to law school for 8 years can be admitted to practice Law and be licensed by the Court. Those that are being turned out do not have the spine of a cooked salmon and are not versed in the organic law of the U.S. Constitution.

See U.S. v. Tarlowski (Appendix p. 23). Its reasoning is sound. It ought to be controlling here, for example:

> The right to the assistance of Counsel, guaranteed by the Sixth Amendment, is largely designed to secure to the accused a fair trial, 'to assure that the accused's interest will be protected consistently with <u>our adversary theory of criminal prosecution.</u> United States v. Wade

> 388 U.S. 218,227,87S.Ct. 1962, 1932 (1967). But this is not the only purpose of that protection offered by the Constitution. One reason for the guarantee is to enable an individual 'with the whole power of the state against him', to defend against the loss of personal liberty. Powell v. Alabama, 287 U.S. 45, 69, 72, 53 S.Ct.55, 64,65 (1932). Another is to insure that other fundamental rights secured to the individual will receive adequate and effective enforcement. Id.; Miranda v. Arizona, 384 U.S. 436, 86 S.Ct 1602 (1966); Escobedo v. Illinois, 378 U.S. 478,84 S.Ct. 1758 (1964).

At the very outset, when Defendant was taken into custody, he was not notified of his Right to Counsel or his Right to Remain Silent.

At the very first appearance in Court, the Judge erred in proceeding with the arraignment without assistance of Counsel for the Defendant. When the Defendant asked that his Father represent him, this was denied by Judge in error, (Appendix p.6). The Court told Defendant, in error, he was of age when he was in fact only 20 years of age and a Minor. The Judge told Defendant he was competent and in error directed Defendant to speak for himself without assistance of Counsel (Appendix p.7).

At arraignment, October 2, 1969, Defendant specifically waived the Administrative Procedures Act of 1946 and the Judge concurred (p.6). At no time did the Judge notify the Defendant that Court Rules or Procedure promulgated under this Act would nullify invisibly his right to submit Motions or have his own Counsel do so, and that Defendant might lose any of his Constitutional Rights without being notified. Trial Judge did not notify Defendant about the existence of any Court Rules whatsoever which would waive Defendants Rights or jeopardize them.

On Nov. 10, 1969, Power of Attorney appointing Daly as Attorney at Law and in Fact (Appendix pp.11,12) along with his Notice of Appearance (Appendix p.9) was filed on behalf of

Defendant. See National Savings Bank v. Ward on the subject of Attorney at Law,,100 U.S. 195, 25 L ed. 621.

On Nov. 14, 1969, Friday before the scheduled Monday trial, Defendant was notified by telegram that the Trial Court did not like his Lawyer and would not let him appear. (Appendix p.19)

On Nov. 17, 1969, without a hearing of any kind, the Court in error entered a Decree, Order and Judgment that Daly be denied leave to appear as Counsel for the Defendant. This Court order contains a false statement in error by the Trial Judge to wit: (Appendix p. 31)

> Upon this arraignment proceeding, this Defendant was specifically advised that if he did not have funds to employ and pay Counsel to represent him in this Case, The Court would, if he requested it, appoint a competent Attorney to represent him without cost.

Futhermore this false statement is used once again by the Trial Judge in error in open Court before prospective Jurors when the Judge said: (Appendix p.33)

> When you were here on October 2, in open Court, you were advised that the Court would, if you were unable to employ counsel, appoint Counsel that would represent you in this case without charging an Attorney's Fee.

The Judge erred in making such false statements on the issue of Counsel. An exhaustive search of the official Arraignment Transcript (Appendix p.5,6,7) reveals no such benevolent offer on the part of the Trial Judge. Such errors are false and misleading and therefore prejudicial to Defendant's rights at law and before the Jury. The Trial Judge stated (Appendix p.33)

> The Court reiterates and restates to you at this time, Charles R. Muncaster, that if you are unable etc.

Such was not a reiteration nor a restatement. The Judge erred again in the proceedings of Nov. 17, in attempting to limit

Defendant to Counsel "qualified to practice law in the Courts of the State of Alabama and in this Court". (see Appendix p.34) Furthermore the Judge erred during the trial in the presence of the Jury when he again used a similar false statement about Counsel to the prejudice and detriment of the Defendant to wit: (Appendix p.44)

> And I offered you a lawyer when you were here October 2, and you refused it.

Do the "Rules" permit the trial Judge to use such falsehoods without censure or reproof? Where did the Trial Judge get the idea that he offered Counsel Oct. 2nd, when the record shows otherwise?

