

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 84-310

TITLE IN RE ROBERT J. SNYDER, Petitioner

PLACE Washington, D. C.

DATE April 16, 1985

PAGES 1 thru 47

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1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: We will hear arguments
3 next in re Robert J. Snyder.

4 Mr. Peterson, I think you may proceed whenever
5 you are ready.

6 ORAL ARGUMENT OF DAVID L. PETERSON, ESQ.,

7 ON BEHALF OF THE PETITIONER

8 MR. PETERSON: Mr. Chief Justice, and may it
9 please the Court, in March of 1983, Robert Snyder was
10 appointed under the CJA Act to represent an indigent in
11 a federal criminal case. This case was tried in May of
12 that year, and in August of 1983, Robert Synder
13 submitted a request for payment.

14 The District Judge approved that request for
15 the most part, and it was then sent on to the Circuit
16 Court of Appeals for final approval.

17 In September of that same year an
18 administrative secretary of the Circuit Court sent a
19 memorandum to the District Judge's office and asked that
20 there be a detailed memorandum submitted to support
21 payment beyond the \$1,000 amount under the CJA Act.

22 QUESTION: When you refer to an administrative
23 secretary, someone in the clerk's office or someone
24 attached to a particular judge?

25 MR. PETERSON: Her title is administrative

1 secretary for Judge Lay, the Chief Judge of the Circuit,
2 Your Honor.

3 The memorandum from the administrative
4 secretary was given to Judge Van Sickle, and she took
5 the matter up with Mr. Snyder. Mr. Snyder then sent in
6 additional records to the District Judge's secretary,
7 which additional records included his computer printouts
8 for his billing.

9 The administrative secretary of the Eighth
10 Circuit, upon receiving that, made yet another request
11 to the District Judge's secretary, returning the
12 voucher, stating essentially in that memorandum that the
13 information required under the Act was there but she
14 didn't particularly prefer it in that form.

15 The Eighth Circuit secretary's request was
16 again given to Mr. Snyder, and Mr. Snyder discussed it
17 with the District Judge's secretary. The secretary
18 suggested that Mr. Snyder write a letter to her stating
19 his concerns regarding his frustrations and the
20 frustrations of a counsel in representing indigents and
21 getting their compensation for that representation.

22 Mr. Snyder wrote a letter to this District
23 Judge's secretary on October 6th of 1983, which letter
24 has brought us to this Court today. The content of that
25 letter I believe is important enough for me to read it.

1 It is not very long, and it stated:

2 "I am in receipt of the letter of September
3 26th, 1983, from the Eighth Circuit Court of Appeals in
4 which our latest attempt to justify our time and
5 expenses for Dennis Warren again have been sent back.

6 "This letter is for the purpose of responding
7 to that letter.

8 "In the first place, I am appalled by the
9 amount of money which the Federal Court pays for
10 indigent criminal defense work. The reason that so few
11 attorneys in Bismarck accept this work is for that exact
12 reason. We have up to this point still accepted the
13 indigent appointments because of a duty to our
14 profession and the fact that nobody else will do it.

15 "Now, however, not only are we paid an amount
16 of money which does not even cover our overhead, but we
17 have to go through extreme gymnastics even to receive
18 the puny amounts which the federal courts authorize for
19 this work.

20 "We have sent you everything we have
21 concerning our representation, and I am not sending you
22 anything else. You can take it or leave it.

23 "Further, I am extremely disgusted by the
24 treatment of us by the Eighth Circuit in this case, and
25 you are instructed to remove my name from the list of

1 attorneys who will accept criminal indigent defense
2 work. I have simply had it.

3 "Thank you for your time and attention. Very
4 truly yours."

5 QUESTION: Mr. Peterson, would you think that
6 that same message could have been communicated in more
7 respectful, diplomatic terms?

8 MR. PETERSON: There is no doubt, Your Honor,
9 that different authors attempting to put across the same
10 point could have said it in a more diplomatic fashion.

11 The District Court's secretary discussed this
12 letter with Mr. Synder, and then the District Judge
13 discussed the letter with Mr. Snyder. The District
14 Judge, after that discussion with Mr. Snyder, directed
15 his secretary to send that letter on to the Eighth
16 Circuit Court of Appeals.

17 The District Judge has stated, and it is in
18 the record in this case, and I quote, "I did not view
19 the letter as one of disrespect for the court, but
20 rather one of a somewhat frustrated lawyer hoping that
21 his comments might be viewed as a basis for some change
22 in the process."

23 The Circuit Court, however, obviously viewed
24 the letter differently, and the Chief Judge wrote to the
25 District Judge stating that he questioned whether or not

1 Mr. Synder was worthy of practicing law in the federal
2 courts on any matter, and indicated that he was going to
3 issue an order to show cause as to why Mr. Snyder should
4 not be suspended from practice for a one-year period.

5 The Chief Judge then approved the fee request
6 to the extent of the \$1,000 statutory limit, and
7 returned it to the District Court office.

8 In addition, the Chief Judge wrote another
9 letter to the District Court stating that if Mr. Synder
10 would apologize to the court for his disrespectful
11 remarks, and that he would in the future comply with the
12 CJA Act and the guidelines, that the Chief Judge would
13 then recommend that a show cause order not be issued by
14 the Eighth Circuit and become a matter of public
15 record.

16 The District Judge talked to Mr. Snyder at
17 that point and wrote to the Chief Judge after that
18 conversation advising the Chief Judge that Mr. Snyder
19 saw his letter as an expression of honest opinion and an
20 exercise of his right of freedom of speech, and that he
21 has decided not to apologize.

22 A show cause order was then issued directing
23 Mr. Snyder to show cause why he should not be suspended
24 from practice, and I quote, "for such period of time as
25 his refusal to serve continues."

1 Mr. Snyder responded, pointing out that the
2 Criminal Justice Act plan in effect in North Dakota at
3 that time which had been approved by the Eighth Circuit
4 Court of Appeals in the 1960's was indeed and in fact a
5 voluntary plan.

6 In other words, it specifically stated that
7 only those lawyers that agreed to serve had to serve.
8 He further pointed out that he had absolutely nothing
9 but the greatest respect for the federal courts.

