BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: APPLICATION OF MEMPHIS NETWORX, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATION SERVICES AND JOINT PETITION OF MEMPHIS LIGHT, GAS AND WATER DIVISION, A DIVISION OF THE CITY OF MEMPHIS, TENNESSEE ("MLGW"), A&L NETWORKS-TENNESSEE, LLC ("A&L") FOR APPROVAL OF AGREEMENT BETWEEN MLGW AND A&L REGARDING JOINT OWNERSHIP OF MEMPHIS NETWORX, LLC.	)	Docket No. 99-00909

MEMORANDUM IN SUPPORT OF MOTION TO SHOW CAUSE - VIOLATION OF PROTECTIVE ORDER

MEMPHIS NETWORX, LLC ("Applicant") and MEMPHIS LIGHT, GAS AND WATER DIVISION, and A&L NETWORKS-TENNESSEE, LLC ("Joint Petitioners") respectfully submit this Memorandum in Support of Their Motion to Show Cause. Sanctions should be imposed upon Intervenors Time Warner Communications of the Mid-South, Time Warner Telecom of the Mid-South, and the Tennessee Cable Telecommunications Association ("Intervenors"), and/or their counsel, John M. Farris, for violation of the Protection Order entered in this cause.

Relevant Background

As explained in the Motion to Show Cause, on April 20, 2000, the Tennessee Regulatory Authority ("TRA") entered an Order providing protection to certain confidential information of all parties including the Applicant and Joint Petitioners in this matter. (A copy of the Protection Order is attached to the Motion as Attachment 1). On or about April 29, 2000, certain documents were produced at the request of counsel for the Intervenors. Included among those documents was certain

personal financial information of Alex Lowe. That information, along with other information, was clearly designated as confidential pursuant to the Protective Order.

On two occasions, the TRA denied Intervenors' Motion to Lift Protective Order. On May 1, 2000, Intervenors filed a Motion to Lift Protective Order and specifically identified the "Alex Lowe Financial Statement 12/13/99" as one of the documents for which the lifting of the Protective Order was requested. The TRA considered the Motion to Lift Protective Order at the Hearing on July 17, 2000, and denied the Motion (transcript of proceedings Monday, July 17, 2000, at pages 6 through 8) (a copy of those pages of the transcript is attached to the Motion as Attachment 2). A second Motion to Lift Protective Order was filed by the same Intervenors on September 21, 2000, and that Motion was denied by the TRA at a hearing on September 26, 2000. At no time during the TRA proceedings has any action taken place that is inconsistent with the confidential status of personal financial information.

Despite clear instructions contained in the Protective Order, and despite two denials to lift the Protective Order, the Protective Order was violated. It has come to the attention of counsel for the applicant and Joint Petitioners that a statement was quoted in an article in the *Memphis Business Journal* of October 6, 200, that pertains to financial matters of Alex Lowe. Without confirming or denying the correctness of the statement contained in the newspaper article, information regarding Mr. Lowe's personal financial situation has been disclosed only in the form of confidential documents protected by the Protective Order in this TRA proceeding. (A copy of the article from *Memphis Business Journal* is attached to the Motion as Attachment 3 to this document) Disclosure of information produced under seal and subject to the Protective Order is in violation of the Protective Order.

Legal Argument

Because counsel for Intervenors disclosed confidential information protected by the Order of this tribunal, the TRA should order Intervenors and their counsel to show cause why they should not be held in violation of the Protective Order. If the TRA finds Intervenors and their counsel to be in violation of the Protective Order, the TRA should impose sanctions, as discussed below.

As a tribunal, the TRA looks to the Tennessee Rules of Civil Procedure for guidance. See Tenn. Code Ann. § 4-5-311(a) (the tribunal shall issue protective orders in accordance with the Tennessee Rules of Civil Procedure). Pursuant to Rule 26.03 of the Tennessee Rules of Civil Procedure, tribunals may enter protective orders, as the TRA did in this case on April 20, 2000, protecting certain confidential information. Specifically, the TRA's Protective Order included certain personal financial information of Alex Lowe in its ambit.

