

Trial File

Sept. 21, 1967

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DJ 171-32-4

Sobol v. Perez, CA No. 67-243, (ED La.);
Pre-trial conference with Judge Cassibry
on September 20, 1967

This memorandum is to summarize the conference the attorneys for the various parties in Sobol v. Perez had with Judge Cassibry on September 20, 1967. Present at the conference were Judge Cassibry's law clerk, Edward D. Martin; the counsel for the plaintiffs, Messrs. Bronstein, Amsterdam, Collins and Elie; counsel for the plaintiffs, Mr. Provensal, and myself. Neither Judge Ainsworth, nor Judge Heebie were present at the conference although they were in their offices during the day. I was allowed to attend the meeting only after Judge Cassibry telephoned Mr. Provensal, and Mr. Provensal indicated he had no objection to the United States being represented at this meeting.

1. At the outset of the meeting, Judge Cassibry stated that the three judges had decided to try defendants' Motion for Summary Judgment on affidavits and depositions within the next month, and that this hearing would precede the full evidentiary hearing on the merits. Defendants' Motion for Summary Judgment is based both on Section 2283 and on the claim that there are no disputed issues of fact pertaining to plaintiffs' claim that Negroes can be fairly represented in Plaquemines Parish.

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Counsel for the plaintiffs immediately objected to the prospect of resolving the 2283 issue first. Their position was as follows:

(a) That a ruling on 2283 would not be dispositive of their case because in addition to relief against the prosecution of the Sobol case, they sought declaratory relief and injunctive relief against future prosecutions;

(b) The Court may never need to reach the 2283 issue if they fail to demonstrate the equity for enjoining the Sobol prosecution and that their proof on the equity issue would be their whole case on the merits; and

(c) The intervention by the Government made the defendants' motion based on 2283 frivolous.

Judge Cassibry then turned to me and asked if this last proposition was correct. I responded that the law as presently standing makes section 2283 inapplicable to cases commenced by the United States, and I gave him the citation for United States v. Wood, which he had apparently not heard of before. Provensal immediately picked up the distinction, commenced by the United States and one it intervened in.

Judge Cassibry then realized the significance that would be attached to intervention by the United States and decided that although he had previously decided to rule on the Motion, on his own, it should be decided by all three judges on the panel. The plaintiffs then took the position that perhaps the Judges

should decide the 2283 issue at the same time as they decide the Motion to Intervene because the Government's Motion to Intervene might become less complicated or of less significance if the Court was inclined to hold that 2283 did not require the dismissal of plaintiffs' claim.

Judge Cassibry then turned to me and asked for my views on this. I explained that while the Government did not have any strong objections to having the matters decided in the way plaintiffs suggested, that it was our preference that the Motion to Intervene be decided first and without regard to the 2283 issue. I expressed the view that it was our position that the Motion to Intervene should be decided solely on the statutory requirements of Title IX and should not be dependent upon the effect of 2283 on plaintiffs' claim or even on the claim of the United States if we became an intervenor. Judge Cassibry apparently agreed and scheduled a decision on the Government's Motion to Intervene as the first order of business.

He then began to check with Judges Heebie and Ainsworth to find a date when both were free in order to hear oral argument on the Motion. It soon began to appear that the first available date would be during the second week in October. I then suggested that if it was agreeable to the Court, and to the defendants' counsel, the Government was prepared to submit the issue on written briefs; I thought we had to take this accommodating position to minimize the disruptive impact this late intervention might have on the schedules of the Court and the parties. I also thought that the Motion to Intervene was not of sufficient difficulty to warrant oral argument. We agreed to submit the briefs on September 27, 1967.

2. In the course of the conference, Judge Cassibry made the following statements which I thought were of some significance:

(a) At one point Provencal said that the prosecutors of Plaquemines Parish were getting anxious to try the Sobol case; previously, an informal arrangement between counsel and Judge put off the trial in the state courts until the federal courts had them to act on it. Because of this informal agreement the plaintiffs' request for a temporary restraining order had been indefinitely continued. Provencal said that unless the Court ruled promptly he would be obliged to ask the Court to rule on a temporary restraining order -- or some other form of interim relief. He said that the anxiety of the prosecutors to go forward with the Sobol case was based on the risk of having the claim foreclosed by the statute of limitation. In response to this statement by Provencal, the Judge went into a long statement which apologized for the delay that had taken place and said that the delay was caused by his hope that the parties could voluntarily settle this matter. He expressed the view that he believed Sobol had made a "mistake", that he had violated the statute because he was not in "association" with Collins at that time but that it was particularly important for this federal action not to go forward because of its impact upon the Louisiana Bar. He said that he, as well as all the other Judges, was aware of the situation in Plaquemines Parish and that they all get their backs up about Leander Perez, but that the Louisiana statute here being challenged was not terribly different from the statutes in the other forty-nine states, and that the Louisiana Bar had been as good or as bad as the other state bars. On the basis

of this and other comments he made during the course of the conference, I doubt the possibility of obtaining his vote on any ruling holding the state statute unconstitutional. But I also felt that he was sympathetic enough for Sobol's case ("Everyone should be entitled to make one mistake.") and that he would try to find some way of helping Sobol. I did not put forth our theory of temporary suspension during the course of the meeting.

(b) The issue of abstension came up briefly during the course of the conference and the Judge remarked, as though he had given this matter great thought already, that "Dombrowski means to me that if there is a chilling effect, there is no abstension."

3. In the course of my conversations with plaintiffs' counsel, during the day, out of the presence of the Judge and defense counsel, the following was brought to my attention:

(a) At one point the president of the State Bar Association wrote a letter to the officials in the Parish stating that according to the present statute, Sobol should be considered to be "temporary" in the State. I gather this letter was written in response to a letter from Provençal asking the State Bar to participate in this case as amicus. I also gather that the Court is unaware of the existence of this letter, that plaintiffs do not want it to be brought to his attention because it might make the abstension argument even stronger, and further the president of the State Bar Association said that the new legislation was going to be proposed so as to make the present statute more restrictive -- to make sure someone, such as Sobol, could not be considered to be temporarily within the State.

(b) LCDC has hired another staff member for the New Orleans office and this person is from Alexandria, Louisiana, and is applying for admission to the State Bar;

(c) Al Bronstein is of the view that immediately before Sobol's arrest, Leander Perez, ~~Mr.~~ called Judge Leon from New Orleans, asked him whether Sobol had been arrested and Judge Leon replied "No not yet."

4. I was served with a copy of plaintiffs' brief which apparently is addressed to the Motion for Summary Judgment and the merits. I gather the strategy is to convince the Court that they should not decide the Motion for Summary Judgment (even as it relates to the 2283 issue) before the full evidentiary hearing on the merits. Bronstein said that plaintiffs had finished their pre-trial discovery; Provensal said that they had finished their pre-trial discovery insofar as a Motion for Summary Judgment was concerned but that they ~~can't~~ ^{intended to} wait to ~~propose~~ ^{propose} other witnesses for the full evidentiary hearing on the merits.