10 A hearing was had before the Circuit panel,
11 and that panel consisted of the Chief Judge and two
12 other judges of that court. Even though Mr. Snyder did
13 make a request that the hearing be an en banc hearing,
14 and further requested that the Chief Judge recuse
15 himself, both of those requests were denied.

16 At the hearing, the Circuit Court soon
17 recognized that the CJA plan in North Dakota was indeed
18 and in fact a voluntary plan. And when that occurred,
19 they then turned to the issue of the tone of the
20 letter. Judge Arnold specifically at the hearing
21 requested of Mr. Snyder whether or not he was indeed at
22 that point going to apologize for the tone of the
23 letter.

24 Mr. Snyder declined, indicating that that was
25 not the reason stated in the show cause order for his

1 appearance before the court, that he had been asked
2 previously by Chief Judge Lay to apologize and had
3 respectfully declined.

4 QUESTION: Mr. Peterson, was it clear at this
5 stage that the Court of Appeals was relying on the
6 Federal Rule of Appellate Procedure 46(c)?

7 MR. PETERSON: Forty-six had not been included
8 in the order to show cause, Your Honor.

9 QUESTION: If 46 is not it, what did the Court
10 of Appeals suggest was the authority under which it was
11 acting?

12 MR. PETERSON: In reading the order to show
13 cause, they cited a case, Justice Rehnquist, which
14 related to the fact that they had in a previous case
15 indicated that counsel had a duty to serve on indigent
16 cases, and that was basically the essence of the order
17 to show cause, that you have somehow violated your duty
18 by wanting your name taken off this list of persons who
19 represent indigent counsel.

20 QUESTION: I would think if you violate your
21 duty that might well be a basis for the Court of Appeals
22 to take some action against you, but you would still
23 want to know what was the basis that the Court of
24 Appeals thought empowered it to suspend or to
25 discipline?

1 MR. PETERSON: I can only refer you, Justice
2 Rehnquist, to the order to show cause which specifically
3 told him to show cause why he should not be suspended
4 for refusing to continue to serve indigents.

5 QUESTION: And you take the view that that was
6 the sole issue before the court at that time?

7 MR. PETERSON: That is our position, Your
8 Honor.

9 QUESTION: Well, then, how does Judge Arnold's
10 phrase come in, which is where you were in your argument
11 when you were interrupted?

12 MR. PETERSON: Justice Marshall, Judge Arnold,
13 after the return and Mr. Snyder's oral appearance at the
14 panel hearing that day specifically pointed out that
15 under the North Dakota plan it was a voluntary situation.

16 That is when Judge Arnold then, and the
17 transcript is in the appendix, he said, then, I want to
18 turn to this letter, and the tone of the letter that was
19 written to Judge Van Sickle's secretary on October 6th.

20 And from that point forward until today, Your
21 Honor, this case has been a free speech case,
22 notwithstanding the fact that the Eighth Circuit in
23 their response in this case have tried to remove it from
24 a First Amendment case and into the area of conduct
25 rather than speech.

1 QUESTION: Well, Mr. Peterson, before you get
2 to the First Amendment in a case like this, there is
3 ordinarily a presumption that people, Congress, this
4 Court, the Judicial Conference, when they promulgate
5 rules that authorize suspension are aware of the First
6 Amendment, and that you may not have to get to any
7 constitutional question. Perhaps it is just a question
8 of interpreting the rules.

9 MR. PETERSON: Your Honor, that very well may
10 be true, and I think that the Court -- this Court in the
11 Sawyer case specifically declined to get to the First
12 Amendment and reversed a lower court's opinion
13 suspending a lawyer who I would submit the record in
14 that case indicates that her conduct was far more
15 egregious than what is in this case.

16 QUESTION: But that was a state -- wasn't that
17 a state proceeding in Sawyer, or was that a federal
18 proceeding?

19 MR. PETERSON: That was a state proceeding out
20 of the State of Hawaii.

21 QUESTION: You would have to get to the First
22 Amendment, I think, to reverse a state proceeding
23 because you can't do it on a statutory or rule basis.
24 The states are the final arbiters of how their rules are
25 interpreted. But here you are in the federal system,

1 and certainly this Court can speak with some authority
2 on the meaning of the Federal Rules of Appellate
3 Procedure.

4 MR. PETERSON: That is indeed correct, Justice
5 Rehnquist, and I agree that this Court could reverse
6 what has occurred to Mr. Snyder without reaching the
7 constitutional issues that we have addressed in our
8 brief and are attempting to address in this argument.

9 QUESTION: You are mainly doing it on the due
10 process, on the notice aspect?

11 MR. PETERSON: Well, I think under the
12 supervisory powers of this court even over the lower
13 courts, the Courts of Appeals and the Federal District
14 Courts.

15 QUESTION: Then you would be going to the
16 merits, not to the procedure.

17 MR. PETERSON: That's correct.

18 QUESTION: Remarkably, your brief as I read it
19 really just starts right in talking about the
20 constitutional issues, the arguments, First Amendment,
21 due process, and as is so often the case, nobody stops
22 to ask whether there is some other non-constitutional
23 ground which might dispose of the case.

24 Are you going to argue any non-constitutional
25 ground, or do you just rely entirely on the

1 Constitution?

2 MR. PETERSON: Well, Your Honor, our --

3 QUESTION: If there were no constitution,
4 would you think this discipline was entirely
5 appropriate? Is that your position?

6 MR. PETERSON: Absolutely not, Your Honor.

7 QUESTION: But you don't make the argument.

8 MR. PETERSON: We believe that the First
9 Amendment concept is certainly --

10 QUESTION: Your client is really interested in
11 having a First Amendment case made out of this incident,
12 isn't he?

13 MR. PETERSON: Well, my client is most
14 interested, Your Honor, in having what he believes is an
15 injustice to him reversed, and as I have indicated in my
16 response to Justice Rehnquist, I think that the Court
17 could do that without even getting to the First
18 Amendment issue.