The failure to obey a protective order is sanctionable under Rule 37 of the Tennessee Rules of Civil Procedure. A.J. Stephani & Glen Weissenberger, Weissenberger's Tennessee Civil Practice Manuel. 198 (2d ed. 2000) (copy attached). Rule 37.02 of the Tennessee Rules of Civil Procedure provides, in pertinent part, that a tribunal faced with violation of a protective order may, among other things: (1) strike out pleadings or parts of pleadings, (2) stay further proceedings until the order is obeyed, (3) dismiss the action or proceeding, or any part of the action or proceeding, or (4) render a default judgment against the disobedient party. Tenn. R. Civ. P. 37.02 (C). Instead of, or in addition to, the foregoing orders, an offended tribunal may treat the failure to obey orders as contempt of court. Tenn. R. Civ. P. 37.02 (D). "In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the

court finds the failure was substantially justified or that other circumstances make an award of expenses unjust." Id. Failure to comply with a discovery order subjects a party to sanctions covered by Rule 37 rather than by Rule 11. Stephani, supra, at 261 (copy attached).

Among the sanctions available are the following:

(A) Dismissal Of The Intervention Of These Intervenors

The TRA should dismiss the intervention of these Intervenors. Rule 37.02 (C) provides express authority for tribunals to dismiss actions or parts of actions when discovery orders are disobeyed, as in this case. "The trial courts of Tennessee must and do have the discretion to impose sanctions such as dismissal in order to penalize those who fail to comply with the Rules and, further, to deter others from flaunting or disregarding discovery orders." Holt v. Webster, 638 S.W.2d 391, 394 (Tenn. Ct. App. 1982). Further, "[w]hen the trial court exercises its discretion in imposing the sanction of dismissal, the exercise of its discretion will not be disturbed by [an appellate court] in the absence of an affirmative showing that the trial judge abused his discretion." Id.; See also Yearwood, Johnson, Stanton & Crabtree, Inc. v. Foxland Dev. Venture, 828 S.W.2d. 412, 413-14 (Tenn. Ct. App. 1991) (affirming a default judgment entered for failure to comply with a discovery order).

In the instant case, dismissing the action of Intervenors is an appropriate sanction. Counsel for Intervenors twice failed to have the Protective Order lifted in this case. Nevertheless, counsel for Intervenors disregarded the TRA's discovery order in this regard by disclosing to a newspaper confidential financial information of Mr. Alex Lowe. Intervenors should not be permitted to proceed before this Tribunal after attempting to litigate their case in the press.

(B) Attorney Fees and Costs

The TRA, upon finding Intervenors in violation of the Protective Order, should require Intervenors to pay the attorney's fees and costs of Applicant and Joint Petitioners as an appropriate sanction, pursuant to Tenn. R. Civ. P. 37.02. An order requiring an offending party to pay attorney's fees and expenses will not be reversed unless the tribunal abused its discretion. State v. Cox, 840 S.W.2d 357, 366-67 (Tenn. Ct. App. 1991). The TRA should require Intervenors to pay attorney fees and costs in light of Intervenors total disregard for this Tribunal's Protective Order.

(C) Appropriate Penalties or Fines Pursuant To Tennessee Code Annotated §65-4-120

"Any public utility that violates or fails to comply with any lawful order . . . shall in the discretion of the authority be subject to a penalty of fifty ($50.00) dollars for each day of any such violation or failure, which . . . when paid, . . . shall be placed to the credit of the public utility account." Id. Although Intervenors should be given a heftier sanction in light of the financial resources of the Time Warner companies, the TRA also should impose fines pursuant to Section 65-4-120.

(D) Damages for Injuries to the Parties Involved and to the TRA as the Tribunal Whose Orders Were Not Obeyed

In violating the TRA's Protective Order by disclosing confidential financial information of Mr. Lowe to a newspaper in Memphis, the Applicant, Joint Petitioners and Mr. Lowe were damaged. The TRA should sanction Intervenors by requiring them to pay for damages resulting from Intervenor's violation of the Protective Order.

