

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION

RICHARD B. SOBOL, ET AL \* CIVIL ACTION  
\*  
VS. \* NO. 67-243  
\*  
LEANDER H. PEREZ, SR., ET AL \* DIVISION "E"  
\*  
UNITED STATES OF AMERICA, \* (THREE-JUDGE COURT)  
Intervener-Plaintiff \*  
\*  
STATE OF LOUISIANA, JOHN P. DOWLING \*  
ET AL and LOUISIANA STATE BAR \*  
ASSOCIATION, \*  
Interveners-Defendants \*  
\*  
\* \* \* \* \*

ISSUES OF LAW AND OF FACT FROM THE VIEWPOINT OF  
THE CRIMINAL COURTS BAR ASSOCIATION ET AL,  
DEFENDANT-INTERVENER

1. Are the activities of plaintiff Sobol, as outlined in the complaint, first amendment rights?
  - a. Can Sobol rely on the first amendment rights of Duncan and Reynolds to effect the remedy he seeks?
  - b. Are the activities of Duncan and Reynolds, as outlined in the complaint, first amendment rights?
  - c. Is the practice of law in Louisiana without a license by Sobol either a first amendment right or a "right, privilege or immunity" of the Constitution or Federal statutes under 42 USCA 1983.
  
2. Whether injunctive relief or declaratory relief is proper in light of the Dombrowski, vs. Pfister 380 U.S. 479 85 Supreme Court 1116(1965), case.
  - a. Is this a proper case for an injunction or does 28 USC 2283, the anti-injunction statute apply in 42 USC 1983 cases.
  - b. Is LSA-R.S. 37:213, 214 "overly broad and a vague regulation of expression".

- c. Was the prosecution of Sobol instituted prior to the suit for injunctive relief being brought?
3. Whether there are lawyers in Louisiana willing to assert the Constitutional civil rights of Negroes who reside in Plaquemines Parish?

Respectfully submitted:

DOWLING, WESSEL and CRIMINAL  
COURTS BAR ASSOCIATION

BY:

WILLIAM F. WESSEL  
1605 Nat'l Bank of Commerce Bldg.  
New Orleans, Louisiana 70112  
523-6421

C E R T I F I C A T E

A copy of the foregoing has been served on all counsel by posting same to them this 18th day of January, 1968.

WILLIAM F. WESSEL

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF LOUISIANA  
 NEW ORLEANS DIVISION

RICHARD B. SOBOL, ET AL	*	
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	*	NO. 67-243
UNITED STATES OF AMERICA,	*	
Intervener-Plaintiff	*	
	*	DIVISION "E"
STATE OF LOUISIANA, JOHN P.	*	
DOWLING ET AL and LOUISIANA	*	
STATE BAR ASSOCIATION,	*	(THREE-JUDGE COURT)
Interveners-Defendants*	*	
	*	
* * * * *		

TRIAL MEMORANDUM OF  
 THE CRIMINAL COURT BAR ASSOCIATION ET AL  
DEFENDANT INTERVENER

I. THE PRACTICE OF LAW IS NOT EXPRESSION UNDER THE FIRST AMENDMENT.

This is not a case where the applicant has been refused admission to the Bar because of arbitrariness on behalf of any defendants. See Konigsberg v. California 77 S.Ct. 722 (1957) and Schwartz v. New Mexico 77 S.Ct. 752 (1957). The Supreme Court of the United States has not held that the practice of law is a first amendment right. Counsel is unable to see how Sobol can rely upon the right of Duncan and Reynolds to bring him within the penumbra of the first amendment. Even if one assumes that the activities of Duncan and Reynolds are first amendment rights, At the very best, it is submitted, the activities of Duncan and Reynolds involve the right to counsel, which is not a first amendment right.

II. THE QUESTION OF INJUNCTIVE RELIEF.

There has been no federal case where a state court has been enjoined from the prosecution of a criminal case under the theory that 42 USC 1983 is an exception to 28 USC 2283. Bains v. Danville 337 F.2d 579, 586-596 discusses practically every case on



the subject. See also Dillworth v. Riner, 343 F.2d. 226(5 Cir.). Furthermore, plaintiff cannot show by any reasonable inference that can be drawn by his complaint that 42 USC 1983 purports to set up a civil right designated as "the right to practice law without a license". At any rate, Dombrowski v. Pfister 380 U.S. 479, 85 S.Ct. 1116 is dispositive of this case. Dombrowski held that an injunction may issue only against the institution of state court proceedings; it may not be brought against proceedings that have already begun. The facts in this case will show that the state criminal proceedings had begun against Sobol and therefore he is not entitled to an injunction. Once proceedings have begun, the remedy is removal. See Georgia v. Rachel, 86 S.Ct. 1783(1966). But removal can be used only for federal officers or specific "federal rights". Greenwood v. Peacock, 86 S.Ct. 1800(1966).

The holding of Dombrowski is without dispute. Even the dissenting opinion understood it: "If the state criminal prosecution were instituted first, a federal court could not enjoin the state action." 85 S.Ct. 1127, footnote 1. See also Cameron v. Johnson, 244 FS 846(1964) and 262 FS 873(1966) (three judge court), App. pen.

Defendant-interveners further show that LSA-R.S. 37:213, 214, cannot possibly be "overly broad and a vague regulation of expression" because the statute does not purport, nor in its application does it, regulate "expression."

Respectfully submitted:

DOWLING, WESSEL AND CRIMINAL COURT  
BAR ASSOCIATION

BY: \_\_\_\_\_

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1605 Nat'l Bank of Commerce Bl.  
New Orleans, Louisiana 70112

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WILLIAM F. WESSEL