19 QUESTION: All the lawyers on this brief, a
20 whole flock of them, none of them thought to make a
21 nonconstitutional argument in this case.

22 MR. PETERSON: Well, Your Honor, I don't agree
23 that none of us thought we couldn't make a
24 non-constitutional argument.

25 Our considered opinion was based not only on

1 what had occurred in this case, but input we have had
2 through the amicus and so forth that this issue
3 regarding First Amendment rights and lawyers' speech in
4 relationship to the courts is one that needs to have
5 some direction, and hopefully from this Court.

6 QUESTION: Well, Mr. Peterson, if you were
7 going to make a non-constitutional argument, what would
8 you rest it on?

9 MR. PETERSON: The non-constitutional
10 argument, Justice O'Connor, would rest upon the basis
11 that simply the facts of this case do not warrant the
12 extreme sanction which was given Mr. Snyder, which was
13 the suspension of his right to practice in the court.

14 And it is interesting to note that it was not
15 just a term suspension, that he would automatically be
16 reinstated, but that he had to reapply, and we can only
17 surmise that upon reapplying the request would have
18 been, will you now apologize?

19 QUESTION: Would your approach in response to
20 Justice O'Connor's question be something in the nature
21 of confession and avoidance in the sense that it may
22 have been an unwise, even a foolish letter, but it was
23 not a contemptuous or disrespectful letter?

24 MR. PETERSON: That may be a fair
25 characterization, Mr. Chief Justice. Our problem is,

1 the Eighth Circuit has indicated, apparently, that a
2 disrespectful letter, whatever that is, is grounds for
3 suspension, and that is simply such a vague basis, and
4 it is clearly demonstrated by virtue of the fact that
5 the District Judge to whom -- to whose secretary this
6 letter was initially written has said in an affidavit
7 which is in the record that he didn't find this
8 disrespectful, but the Eighth Circuit says that it was.

9 And because they are a higher court, Mr.
10 Snyder finds himself suspended from practice not only in
11 the Eighth Circuit but also in Ms. Van Sickle's court.

12 QUESTION: Has that order been stayed, by the
13 way.

14 MR. PETERSON: It has, Your Honor, by Justice
15 Blackmun.

16 QUESTION: Well, I suppose even if you are
17 arguing a non-constitutional basis under Rule 46, that
18 how you construe and apply that rule might be
19 considerably affected by the fact that there are First
20 Amendment concerns in the wings, and that you should
21 avoid some constitutional issue.

22 MR. PETERSON: There is no question, Justice
23 White, in our mind, at least, that under Rule 46, the
24 federal courts have the power to discipline lawyers.
25 Our concern is that if that power is going to be

1 exercised, there needs to be some kind of guideline so
2 that the lawyer and the court both know and can apply to
3 a given factual situation --

4 QUESTION: Certainly a guideline that would
5 avoid First Amendment constitutional issues.

6 MR. PETERSON: That is correct, Justice
7 Blackmun.

8 We believe that the circuit decisions which
9 are also a part of the record clearly indicate that in
10 those opinions, Mr. Snyder was suspended because of his
11 -- the so-called disrespect indicated in his letter, and
12 for his refusal to apologize for what the Eighth Circuit
13 determined was disrespect.

14 The Eighth Circuit contends, as I understand
15 their argument, that he was not suspended for that, but
16 indeed he in fact was suspended for failure to comply
17 with the CJA guidelines.

18 QUESTION: When he concluded his letter "take
19 it or leave it," do you suggest that was a respectful
20 way to address the judicial branch of the government?

21 MR. PETERSON: Well, Your Honor --

22 QUESTION: I am talking about the terms now,
23 not the substance, the language.

24 MR. PETERSON: Certainly again I must confess
25 that it could have been put in less stringent terms, but

1 I don't think that that lessens the fact that he had the
2 right to say what he did. I further believe that there
3 is a question as to whether or not it was indeed
4 directed to the court.

5 It was directed at the request of the
6 secretary. She said write me a letter about your
7 concerns, and she has so stated, and the affidavit is in
8 the record.

9 QUESTION: And you say he was addressing the
10 system and not the judge, that is, the system of
11 appointment of counsel? Somewhere in your brief I get
12 that --

13 MR. PETERSON: That is correct, Mr. Chief
14 Justice.

15 QUESTION: One thing that came out of his
16 letter was a change in the system.

17 MR. PETERSON: That is exactly right, Justice
18 White. As a matter of fact, the opinion clearly
19 indicates that the Eighth Circuit determined after
20 reviewing the plan that that plan needed some revision,
21 and they directed the Judicial Council and the District
22 Court to in cooperation with the bar associations
23 attempt to revise the plan.

24 So, I think that one might query as to whether
25 or not had Mr. Snyder said everything very respectfully,

1 it may not have even gotten to the point where anyone
2 would have paid any attention to it, and so perhaps if
3 he had not used the strident language, the deficiencies
4 in the plan might not have been discovered, and the
5 attempt to revise and reinstitute that plan would not
6 have occurred.

7 QUESTION: Here is a difficult question.
8 Perhaps you aren't qualified to answer it. But do you
9 think it is possible that if he was addressing that
10 letter to the Chief Judge of the Court rather than to in
11 effect a clerk or a staff member, he might have had a
12 different tone to the letter?

13 MR. PETERSON: I cannot answer that question,
14 Mr. Chief Justice.

15 QUESTION: One would ordinarily be a little
16 more careful addressing a letter "Dear Chief Judge Lay"
17 rather than "Dear Ms. Perkins" or whatever.

18 MR. PETERSON: He certainly would, Your
19 Honor.

20 The position of the petitioner in this case is
21 that the suspension of Robert Snyder for writing what
22 has been adjudged by the Eighth Circuit to be a
23 disrespectful letter to a Federal District Judge's
24 secretary does present this Court with an issue critical
25 to the legal profession.

1 The critical issue is whether or not the First
2 Amendment applies to the legal profession, and if it
3 does, what standard shall be applied in evaluating the
4 contents of the attorney's statement.

5 QUESTION: May I ask one question, Mr.
6 Peterson? Should we assume for purposes of this issue
7 that the letter was or was not disrespectful?