When faced with facts very similar to the present matter, a federal district court in Illinois ordered the offending person to compensate the parties for losses that they could prove resulted from his non-compliance with the court's discovery order. Grove Fresh Distrib's., Inc. v. John Labatt,

Ltd., 888 F. Supp. 1427, 1445-47 (N.D. Ill. 1995) (copy attached). There, one of the former attorneys for the plaintiff violated the court's orders of confidentiality when he disclosed protected information in an interview with a reporter for The New York Times. Id. at 1435. The court held the offending former attorney to a higher standard based on his membership in the bar and his knowledge of the consequences of violating orders of confidentiality and protection. Id. at 1438. In the present case, counsel for Intervenors also should be held responsible for violation of this Tribunal's confidentiality requirements of documents covered in the TRA's Protective Order. Accordingly, Intervenors should be required to pay damages for injuries to the parties involved and to the TRA as the Tribunal whose orders were not obeyed.

(E) Such other Relief As Deemed Appropriate

Rule 37.02(D) provides that a tribunal may treat as contempt the failure to obey any discovery orders. As the United States Supreme Court has explained, courts have the inherent power to punish contempt.

> It is firmly established that the power to punish for contempts is inherent in all courts . . . this power reaches both conduct before the court and that beyond the court's confines, for the underlying concern that gave rise to the contempt power was not . . . merely the disruption of court proceedings. Rather, it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial.

Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (citations and quotations omitted)(copy attached). Similarly, as Tennessee appellate courts have explained:

> Courts have the inherent power to supervise and control their own proceedings and to sanction attorneys from conducting themselves in a reckless manner. . . . It has traditionally been held the province of the courts to set standards for the bar and that an attorney acts not only as a client's representative but also as an officer of the court and, accordingly, has a duty to serve two masters.

Wright v. Quillen, 909 S.W.2d 804, 814 (Tenn. Ct. App. 1995) (citations and quotations omitted) (restricting the participation of the violating attorney in the case). Further, the court's inherent power to enforce its rules will not be reversed, absent clear abuse of discretion. Osgood Co. v. Bland, 141 S.W.2d 505, 506 (Tenn. Ct. App. 1940).

Should the TRA decline to dismiss the intervention of Intervenors, the TRA should require Intervenors to post a bond to help insure future compliance with the TRA's Protective Orders. In Grove Fresh, the federal district court required the violating attorney to post a fifty thousand dollar ($50,000) bond to protect against future disclosures in violation of protective orders. 888 F. Supp. at 1448. Similarly, should the TRA refuse to dismiss the Intervenor's action, the TRA should require Intervenors to post a bond, similar to the one required in Grove Fresh.

In light of the foregoing argument, Applicant and Joint Petitioners urge the TRA to grant its Motion to Show Cause and provide the relief requested therein.

Respectfully submitted,

John Knox Walkup, Esq. (#7776)
WYATT, TARRANT & COMBS, LLP
2525 West End Avenue, Suite 1500
Nashville, TN 37203
(615) 244-0020

Attorneys for A&L and
Memphis Networx, LLC

D. Billye Sanders, Esq.
Waller, Lansden, Dortch & Davis
A Professional Limited Liability Company
Nashville City Center
511 Union Street, Suite 2100
Nashville, TN 37219-8966
(615) 244-6380

Attorney for MLGW and
Memphis Networx, LLC

Ricky E. Wilkins
Burch, Porter and Johnson
130 North Court Avenue
Court Square Office
Memphis, TN 38103-2217
(901) 524-5000

Attorney for Memphis Networx, LLC

CERTIFICATE OF SERVICE

I, John Knox Walkup, hereby certify that on this 13th day of October, 2000, a true and correct copy of the foregoing Memorandum In Support of Motion To Show Cause was delivered by hand delivery, facsimile or U.S. Mail, postage prepaid, to the Counsel of Record listed below.

