

CASE LAW: Federal

CONSTITUTIONAL ISSUES

"It is of course true that a law which impinges upon a fundamental right explicitly or implicitly secured by the Constitution is presumptively unconstitutional." **Mobile v. Bolton**, 446 US 55, 64 L Ed 2d 47, 100 S Ct 1490 (1979); see *Shapiro v. Thompson*, 394 US 618, 634, 638, 22 L Ed 2d 600, 89 S Ct 1322; et al.

If a law has no other purpose than to chill assertion of constitutional rights by penalizing those who choose to exercise them, it is patently unconstitutional. **Harris v. McRae**, 100 S.Ct. 2671, 448 U.S. 297, 65 L.Ed.2d 784, rehearing denied 101 S.Ct. 39, 448 U.S. 917, 65 L.Ed.2d 1180 (1980).

Government may not prohibit or control the conduct of a person for reasons that infringe upon constitutionally guaranteed freedoms. **Smith v. United States**, 502, F.2d.512 (1974)

Ex parte Young [209 U.S. 123 (1908)] teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." *Id.*, at 159-160. (Emphasis supplied.) **Scheuer v. Rhodes**, et al, No. 72-914, 416 U.S. 232; 94 S. Ct. 1683; 40 L. Ed. 2d 90; 1974 U.S. LEXIS 126.

"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." **Cooper v. Armstrong**, 358 US 1, 78 S.Ct. 1401 (1958).

It is the duty of the courts to be watchful for CONSTITUTIONAL RIGHTS of the citizen, against any stealthy encroachments thereon." **Boyd v. U.S.**, 116 US 616, 635, (1885).

"When a judge acts intentionally and knowingly to deprive a person of his constitutional rights, he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudice." **Pierson v. Ray**, 386 U.S. 547 at 567 (1967).

The U.S. Supreme Court has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. **U.S. v. Will**, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); **Cohens v. Virginia**, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821).

"State judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights." **Goss v. State of Illinois**, 312 F2d. 1279 (U.S.Ct.App. - Illinois - 1963)

"When any court violates the clear and unambiguous language of the Constitution, a fraud is perpetrated and no one is bound to obey it." **State v. Sutton**, 63 Minn. 147 65 NW 262 30 ALR 660. Also see (*Watson v. Memphis*, 375 US 526; 10 L Ed 529; 83 S.Ct. 1314).

DUE PROCESS

"The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint." **Washington v. Glucksburg**, 521 US 702, 138 L Ed 2d 772, 117 S Ct 2258 (1997); citing *Collins v. Harker Heights*, 503 US 115, 117 L Ed 2d 261, 112 S Ct 1061 (1992). (Due Process Clause "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them'"") quoting *Daniels v. Williams*, 472 US 327, 331, 88 L Ed 2d 662, 106 S Ct 662 (1986). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. **Reno v. Flores**, 507 US 292, 301-302, 123 L Ed 2d 1, 113 S Ct 1439 (1993); et al.

" ... Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," quoting **Moore v. ? ? ?**, 431 US, at 502, 52 L Ed 2d 531, 97 S Ct 1932 (plurality opinion).

From the U.S. Supreme Court Holding in **Peralta v. Heights Medical Center, Inc.**, 108 S.Ct. 896 (1988):

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections." **Mullane v. Central Hanover Bank & Trust Co.**, 339 U.S. 306, 70 S.Ct. 652 94 L.Ed. 865 (1950); Failure to give notice violates "the most rudimentary demands of due process of law." **Armstrong v. Manzo**, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965). See also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S.Ct. 559, 564, 62 L.Ed. 490 (1980); *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed. 18 (1976); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110, 89 S.Ct. 1562, 1569, 23 L.Ed. 129 (1969); *Pennoyer v. Neff*, 95 U.S. (5 Otto) 714, 733, 24 L.Ed. 565 (1878). And

"As we observed in *Armstrong v. Manzo*, 380 U.S. at 552, 85 S.Ct., at 1191, only "wiping the slate clean ... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place." *Peralta*, supra

Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, "it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." **Coe v. Armour Fertilizer Works**, 237 U.S. 413, 424, 35 S.Ct. 625, 629, 59 L.Ed. 1027 (1915).