8 MR. PETERSON: Well, Your Honor, our position
9 is that the --

10 QUESTION: You claim a First Amendment right
11 to write disrespectful letters to judges?

12 MR. PETERSON: Yes, Your Honor.

13 QUESTION: You do. So then we will assume it
14 is a disrespectful letter for the purpose of this
15 argument.

16 MR. PETERSON: I think that the Court can
17 assume that it is a disrespectful letter, and based upon
18 the First Amendment rights that individuals have, that
19 whether or not it is -- that the term "disrespectful" is
20 so vague that it cannot survive the First Amendment
21 scrutiny.

22 QUESTION: Well, I must say, though, whether
23 it is vague or not, there will be an awful lot of
24 language that there wouldn't be any doubt about that it
25 is disrespectful, and there may be some arguments on the

1 fringe, but I would suppose you would just assume in
2 this case that this was a disrespectful letter, and say
3 that nevertheless, as you have said, he may not be
4 suspended for that.

5 MR. PETERSON: That is correct, Your Honor,
6 and our concern is that because at least in the Eighth
7 Circuit, in the Circuit Courts that Mr. Snyder has
8 practiced and Mr. Hill and I practice, we now have a
9 standard at the Eighth Circuit level that if we write a
10 letter that is disrespectful, whatever that is --

11 QUESTION: Or say anything disrespectful.

12 MR. PETERSON: Or say anything disrespectful,
13 we stand to be suspended from our right to practice
14 law.

15 QUESTION: Rule 46(c) doesn't even use the
16 word "disrespectful." It uses the term "conduct
17 unbecomig a member of the bar."

18 MR. PETERSON: That is correct, Justice
19 Brennan.

20 QUESTION: So disrespectful is something, it
21 is just almost a word floating around in the air, so far
22 as I can see. It is not anchored to any provision of
23 the rules under which the Court of Appeals acted.

24 MR. PETERSON: That is correct, Your Honor.

25 QUESTION: Would you take the position that

1 this was "disrespectful" if it was addressed to anybody
2 other than a judge? If he had written this to his law
3 partner, would it have been disrespectful?

4 MR. PETERSON: I don't know what disrespectful
5 is, Your Honor.

6 QUESTION: That is exactly where I am, and I
7 was trying to get some help.

8 QUESTION: If you had a circuit executive --
9 you do not have a circuit executive in the Eighth
10 Circuit?

11 MR. PETERSON: I believe that there is an
12 administrative circuit executive, Your Honor.

13 QUESTION: If he had addressed this to the
14 circuit executive instead of to the administrative
15 secretary, what would you say about that letter?

16 MR. PETERSON: Well, one of the issues, and
17 this Court has addressed it in cases not related to the
18 legal profession, and they have set up the clear and
19 present danger standard, and it sets up a series of
20 questions --

21 QUESTION: Now you are on First Amendment
22 again. I am talking about the ordinary communication
23 between lawyers. A lawyer in this courtroom at that
24 lecturn might conduct himself in such a way with his
25 tone of voice and his manner that he would be swiftly

1 dealt with in contempt terms. I am sure you acknowledge
2 that.

3 MR. PETERSON: That is exactly correct, Your
4 Honor.

5 QUESTION: So that the First Amendment doesn't
6 mean the same at that lecturn or in addressing judges as
7 it means out on the street.

8 MR. PETERSON: That's correct.

9 QUESTION: You agree with that?

10 MR. PETERSON: I do. In this case, that is
11 another issue, because was this letter -- is this letter
12 to be treated as one addressed to the court, or -- and
13 if addressed to the court, if that is the way it is
14 treated, then I think there needs to be a distinction
15 made as to whether or not Judge Lay and his
16 administrative secretary were indeed performing a
17 judicial function at that time or were performing an
18 administrative function.

19 And our position is that at that time, with
20 respect to the processing of that voucher, the
21 performance of those duties related to an administrative
22 function, and therefore the argument by the circuit that
23 somehow he has impeded the administration of justice
24 simply must fail on the facts of this case, again
25 without addressing the issue of the First Amendment.

1 QUESTION: Well, Mr. Peterson, if the same
2 remarks had been made orally in open court directly to
3 the judge, would you think that you would be taking that
4 same position? In the presence of other people, in open
5 court.

6 MR. PETERSON: Justice O'Connor, the remarks
7 in the letter do not offend my sensibilities. They may
8 well have and apparently did offend the sensibilities of
9 the Eighth Circuit panel. And my position would be that
10 if those same remarks were made within the courtroom,
11 that that still would not serve as a basis for
12 suspension of the individual's right to practice.

13 QUESTION: You don't think then that there is
14 any difference between the standards the court could
15 properly apply when you are talking about a
16 communication between a member of the legal profession,
17 a lawyer, and the judge, and the standards that would
18 apply in a courtroom where a lawyer is addressing a
19 judge, where there are a number of people present.

20 MR. PETERSON: There are -- certainly, Justice
21 Rehnquist, if there are comments made to the court in
22 the presence of others in a judicial proceeding of an
23 obscene nature, something much more egregious than what
24 is in this case, I would agree that the court could
25 certainly take action under Rule 46 or their powers of

1 control of the courtroom and put that lawyer in his
2 place, so to speak, but I do not think that the language
3 in this particular letter is of such egregious nature
4 that that could or should be done.

5 QUESTION: You wouldn't think, I don't
6 suppose, that if the District Judge had actually ordered
7 him to represent a person, and had it done so in open
8 court, the court could -- that he could say, I refuse to
9 obey your order because this is a lousy system, take it
10 or leave it.

11 MR. PETERSON: That is different, Your Honor,
12 because now we are talking about an order.

13 QUESTION: All right. So he couldn't have
14 said what he said in the courtroom if the judge had
15 ordered him to --

16 MR. PETERSON: If the judge had issued an
17 order and said, you will represent John Jones in this
18 case, he has to do that. Yes, Your Honor.