John Knox Walkup

Henry Walker, Esq.
Boult Cummings Conners & Berry, PLC
414 Union Street, Suite 1500
P. O. Box 198052
Nashville, TN 37219
Attorney for NEXTLINK, Tennessee, Inc.

Guy Hicks, Esq.
Patrick Turner, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
Attorneys for BellSouth Telecommunications, Inc.

Charles B. Welch, Jr., Esq.
Farris, Mathews, Branan, Bobango & Hellen, P.L.C.
618 Church Street, Suite 300
Nashville, TN 37219
Attorney for Time Warner of the Mid-South, L.P. and the Tennessee Cable Telecommunications Association

Lee J. Bloomfield, Esq.
Allen, Godwin, Morris, Laurenzi & Bloomfield, P.C.
One Memphis Place
200 Jefferson Avenue, Suite 1400
Memphis, Tennessee 38103
Attorney for the International Brotherhood of Electrial Workers Union, Local 1288

R. Dale Grimes, Esq.
Bass, Berry & Sims
2700 First American Center
Nashville, TN 37238
Attorney for Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Inc., and Tennessee Telephone Company

Vance L. Broemel, Esq.
Consumer Advocate Division
Office of the Attorney General & Reporter
Cordell Hull Building
425 5th Avenue North
Nashville, Tennessee 37243-0500
Consumer Advocate Division

Weissenberger's

TENNESSEE
CIVIL PRACTICE MANUAL

WITH RULES AND COMMENTARY

Second Edition

Including complete coverage of the

Tennessee Rules of Civil Procedure

through June 30, 2000

A.J. STEPHANI
J.D., University of Cincinnati

GLEN WEISSENBERGER
Judge Joseph P. Kinneary Professor of Law
University of Cincinnati

ANDERSON PUBLISHING CO.
CINCINNATI

WEISSENBERGER'S TENNESSEE CIVIL PRACTICE MANUAL, SECOND EDITION

2035 Reading Road/Cincinnati, Ohio 45202
Telephone: 800 582-7295
Fax: 513 562-8110
E-mail: mail@andersonpublishing.com
World Wide Web: http://www.andersonpublishing.com

ISBN 1-58360-325-5

exhaustive. The protective order should set forth the terms or conditions under which discovery may proceed, and the failure to obey a protective order is sanctionable under Rule 37. The party opposing the motion for a protective order, whether or not an order is actually issued, must pay the reasonable expenses incurred by the party making the motion, including attorneys' fees, unless the court finds that the motion was substantially justified or that other circumstances would make an award of expenses and fees unjust.

Duty to Supplement Disclosures and Discovery Responses

Rule 26.05 sets forth the general rule that parties are under no duty to supplement responses to discovery requests. This general rule is subject to several limitations. An implicit limitation in the Rule is that the principle applies only to those responses that were complete when they were originally made. Incomplete discovery responses must be supplemented and are sometimes sanctionable under Rule 37.

The Rule also creates three explicit exceptions to the principle explained above. First, supplementation is required with regard to any response concerning the identity and location of witnesses, including expert witnesses who are expected to testify at trial. Second, if a response to a discovery request is subsequently found to have been incorrect, as opposed to merely incomplete, or the failure to amend the response would constitute a "knowing concealment," that party is obligated to correct the response. Finally, a general duty to supplement prior discovery responses may be ordered by the court or agreed to by the parties at any time before trial.

Illustration 26-6:

Abel sues Terry for personal injuries suffered in an automobile accident. Through interrogatories, Abel provides Terry with the names and addresses of all witnesses he has knowledge of at the time of the disclosure. Four months later, Abel learns of two other witnesses that were not included in his initial disclosure. Under Rule 26.05, Abel must supplement his initial disclosures and provide Terry with the names and addresses of the two witnesses.