FIRST AMENDMENT

Gentile v. State Bar of Nevada, 111 S. Ct. 2720, 501 U.S. 1030, 115 L. Ed. 2d 888, 59 U.S.L.W. 4858, 1991. SCT.43663 (US Supreme Court No. 89-1836)

"Following a hearing, the Southern Nevada Disciplinary Board of the State Bar found that Gentile had made the statements in question and concluded that he violated Rule 177. ...

Nevada's application of Rule 177 in this case violates the First Amendment. ... Petitioner spoke at a time and in a manner that neither in law nor in fact created any threat of real prejudice to his client's right to a fair trial or to the State's interest in the enforcement of its criminal laws. Furthermore, the Rule's safe harbor provision, Rule 177(3), appears to permit the speech in question, and Nevada's decision to discipline petitioner in spite of that provision raises concerns of vagueness and selective enforcement. ... At issue here is the constitutionality of a ban on political speech critical of the government and its officials." There is no question that speech critical of the exercise of the State's power lies at the very center of the First Amendment. ... , which only last Term we described as "speech which has traditionally been recognized as lying at the core of the First Amendment." **Butterworth v. Smith**, 494 U.S. , (1990) (slip op., at 7).

The judicial system, ..., play a vital part in a democratic state, and the public has a legitimate interest in their operations. See, e. g., *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838-839 (1978). ... ("commentary on the fact that there is strong evidence implicating a government official in criminal activity goes to the very core of matters of public concern"), Our system grants prosecutors vast discretion at all stages of the criminal process, see *Morrison v. Olson*, 487 U.S. 654, 727-728 (1988) (SCALIA, J., dissenting). The public has an interest in its responsible exercise.

We have held that "in cases raising First Amendment issues . . . an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" **Bose Corp. v. Consumers Union of United States, Inc.**, 466 U.S. 485, 499 (1984), (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 284-286 (1964)).

... The Bar's whole case rests on the fact of the statement, the time it was made, and petitioner's own justifications. Full deference to these factual findings does not justify abdication of our responsibility to determine whether petitioner's statements can be punished consistent with First Amendment standards.

Rather, this Court is "compelled to examine for [itself] the statements in issue and the circumstances under which they were made to see whether or not they do carry a threat of clear and present danger to the impartiality and good order of the courts or whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect." **Pennekamp v. Florida**, 328 U.S. 331, 335 (1946).

"Whenever the fundamental rights of free speech . . . are alleged to have been invaded, it must remain open to a defendant to present the issue whether there actually did exist at the time a clear danger; whether the danger, if any, was imminent; and whether the evil apprehended was one so substantial as to justify the stringent restriction interposed by the legislature." **Landmark**, supra, at 844 (quoting *Whitney v. California*, 274 U.S. 357, 378-379 (1927) (Brandeis, J., concurring)).

Whether one applies the standard set out in *Landmark Communications* or the lower standard our colleagues find permissible, an examination of the record reveals no basis for the Nevada court's conclusion that the speech presented a substantial likelihood of material prejudice.

Landmark Communications, Inc v. Virginia, 98 S. Ct. 1535, 435 U.S. 829, 56 L. Ed. 2d 1, 1978. SCT.41603 (U.S. 05/01/1978) decided: May 1, 1978. (US Supreme Court No. 76-1450)

"The only witness at the trial, ..., testified that he decided to print the information about the Commission proceedings because he felt that the subject was a matter of public importance which should be brought to the attention of the Pilot's readers. ...