19 QUESTION: And it wasn't an order that he
20 disobeyed, I take it. It was just a request from a
21 clerk?

22 MR. PETERSON: It was just a request from an
23 administrative secretary to send me some more
24 information, which she conceded she already had but it
25 was not in the form she wanted.

1 QUESTION: If the letter had come from a
2 judge --

3 MR. PETERSON: It would still -- if it was
4 exactly the same language, it was still a request and
5 not an order.

6 Thank you.

7 CHIEF JUSTICE BURGER: Very well.

8 Mr. Greer.

9 ORAL ARGUMENT OF JOHN J. GREER, ESQ.,
10 ON BEHALF OF THE UNITED STATES COURT OF APPEALS
11 FOR THE EIGHTH CIRCUIT

12 MR. GREER: Mr. Justice, and may it please the
13 Court, we do not believe that this is a First Amendment
14 case. If certiorari has been granted predicated upon a
15 contrary view, we may be wasting your time.

16 In this day and age, people seem to do or not
17 do or say anything. Not so a lawyer. The practice of
18 law carries with it a clear obligation to comply
19 respectfully at all times.

20 All this Court did was seek to get compliance
21 with the CJA from this young man. That is it in its
22 entirety.

23 QUESTION: How do you square that, Mr. Greer,
24 with the request for the apology? The administration of
25 the Criminal Justice Act is one thing. We probably

1 wouldn't have much disagreement among any of us the
2 importance of it, the importance of counsel being
3 appointed.

4 But I get from this record that the order to
5 show cause was not addressed so much to the system as to
6 the content of the letter, apart from the refusal to
7 serve.

8 MR. GREER: Mr. Chief Justice, I think I have
9 to respond to that in this fashion. The whole matter
10 starts with the SGA -- or the CJA. Here, he accepted
11 this obligation to defend this man, and as a part of it
12 he had to present his statement.

13 If the court will take the time to look at
14 that original Form 20, it will determine quickly that it
15 is at a figure entirely different from the second
16 submission, the so-called computer sheets.

17 Now, the variance between the two figures,
18 \$1,895 and \$1,696, may be insignificant, but the fact is
19 that the Chief Judge of this Court, the Eighth Circuit,
20 has to administer this Act. All of the Federal Courts,
21 as we understand it, have to administer the CJA.

22 I think some 2,000 people are appointed every
23 year in the Eighth Circuit to carry out this work. In
24 the 17 years, this is the first time that such a
25 situation has arisen.

1 Here, this young man, the petitioner, did not
2 comply with the Act because he did not verify his
3 statement, and he did not present it in acceptable form,
4 and he said that his reasons for that were, as his note
5 in the margin states, that it is a computer problem.

6 Then later he said at the hearing, well, if
7 there is a \$200 difference, you could pay it. He also
8 said at the hearing we would not forward the detail
9 about our telephone bill because that is privileged
10 information.

11 The Court has to decide how this money will be
12 spent, and he has to decide it just like any other Chief
13 Judge. He has to depend upon the people who do the work
14 for him. This failure to file these claims in the
15 manner that is required has cost unnecessary time,
16 countless thousands of --

17 QUESTION: Well, Mr. Greer, I understood, and
18 maybe incorrectly, that Mr. Snyder has now agreed to
19 comply with all the CJA requirements.

20 MR. GREER: We do not agree that he has,
21 Justice O'Connor.

22 QUESTION: You say he has not made that
23 agreement.

24 MR. GREER: We say that his letter, and if the
25 Court will examine that letter, his letter is a

1 conditional acquiescence. If the rule is changed he
2 will comply. That is what we got. And we also got --

3 QUESTION: And has the rule been changed?

4 MR. GREER: The rule has been changed by
5 reason of the Judicial Conference action. Yes, Your
6 Honor.

7 QUESTION: And so presumably his condition is
8 met, and he would be willing to comply?

9 MR. GREER: In the future, we don't know, of
10 course.

11 QUESTION: But that was the assurance that he
12 made in any event.

13 MR. GREER: The only assurance that the court
14 got really is the conditional assurance, but that was --

15 QUESTION: Is it correct that the suspension
16 was made because of Mr. Snyder's refusal to apologize
17 for the tone of his letter?

18 MR. GREER: I do not believe so, Justice
19 O'Connor. I believe the suspension came about by reason
20 of the totality of these events, starting with the
21 absolute refusal to present the account in the manner in
22 which it should be presented, and we call attention of
23 the Court back to 1981. This man, the petitioner, had a
24 letter perfect claim, down to \$1.46 for a phone call to
25 Cannonball, North Dakota. So he knew how this was to be

1 done. He simply --

2 QUESTION: Mr. Greer, wouldn't one way to
3 handle that be not to pay him?

4 MR. GREER: One way to handle it would be not
5 to pay it, Justice Marshall, without question, and, of
6 course, a substantial part has not been paid.

7 QUESTION: Mr. Greer, supposing he in every
8 polite language said I just am too busy to fill out all
9 these forms, and I told you what my estimate of hours
10 was, and if you won't pay me, I won't do any more CJA
11 work, and you just pay me what you think I am entitled
12 to, and that is is.

13 Could he have been suspended for that? You
14 could refuse to pay him, but do you think that there is
15 power for -- I mean do you think it is appropriate
16 judicial action for the Eighth Circuit to suspend a
17 lawyer for taking that position?

18 MR. GREER: If that were the only fact, I
19 would not say --

20 QUESTION: But isn't that the only fact in the
21 rule to show cause? What in the rule to show cause
22 justified suspension?

23 MR. GREER: In the rule to show cause he was
24 charged, of course, with two things, failing to agree,
25 in essence, to comply with the CJA --

1 QUESTION: I would suggest that he could do
2 that in a very polite, mild way.

3 MR. GREER: Pardon me?

4 QUESTION: And he could have done that in a
5 very polite, mild way.

6 MR. GREER: And failing to comply with the
7 requirements of the CJA.

8 QUESTION: Which is really the same thing.

9 MR. GREER: Well, except for the detail, Your
10 Honor. The administrative detail.

11 QUESTION: Then the Court's remedy is, as has
12 been suggested, not pay the voucher. That has happened
13 in every circuit in this country today because of the
14 frustration of both lawyers and judges in trying to deal
15 with this difficult problem.