Discovery Planning Conference

Rule 26.06 provides for a discovery planning conference upon request of a party or upon order by the court. The conference is mandatory if requested by a party by motion that includes the items listed in the subrule. Notice of the motion must be served on all parties, who are afforded the opportunity to respond to the matters set forth in the motion within 10 days after service of the motion. The discovery planning conference may be combined with any other kind of pretrial conference authorized under Rule 16.

37.04. Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Requests for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30.02(6) or 31.01 to testify on behalf of a party fails

(1) to appear before the officer who is to take his or her deposition, after being served with a proper notice, or
(2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or
(3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request,

the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of Rule 37.02. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26.03.

37.05. Failure to Participate in the Framing of a Discovery Plan. If a party or the party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26.06, the court may, after opportunity for hearing, require such party or the party's attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

✧ ✧ ✧ ✧ ✧

COMMENTARY

A party's refusal to abide by the discovery provisions of Rules 26-36 does not subject that party to sanctions under Rule 11. Instead, discovery requests, responses, objections, and motions are covered by Rule 37, which details the sanctions available to the court for violation of discovery orders and abuse of the discovery process. Rule 37 also sets forth the procedure for making a motion to compel disclosure or discovery.

Motion for Order to Compel Discovery Generally

Rule 37.01 allows a party to make a motion requesting an order to compel a person to take certain actions concerning discovery. In all cases, the motion

111 S.Ct. 2123
115 L.Ed.2d 27, 59 USLW 4595, 19 Fed.R.Serv.3d 817
(Cite as: 501 U.S. 32, 111 S.Ct. 2123)
<YELLOW FLAG>

Supreme Court of the United States

G. Russell CHAMBERS, Petitioner,
v.
NASCO, INC.

No. 90-256.

Argued Feb. 27, 1991.
Decided June 6, 1991.
Rehearing Denied Aug. 2, 1991.
See 501 U.S. 1269, 112 S.Ct. 12.

Television station purchaser brought action for specific performance. The United States District Court for the Western District of Louisiana, Nauman S. Scott, J., 623 F.Supp. 1372, ordered specific performance, and seller appealed. The Court of Appeals for the Fifth Circuit, 797 F.2d 975, affirmed and remanded with instructions to fix amount of appellate sanctions for frivolous appeal and to determine whether further sanctions were appropriate for conduct on district court level. On remand, the District Court, 124 F.R.D. 120, imposed sanctions against seller's sole shareholder, and he appealed. The Court of Appeals, 894 F.2d 696 affirmed and remanded. Certiorari was granted. The Supreme Court, Justice White, held that: (1) courts' inherent power to impose sanctions for bad-faith conduct is not displaced by scheme of statute and rules; (2) there was no abuse of discretion in District Court's resort to its inherent power to impose sanctions for bad-faith conduct, even though some conduct was also sanctionable under rules; (3) federal courts sitting in diversity can use their inherent power to assess attorney fees as sanction for bad-faith conduct even if applicable state law does not recognize bad-faith exception to general rule against fee shifting; and (4) District Court acted within its discretion in assessing, as sanction, entire amount of opposing party's attorney fees.

Affirmed.

Justice Scalia filed dissenting opinion.

Justice Kennedy filed dissenting opinion in which Chief Justice Rehnquist and Justice Souter joined.

West Headnotes

[1] Federal Civil Procedure k2827
170Ak2827

Court generally may act sua sponte in imposing sanctions under rules. Fed.Rules Civ.Proc.Rules 11, 16(f), 26(g), 30(g), 37, 56(g), 28 U.S.C.A.

[2] Contempt k2
93k2

Power to punish for contempts, inherent in all courts, reaches both conduct before court and that beyond court's confines.

[3] Federal Civil Procedure k2654
170Ak2654

Federal court has inherent power to vacate its own judgment upon proof that fraud has been perpetrated upon court.

[4] Federal Civil Procedure k2643.1
170Ak2643.1
(Formerly 170Ak2643)

Federal court has power to conduct independent investigation in order to determine whether it has been victim of fraud.