It identified three functions served by the requirement of confidentiality in Commission proceedings: (a) protection of a judge's reputation from the adverse publicity which might flow from frivolous complaints, (b) maintenance of confidence in the judicial system by preventing the premature disclosure of a complaint before the Commission has determined that the charge is well founded, and (c) protection of complainants and witnesses from possible recrimination by prohibiting disclosure until the validity of the complaint has been ascertained. ...

... truthful reporting about public officials in connection with their public duties is always insulated from the imposition of criminal sanctions by the First Amendment. It points to the solicitude accorded even untruthful speech when public officials are its subjects, ... and the Commonwealth's interests advanced by the imposition of criminal sanctions are insufficient to justify the actual and potential encroachments on freedom of speech and of the press which follow therefrom. See, e. g., *Buckley v. Valeo*, 424 U.S. 1, 64-65 (1976).

In **Mills v. Alabama**, 384 U.S. 214, 218 (1966), this Court observed: "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." Although it is assumed that judges will ignore the public clamor or media reports and editorials in reaching their decisions and by tradition will not respond to public commentary, the law gives "[judges] as persons, or courts as institutions . . . no greater immunity from criticism than other persons or institutions." **Bridges v. California**, 314 U.S. 252, 289 (1941) (Frankfurter, J., dissenting). The operations of the courts and the judicial conduct of judges are matters of utmost public concern.

The Commonwealth ... argues that such protection does not extend to the publication of information "which by Constitutional mandate is to be confidential."

"The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. . . . [An] enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect."

Mr. Justice Frankfurter, in his dissent in *Bridges*, agreed that speech cannot be punished when the purpose is simply "to protect the court as a mystical entity or the judges as individuals or as anointed priests set apart from the community and spared the criticism to which in a democracy other public servants are exposed." *Id.*, at 291-292.

The Commonwealth has provided no sufficient reason for disregarding these well-established principles. We find them controlling and, on this record, dispositive."

Deference to a legislative finding cannot limit judicial inquiry when First Amendment rights are at stake.

CIVIL RIGHTS

"By the plain terms of section 1983, two - and only two - allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law." ***Gomez v. Toledo***, 446 U.S. 635 (1980)

In pursuing substantial state interest, state cannot choose means which unnecessarily burden or restrict constitutionally protected activity. *Dunn v. Blumstein*, 92 S.Ct. 995, 405 U.S. 330 (1972)

Undermining the integrity of the judicial system.

Jones v. Clinton, 36 F.Supp.2d 1118, 1131-32 (E.D.Ark. 1999)

Susan Webber Wright, Chief Judge

Nevertheless, the President's contumacious conduct in this case, coming as it did from a member of the bar and the chief law enforcement officer of this Nation, was without justification and undermined the integrity of the judicial system.

"Our adversary system depends on a most jealous safeguarding of truth and candor," citing ***United States v. Shaffer Equip. Co.***, 11 F.3d 450, 463 (4th Cir. 1993).

Sanctions must be imposed, not only to redress the misconduct of the President in this case, but to deter others who, ..., might themselves consider emulating the President of the United States by willfully violating discovery orders of this and other courts, thereby engaging in conduct that undermines the integrity of the judicial system. See ***National Hockey League v. Metropolitan Hockey Club, Inc.***, 427 U.S. 639, 643, 96 S.Ct. 2778, 49 L.Ed.2d 747 (1976).

Jones v. Clinton, 57 F.Supp.2d 719 (E.D.Ark. 1999)

Susan Webber Wright, Chief Judge

On April 12, 1999, this Court entered a Memorandum Opinion and Order adjudging William Jefferson Clinton, President of the United States, to be in civil contempt of court ... for his willful failure to obey certain discovery Orders of this Court in ...

The Court determined that the President violated this Court's discovery Orders by giving false, misleading and evasive answers that were designed to obstruct the judicial process, and that sanctions must be imposed, not only to redress the misconduct of the President in this case, but to deter others who might themselves consider emulating the President of the United States by engaging in misconduct that undermines the integrity of the judicial system.