16 MR. GREER: But in this instance, because of
17 the letter, and because of the failure to file the claim
18 as was required, and because of the knowledge that the
19 court had that this was a deliberate matter, it did not
20 remove the onus of all of those factors.

21 QUESTION: Mr. Greer, are you in agreement
22 that the Court of Appeals was proceeding under Rule 46
23 of the Federal Rules of Appellate Procedure?

24 MR. GREER: I think the Eighth Circuit had to
25 be proceeding under 46.

1 QUESTION: And 46(c)?

2 MR. GREER: And 46(c).

3 QUESTION: So the Court of Appeals to sustain
4 its action has to show that petitioner's conduct was
5 conduct unbecoming a member of the bar?

6 MR. GREER: Yes, Your Honor.

7 QUESTION: Suppose we don't wholly agree with
8 you, and suppose we think that the Court of Appeals did
9 suspend this man for having written a disrespectful
10 letter and having refused to apologize. Let's just --
11 we think that is what the court did.

12 What is your reaction?

13 MR. GREER: My reaction to that is that this
14 Court would be substituting a different standard,
15 because all of the --

16 QUESTION: We have to -- we have to decide
17 some things here. Suppose we read the record, and we
18 think the Court of Appeals suspended him for being
19 disrespectful. Do you think that is proper under the
20 rule or under the Constitution?

21 MR. GREER: I think it was in this instance,
22 Your Honor. I think that he knew where he was and why
23 he was there, and --

24 QUESTION: Well, just wholly aside from the
25 due process issue, let's assume he had plenty of

1 notice. Suppose he had issued a rule to show cause and
2 said, tell us why you shouldn't be suspended for being
3 disrespectful, and he came and said, I am not going to
4 apologize, I just have a right to be disrespectful, and
5 they suspended him.

6 Is that consistent with the rule and the
7 Constitution?

8 MR. GREER: Well, Your Honor, I think this. I
9 think that he was there. They had to have some
10 redress. Some way courts have to have orderly progress
11 with every phase of court action, administrative as well
12 as judicial. That is what I think is required here.

13 QUESTION: Mr. Greer, if this man had said in
14 the courtroom what he said in that letter, and had the
15 tone that one could reasonably draw from the letter,
16 then we would have a more difficult assignment here,
17 because we had not heard him, and we had not seen his
18 facial expression, or the people in the courtroom had
19 not, but here it is all written. We have everything
20 that the Court of Appeals had, do we not?

21 MR. GREER: Yes, Your Honor.

22 QUESTION: Would you concede that we are in as
23 good a position to make the judgment as the Court of
24 Appeals was capable of making it?

25 MR. GREER: I think this Court is in as good a

1 position as the Court of Appeals, because I think if the
2 Court examines the total record, the Court will see the
3 actual conduct of the petitioner.

4 QUESTION: I did not find in the record any --
5 maybe I have missed something, any concession by him
6 that his conduct was disrespectful. I get the
7 impression that he was stating the facts, but not that
8 he was admitting to any disrespectful utterance.

9 MR. GREER: Well, my answer to that, Your
10 Honor, is this, that his utterances, I guess, can be
11 categorized by him, but the view of the three judges,
12 Judge Arnold, Judge Haney, and Judge Lay, was to the
13 effect that unless they had some further assurance from
14 him with respect to compliance, they had to take some
15 action.

16 Here, this Court literally begged this man, I
17 think, five times to just say that he would comply with
18 the CJA.

19 QUESTION: Well, I thought, reading the
20 colloquy with Judge Arnold, I thought Judge Arnold's
21 insistence was that he apologize, not that he comply
22 with the CJA.

23 MR. GREER: Judge Arnold suggested --

24 QUESTION: Did his colleagues on the panel --
25 were they not also insistent that he apologize?

1 MR. GREER: It was a condition --

2 QUESTION: It had nothing to do with the CJA.
3 It was to apologize for having written the letter,
4 wasn't it?

5 QUESTION: Or for both.

6 MR. GREER: Well, or apologize for the
7 continued refusal to comply with the Act, Justice
8 Brennan.

9 QUESTION: That is not the way I read the
10 colloquy, with all respect.

11 MR. GREER: The standard, as I think we have
12 observed it in the Eighth Circuit, is that people who
13 are practicing law there do not use it as a forum to
14 criticize the Congressional mandate or the court,
15 although we know that that is permissible, and it can be
16 done, it is done.

17 QUESTION: You say don't use it as a forum,
18 meaning don't use the Court of Appeals as a forum?

19 MR. GREER: Right.

20 QUESTION: But this whole thing was initiated
21 by a request from the administrative secretary. I mean,
22 Mr. Snyder wasn't simply volunteering his views of the
23 whole situation without any request whatever.

24 MR. GREER: The request, Justice Rehnquist,
25 from the secretary was a request to comply with the

1 provisions of the Criminal Justice Act so that it could
2 be legitimately processed. That's what I understand.

3 QUESTION: You say that you couldn't use the
4 Court of Appeals for a forum. You would feel it is
5 entirely proper for Mr. Snyder to have written this same
6 language to a local newspaper.

7 MR. GREER: I think he would have a right to
8 do that, I guess, if he wished.

9 QUESTION: Why is it any worse to do it the
10 way he did it, to address it to a third party with the
11 knowledge it would come to the attention of the Chief
12 Judge?

13 MR. GREER: I don't know that it is any worse
14 in that sense, Your Honor, but I know that by reason of
15 the letter, and he acknowledges this in his brief and in
16 his argument, had he apologized for the letter at the
17 outset, nothing further would have happened.

18 QUESTION: Yes, but his position was, he had
19 nothing to apologize for.

20 MR. GREER: Or had he performed by completing
21 those Form 20's correctly and said that he would
22 represent indigent criminals without reservation, there
23 would not have been any reason for censure.

24 QUESTION: Does the law compel him to
25 represent them?

1 MR. GREER: I think, Your Honor, that the
2 Eighth Circuit had assumed that all lawyers when given
3 the responsibility of defending an indigent would be
4 required for the indigent at the instance of the court.