The aforementioned Order, Judgment and Decree was served on Defendant and his Father on November 17, 1969 less than ½ hour before the trial was scheduled to commence. The Trial Judge claimed that he was granting a three day continuance. (Appendix p.33)

> . . . for the purpose of allowing you an opportunity to either request this Court to appoint Counsel to represent you or to employ Counsel who is or are eligible or qualified to practice law in the Courts of the State of Alabama and this Court.

An honest inquiry into the Court's packed docket would prompt the question - "is that really the reason the Trial Judge set it over until Thursday?"

On November 18th or 19th, Jerome Daly was served with a copy of the Order excluding Daly as Attorney for the Defendant. Again on November 19, 1969, the Trial Court denied leave without hearing or argument for Daly to appear in this action to serve as Counsel for Defendant, Charles Muncaster.

It should be noted that the entire subject of Counsel is

glossed over and ignored in the docket - the Defendant's Power of Attorney form (Appendix p.11,12) is not even entered on the docket and furthermore that the docket entry dated October 2, 1969, reading "Attorney waived" which was entered by the assistant Clerk, Tim Norris, purported to be the nephew of the Trial Judge, Frank Johnson, constitutes a false and fraudulent entry and a serious error as was asserted immediately in Defendants Motion and Affidavit Nov. 19, 1969. (Appendix p. 37)

On Nov. 19, 1969, Defendant moved to vacate the plea as follows: (Appendix p.35)

> 1. Defendant hereby moves the Court to vacate the plea of Defendant heretofore entered upon the grounds that Defendant was not represented by Counsel pursuant to Amendment 6, U.S. Constitution.

The Court erred in denying the motion.

Defendant then moved the Court to vacate it's Order: (Appendix p.36)

> Defendant further moves the Court to vacate its Order dated November 17, 1969, adjudging and Decreeing that Jerome Daly is denied leave to appear as Counsel for Defendant in this case as being unconstitutional and void and completely contrary to Due Process of Law in all respects. Upon the further grounds that the Judge in the case is my adversary, accepts his salary in unconstitutional money and is subservient to people out todestroy the Constitution of the United States and is therefore my adversary in the case and has no right to determine or limit my God-given right to freedom of association and freedom or right to peaceably assemble and petition the Government for redress of grievances and freedom of right to choice of Counsel

The Court erred in denying the Motion and further erred in denying the Motion without any hearing whatsoever when it well knew that any Court Rules on "timeliness" MUST YIELD TO THE CONSTITUTIONAL RIGHTS possessed by the Defendant, and most especially when Defendant is denied Notice of the effect of Court

Rules and Denied Counsel to give him Advice.

See Reynolds v. Cochran, 365 U.S. 525, 5L ed. 2d 754, 81 S. Ct. 723 in Am Jur p. 979 as follows:

> A State or Federal Court which arbitrarily refuses to hear a party by Counsel employed by and appearing for him in any case, civil or criminal, denies the party a hearing, and therefore denies him due process of law in the Constitutional sense.

On November 20, 1969, the case was called for trial. Defendant appeared and asked for a continuance to prepare his case. This was denied. The Court then offered to supply Defendant with a Lawyer if Defendant was unable to pay for one and would file an affidavit to that effect. Defendant stated that "Jerome Daly is my only choice as a Lawyer". (Appendix p.44) Defendant refused to let the Trial Judge appoint one of the Court's "Approved" Lawyers for him, and especially because the Trial Judge is publicly known as a political enemy of the Muncaster family of long standing, as a result of the Family's uncomprimising allegiance to the American Constitution.

The Court then proceeded to start the trial and would not even give the Defendant the right to have Defendant's Parents present at the Counsel table with him for advice or counsel.

This error violated Amendment VI.

Throughout the trial the Court continued to belittle the Defendant and continued to ask Defendant incriminating questions. After the trial started the Court still tried to appoint a Lawyer for Defendant against his wishes. Finally, after the jury had been selected and after the witnesses had been sworn and after vocal protests by the Defendant, the Court finally reluctantly allowed Defendant's Father to be present at the Counsel table.

Throughout the trial the Court kept alluding to the fact that the Defendant had the right to testify without advising that he also had the right to remain silent. The Court kept asking Defendant, in the presence of the jury, if he wished to testify.

An examination of the record of the trial shows that it is not at all removed from an ex parte proceeding. The Court erred in refusing to allow Defendant the right to have Counsel of his own choice at any stage of the proceedings which was his absolutely, without any qualifications attached. See Chandler v. Fretag. (APPENDIX TO BRIEF/CITATIONS)

> ... Regardless of whether petitioner would have been entitled to the appointment of counsel, his right to be heard through his own counsel is unqualified.