[5] Federal Civil Procedure k2757
170Ak2757

[5] Federal Courts k3.1
170Bk3.1
(Formerly 170Bk3)

Federal courts' inherent powers must be exercised with great restraint and discretion due to their potency; primary aspect of that discretion is ability to fashion appropriate sanction for conduct which abuses judicial process.

[6] Federal Civil Procedure k2812
170Ak2812

[6] Federal Civil Procedure k2820

170Ak2820

Outright dismissal of lawsuit, a particularly severe sanction for conduct that abuses judicial process is within discretion of federal court and, consequently, less severe sanction of assessment of attorney fees is also within court's inherent power.

[7] Attorney and Client k155
45k155

[7] Federal Civil Procedure k2737.1
170Ak2737.1

[7] Federal Civil Procedure k2737.2
170Ak2737.2

[7] Federal Civil Procedure k2750
170Ak2750

Although "American Rule" prohibits fee-shifting in most cases, there are exceptions to rule which fall into three categories: under "common fund exception," court can award attorney fees to party whose litigation efforts directly benefit others; court may assess attorney fees as sanction for willful disobedience of court order; and court may assess attorney fees when party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

[8] Federal Civil Procedure k2757
170Ak2757

Courts' inherent power to impose sanctions for bad-faith conduct is not displaced by sanction scheme of statute and rules. 28 U.S.C.A. § 1927; Fed.Rules Civ.Proc.Rules 11, 16(f), 26(g), 30(g), 37, 56(g), 28 U.S.C.A.

[9] Constitutional Law k55
92k55

Exercise of inherent power of lower federal courts to impose attorney fees as sanction can be limited by statute and rule, as those courts were created by act of Congress. 28 U.S.C.A. § 1927; Fed.Rules Civ.Proc.Rule 11, 28 U.S.C.A.

[10] Constitutional Law k70.1(11)
92k70.1(11)

[10] Federal Civil Procedure k2757
170Ak2757

Federal court is not forbidden to sanction bad-faith conduct by means of court's inherent power simply because that conduct could also be sanctioned under statute or rules. 28 U.S.C.A. § 1927; Fed.Rules Civ.Proc.Rules 11, 16(f), 26(g), 30(g), 37, 56(g), 28 U.S.C.A.

[11] Constitutional Law k303
92k303

[11] Federal Civil Procedure k2757
170Ak2757

Court must exercise caution in invoking its inherent power, and must comply with mandates of due process, both in determining that requisite bad faith supporting sanction exists and in assessing attorney fees. U.S.C.A. Const.Amend. 5.

[12] Federal Civil Procedure k2757
170Ak2757

When there is bad-faith conduct in course of litigation that could be adequately sanctioned under rules, court ordinarily should rely on rules rather than inherent power of court but, if in informed discretion of court, neither statute nor rules are up to task, court may safely rely on its inherent power. 28 U.S.C.A. § 1927; Fed.Rules Civ.Proc.Rules 11, 16(f), 26(g), 30(g), 37, 56(g), 28 U.S.C.A.

[13] Federal Civil Procedure k2757
170Ak2757

District court did not abuse its discretion in resorting to its inherent power to sanction bad-faith conduct when court shifted attorney fees and related expenses as sanction for litigant's attempt to deprive court of jurisdiction by acts of fraud, most of which were performed outside confines of court, for litigant's filing of false and frivolous pleadings, and for litigant's attempt, by other tactics of delay, oppression, harassment and massive expense, to reduce opposing party to exhausted compliance, even though some conduct was sanctionable under rules. Fed.Rules Civ.Proc.Rule 11, 28 U.S.C.A.