5 QUESTION: Mr. Greer, the panel of the Eight
6 Circuit Court of Appeals found that the petitioner was
7 disrespectful and contemptuous. What exactly in your
8 opinion constituted the disrespect and the contempt?

9 The letter was written to a secretary about an
10 administrative matter. Did that constitute contempt or
11 disrespect?

12 MR. GREER: Well, we have treated the letter,
13 Justice Powell, as being, although processed again
14 through the secretarial --

15 QUESTION: Let's take it step by step. Was
16 the letter to the secretary complaining about an
17 administrative, not a judicial matter, contemptuous or
18 disrespectful?

19 MR. GREER: I think it was disrespectful.

20 QUESTION: Disrespectful. The letter was not
21 made public.

22 MR. GREER: That is true.

23 QUESTION: So you would say that the letter
24 itself was disrespectful and contemptuous also?

25 MR. GREER: I think it became contemptuous

1 when there was no way that the court could rationalize
2 or bring the petitioner to the point of compliance.

3 QUESTION: Well, in the end, the -- was
4 voluntary. Apparently the court was unaware of that.

5 MR. GREER: That is true.

6 QUESTION: And most of the lawyers in the
7 state, a large percentage of them never complied with
8 it.

9 MR. GREER: Most of the lawyers, as I
10 understand it, in North Dakota were not requested by
11 reason of the Act, but almost all, since we have been
12 lawyers, at any request from a federal court would have
13 represented the indigent without one.

14 QUESTION: Mr. Greer -- are you through?

15 QUESTION: Yes, I am through. I just find it
16 a little difficult to identify the contempt --

17 QUESTION: I wish I could get some help on
18 that. What words were "disrespectful?"

19 MR. GREER: The words in the letter "Take it
20 or leave it," "I have had it up to here," "puny fees."

21 QUESTION: But, Mr. Greer, both Ms. Monteith
22 and Judge Van Sickle in separate affidavits said -- the
23 two recipients of the letter each said he or she did
24 not regard it as disrespectful. Isn't that rather
25 persuasive against --

1 QUESTION: It might have applied to the
2 money. He didn't say, I think that the judge is, did
3 he? And you say out in the Eighth Circuit the judges
4 and lawyers don't talk about judges. They don't
5 criticize me. You are telling me that in the Court of
6 Appeals you never heard a judge talk about a District
7 Judge?

8 MR. GREER: Justice Marshall, I know that
9 lawyers can criticize courts and not be disrespectful.

10 QUESTION: I have trouble with the
11 disrespectful part. Who else could you say that to and
12 be disrespectful other than a judge? Could you tell the
13 governor, I have had it? Would that be disrespectful?

14 MR. GREER: I think it could be disrespectful,
15 Justice Marshall.

16 QUESTION: To the judge? To the government?

17 QUESTION: But there would be no remedy.

18 MR. GREER: The only remedy that the courts
19 have that I know is the one that has been enforced, and
20 that would apply to this Court --

21 QUESTION: What about the contempt power?
22 What about reprimands? What about censures?

23 MR. GREER: I admit, Chief Justice, that there
24 are lesser sanctions. I didn't mean to not respond,
25 Justice Stevens.

1 QUESTION: I should add, and I don't mean to
2 complement your problems, but I notice that in response
3 to Ms. Monteith's affidavit also bears on his
4 willingness to cooperate with the duty of the lawyer to
5 represent indigents, because she points out that he has
6 always been willing to accept his share and more of the
7 indigent defense cases in this division of the district,
8 which is consistent with the duty of a lawyer to try and
9 help out in a very serious problem.

10 MR. GREER: Yes, we do not find fault with
11 that comment under the total facts in this record. It
12 is just the sudden abandonment of it for some reason
13 that brings us here.

14 I believe that the totality of the acts,
15 failures to act, the letter, the letter making the
16 conditional acceptance of further service under the CJA,
17 all of these, which really are just responses to this
18 court which sought to have him do what the lawyer should
19 do without all of this trouble, fell short of the
20 requirements of the Eighth Circuit.

21 QUESTION: Do you think there is a difference,
22 Mr. Greer, between this letter being addressed to the
23 circuit executive clerk of the court or the
24 administrative secretary on the one hand and the chief
25 judge on the other?

1 MR. GREER: I don't believe so, Chief Justice,
2 because all courts have to function with their
3 supportive personnel, including this one. There just is
4 not time in this day and age to conduct all of the
5 trial, conduct all of the hearing --

6 CHIEF JUSTICE BURGER: We will resume there at
7 1:00 o'clock.

8 (Whereupon, at 12:00 o'clock p.m., the Court
9 was recessed, to reconvene at 12:59 o'clock a.m. of the
10 same day.)
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1 AFTERNOON SESSION

2 CHIEF JUSTICE BURGER: Mr. Greer, you may
3 continue.

4 ORAL ARGUMENT OF JOHN J. GREER, ESQ.,

5 ON BEHALF OF THE UNITED STATES COURT OF APPEALS

6 FOR THE EIGHTH CIRCUIT - RESUMED

7 MR. GREER: Mr. Chief Justice, and may it
8 please the Court, it seems that Rule 46 is questioned by
9 the petitioner. We take the position that Rule 46 is
10 not vague, that it has been workable since the Rules of
11 Civil Procedure have been adopted, and that it is the
12 instrument to have conformity in the respective federal
13 courts, including this one, and we refer, of course, to
14 your Rule 33.7.

15 If responsibility is to be placed upon the
16 Chief Justice and the Chief Judge for administration of
17 the courts, he has to have power coupled with that to at
18 least regulate performance in the court.

19 The bottom line, it seems to me, out of all of
20 this travail, is what factually has occurred in total
21 and what factually should be appraised in total, and how
22 the judicial approach should face it.

23 It seems to me that if this court -- I am
24 talking now, of course, about the Eighth Circuit --
25 cannot properly decide what the standard is under Rule

1 46, we are in real trouble.