On November 25, 1969, Defendant moved the Court to set aside the verdict and all Court Orders on the following grounds: (see Appendix p. 85)

> 1. That the Court errored in denying Defendants Motion dated November 19, 1969.
> 2. That the Court errored in its Order of Nov. 17, 1969 and in all other respects when it refused to allow Defendant in the first instance to let Defendant's Father act as Counsel in his behalf in this action and in the second instance when it refused to allow Defendant Counsel of his own choice in the name of Jerome Daly of Savage, Minnesota a person who is a practicing Lawyer and who has the confidence of Defendant.
> 3. That the Court errored in refusing to grant Defendant a continuance in which to prepare a Defense.
> 4. That the Court errored in excluding evidence offered by Defendant at the trial and in sustaining objections made by Plaintiff at the trial
> 5. That the Court errored in the manner that the Jury was empanelled.
> 6. That the Court errored in the manner that it conducted the trial and more especially in directing a verdict against Defendant in his instructions to the Jury.
> 7. That the Court errored in its instructions to the Jury on Criminal intent; on the statutory law; on the Constitutional Law; in failing to instruct the Jury that Defendant should be found not guilty if they found that his failure

to register was beyond Defendant's control.
8. That the Court errored in proceeding with the trial of Defendant without assistance of Counsel for Defendant.

And further, the Defendant moved the Court by ADDENDUM, Appendix p.87, to grant the Defendant a Judgment of ACQUITTAL on additional grounds.

It must be stated that each and every Error in the Court Trial committed by the Trial Judge could have been stopped by objection or otherwise had Defendant enjoyed the Fundamental Right to choice of Counsel.

The Right to Counsel is Inviolate. The Right to Counsel is Guaranteed by the Constitution. The Trial Judge swore to support the Constitution.

The Federal District Court exists solely by Statutory authority under the United States Constitution. The Trial Judge cited no statutory authority for his arbitrary action in denying the Defendant's Right to Counsel. He cited no law which authorized his action.

N.A.A.C.P. v Button, 371 US 415, 9 L.Ed.2d 405, 83 S.Ct. 328; United Mine Workers of America, District 12 v. Illinois State Bar Association et al, 88 S.Ct. 353 (1967); and, Brotherhood of Railroad Trainmen v Virginia Ex Rel. Virginia State Bar, 377 US 1, 12 L.Ed.2d. 89, 84 S.Ct. 1113, reh den 377 US 960, 12 L.Ed.2d 505, 84 S.Ct. 1625., are all contemporary Supreme Court Decisions which reinforce the Defendant's absolute Right to freely exercise his right to Counsel stated in the Constitution:

> In all criminal prosecutions the accused shall enjoy the right . . . to have the assistance of counsel for his defence. Amendment VI.

In conclusion: Defendant is absolutely entitled to the

right to have Counsel of his choice. He cannot be forced to try the Case himself. Obviously, in refusing to allow the experienced Mr. Jerome Daly to try the Case for Defendant, the Defendant was compelled to be a witness against himself in the Court room - by reason of the mere fact that he had to conduct the Trial.

There is no better substantiation of this contention than the Trial Judge DID USE statements made by the Defendant - acting as his own Counsel and NOT as a witness - in his ARGUMENT to the Jury, in the Charge of the Court.

Defendant had no protection from the Trial Judge during the Trial who persisted in trying the Case for the Government and who made a final Argument for the Government in his charge to the Jury.

The mere fact that Defendant had to conduct the Trail himself caused him to accidentally and incidentally, by his attitude, conduct and demeanor and inflection of voice and by the expressions upon his face, to say and do things which tended to incriminate himself. It was not at Defendant's request that he defend himself. He was forced to do so and was deprived of his right to free choice of Counsel.

This Case really hinges upon the definition of the word "Counsel" and whether the Federal Courts can restrict the meaning of the term. "Counsel is defined in Webster's Collegiate Dictionary as:

1. Advice, esp. that given as the result of consultation.
2. Mutual advising; deliberation together.

The U.S. Supreme Court settled the question in the Case of

Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 US 1. See headnote 2: (see APPENDIX TO BRIEF/CITATIONS)

> Under the First Amendment guaranties of free speech, petition, and assembly, the right of members to consult WITH EACH OTHER in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel.

This is the issue; Who has the right to select the Counsel? The Supreme Court has stated that the individual members possess it as a natural right.

The Trial Judge denied the Defendant Muncaster his absolute (unqualified*) Right to Counsel.

The Question is simple: Does the Judicial Department of the United States Government intend to support and carry out the United States Constitution, as written, on the subject of Right to Counsel or does it not?

The Trial Judge erred in denying the Defendant his Right to Counsel and the Defendant is entitled to a Judgment of ACQUITTAL in this Case or, in the alternative, a new trial on these grounds.

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* Chandler v Fretag, 348 US 3. (see APPENDIX TO BRIEF/CITATIONS)