2 QUESTION: Do you suggest that their capacity
3 or authority is different from ours in that regard?

4 MR. GREER: No, I do not, except I say this,
5 Chief Justice Burger. They are there. They know how
6 lawyers act throughout the Eighth Circuit, they try as
7 reasonable, prudent lawyers and judges to apply the
8 standard that they believe should be applied, and it is
9 not the standard that is or could be applied in a review
10 time measured beyond the event and circumstances perhaps
11 less significant than they were at the time.

12 What I am urging upon the Court for and on
13 behalf of the Eighth Circuit is that the Court not
14 deviate or get way from Rule 46. It seems to me and
15 seems to the Circuit, I am sure, to be workable. The
16 circuit has to deal with its lawyers day in and day
17 out. That is what they have tried to do.

18 Those men, Judge Lay, Judge Arnold, Judge
19 Haney, are not capricious. They are not unintelligent.
20 And they did the best they could under these
21 circumstances. They were told by this petitioner that
22 he was extremely disgusted with the court. I would hate
23 to make that statement before this Court and not believe
24 that I would be sanctioned under Rule 33.7.

25 True, there is a flexibility. We don't

1 complain about the flexibility. This is the highest
2 court in the land. This is where the argument stops.
3 How did the Eighth Circuit commit any fault when they
4 listened to the petitioner say that it was his
5 conscience as a lawyer that told him to not obey the law
6 and to not follow the mandates of the Congress?

7 How can this Court afford the time to review
8 instances like this which will occur all through the
9 United States if a mistake is made here? It is a
10 weighing of the word "disrespect" and its applicability
11 to Rule 46.

12 'QUESTION: Don't you think it is rather
13 extraordinary for a person to be suspended by a Court of
14 Appeals for writing a letter to a functionary in the
15 District Court where neither the functionary nor the
16 District Court thought that anything untoward had been
17 done, and then somehow the Court of Appeals finds out
18 about this letter that has been written to the District
19 Court? Does the Court of Appeals usually take it upon
20 itself to second guess the District Judge as to what
21 warrants some kind of penalty?

22 MR. GREER: Justice White, I believe the only
23 way the court can be administered is the way that it was
24 administered in this case. I cannot explain Judge Van
25 Sickle's approach. In the record, he entreated the

1 petitioner to not go on.

2 QUESTION: Well, suppose Judge Van Sickle had
3 issued an order to show cause why this man should not
4 have been suspended from practice in his court, and he
5 had a hearing and decided he shouldn't be suspended from
6 his court.

7 MR. GREER: That would be Judge Van Sickle's
8 judgment weighed against the judgment of the Eight
9 Circuit.

10 QUESTION: The Court of Appeals could just
11 take it on itself then to suspend him from their court
12 for his conduct before the District Judge. That is what
13 happened here anyway.

14 MR. GREER: I don't believe that that is what
15 happened here, Your Honor.

16 QUESTION: You emphasize, Mr. Greer, that the
17 Court of Appeals are there, on the ground. By
18 implication we are not, which is correct. But by the
19 same token Judge Van Sickle was on the firing line more
20 immediately than the Court of Appeals, was he not?

21 MR. GREER: I have to admit that Judge Van
22 Sickle was there dealing with this problem initially. I
23 don't understand under the record exactly what Judge Van
24 Sickle did when he interefered with the original bill
25 and then sent it on. These are things I don't

1 understand. When we file Form 20's and try to secure
2 money under the Act, we do it not with the idea that
3 this will be compromised, nor that if we walk away from
4 the bill it is okay. That is not what we do. Not out
5 in our Eighth Circuit.

6 CHIEF JUSTICE BURGER: Thank you.

7 Do you have anything further, Mr. Peterson?

8 ORAL ARGUMENT OF DAVID L. PETERSON, ESQ.,

9 ON BEHALF OF THE PETITIONER - REBUTTAL

10 MR. PETERSON: Mr. Chief Justice, and may it
11 please the Court, very quickly, I would like to, in
12 response to a question Justice O'Connor posed regarding
13 whether or not the record reflected that Mr. Snyder
14 agreed to again serve and comply with the guidelines,
15 simply refer the Court to Mr. Snyder's letter dated
16 February 22nd, of 1984, which is on Page 51 of the Joint
17 Appendix.

18 Additionally, the Eighth Circuit acknowledged
19 that fact that he agreed to again serve upon the panel
20 being reconstituted and to comply with the guidelines in
21 their first opinion, and that is found on Page 59 of the
22 Joint Appendix, where they specifically say and
23 recognize that he in fact and indeed has now agreed to
24 serve in indigent cases and to comply with the CJA
25 guidelines.

1 "However, he has otherwise refused to retract
2 or apologize for his disrespectful remarks to the
3 court."

4 And finally, Mr. --

5 QUESTION: When you use the term "his
6 disrespectful remarks to the court," are you quoting?

7 MR. PETERSON: Yes, Your Honor. I am quoting
8 from Page 59 of the Joint Appendix out of the opinion of
9 the Eighth Circuit panel in the first case.

10 QUESTION: I understood in your argument in
11 chief you took the position that these were not
12 disrespectful remarks to the court.

13 MR. PETERSON: That is correct. I am simply
14 pulling that out of the opinion to underscore the fact
15 that in our opinion he was suspended for what the Eighth
16 Circuit perceived were disrespectful remarks.

17 In conclusion, Your Honors, my opponent has
18 indicated that the petitioner never said -- or that the
19 petitioner said he would not obey the law. This record
20 has absolutely no evidence that would indicate that Mr.
21 Snyder ever said he would not obey the law.

22 All Mr. Snyder has said consistently from
23 before the time the order to show cause was issued was
24 that he would not apologize for saying what he believed
25 was a truthful comment regarding concerns he had

1 respecting the CJA Act.

2 Thank you very much.

3 CHIEF JUSTICE BURGER: Thank you, gentlemen.
4 The case is submitted.

5 (Whereupon, at 1:09 o'clock p.m., the case in
6 the above-entitled matter was submitted.)
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CERTIFICATION.

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#84-310 - IN RE ROBERT J. SNYDER, Petitioner

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BY Paul A. Richardson

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