[14] Federal Civil Procedure k2757
170Ak2757

If all of litigant's conduct is deemed sanctionable, and conduct sanctionable under rules is intertwined with conduct that only court's inherent power can address, court need not first apply rules and statutes

and third categories, and since it would have been impossible to assess sanctions at the time the papers in the second category were filed because their falsity did not become apparent until after the trial on the merits. The court likewise declined to impose sanctions under 28 U.S.C. § 1927, both because the statute's authorization of an attorney's fees sanction applies only to attorneys who unreasonably and vexatiously multiply proceedings, and therefore would not reach Chambers, and because the statute was not broad enough to reach "acts which degrade the judicial system." The court therefore relied on its inherent power in imposing sanctions. In affirming, the Court of Appeals, inter alia, rejected Chambers' argument that a federal court sitting in diversity must look to state law, not ***33** the court's inherent power, to assess attorney's fees as a sanction for bad-faith conduct in litigation.

Held: The District Court properly invoked its inherent power in assessing as a sanction for Chambers' bad-faith conduct the attorney's fees and related expenses paid by NASCO. Pp. 2131-2140.

(a) Federal courts have the inherent power to manage their own proceedings and to control the conduct of those who appear before them. In invoking the inherent power to punish conduct which abuses the judicial process, a court must exercise discretion in fashioning an appropriate sanction, which may range from dismissal of a lawsuit to an assessment of attorney's fees. Although the "American Rule" prohibits the shifting of attorney's fees in most cases, see Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 259, 95 S.Ct. 1612, 1622, 44 L.Ed.2d 141, an exception allows federal courts to exercise their inherent power to assess such fees as a sanction when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, id., at 258-259, 260, 95 S.Ct. at 1622-1623, 1623, as when the party practices a fraud upon the court, Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 580, 66 S.Ct. 1176, 1179, 90 L.Ed. 1447, or delays or disrupts the litigation or hampers a court order's enforcement, Hutto v. Finney, 437 U.S. 678, 689, n. 14, 98 S.Ct. 2565, 2573, n. 14, 57 L.Ed.2d 522. Pp. 2132-2133.

(b) There is nothing in § 1927, Rule 11, or other Federal Rules of Civil Procedure authorizing attorney's fees as a sanction, or in this Court's decisions interpreting those other sanctioning mechanisms, that warrants a conclusion that, taken alone or together, the other mechanisms displace courts' inherent power to impose attorney's fees as a sanction for bad-faith conduct. Although a court ordinarily should rely on such rules when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the rules, the court may safely rely on its inherent power if, in its informed discretion, neither the statutes nor the rules are up to the task. The District Court did not abuse its discretion in resorting to the inherent power in the circumstances of this case. Although some of Chambers' conduct might have been reached through the other sanctioning mechanisms, all of that conduct was sanctionable. Requiring the court to apply the other mechanisms to discrete occurrences before invoking the inherent power to address remaining instances of sanctionable conduct would serve only to foster extensive and needless satellite litigation, which is contrary to the aim of the rules themselves. Nor did the court's reliance on the inherent power thwart the mandatory terms of Rules 11 and 26(g). Those Rules merely require ****2127** that "an appropriate sanction" be imposed, without specifying which sanction is required. Bank of Nova Scotia v. United States, 487 U.S. 250, 108 S.Ct. 2369, 101 L.Ed.2d 228, distinguished. Pp. 2133-2136.

***34** c) There is no merit to Chambers' assertion that a federal court sitting in diversity cannot use its inherent power to assess attorney's fees as a sanction unless the applicable state law recognizes the "bad-faith" exception to the general American Rule against fee shifting. Although footnote 31 in Alyeska tied a diversity court's inherent power to award fees to the existence of a state law giving a right thereto, that limitation applies only to fee-shifting rules that embody a substantive policy, such as a statute which permits a prevailing party in certain classes of litigation to recover fees. Here the District Court did not attempt to sanction Chambers for breach of contract, but rather imposed sanctions for the fraud he perpetrated on the court and the bad faith he displayed toward both NASCO and the court throughout the litigation. The inherent power to tax fees for such conduct cannot be made subservient to any state policy without transgressing the boundaries set out in Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, Guaranty Trust Co. v. York, 326 U.S. 99, 65 S.Ct. 1464, 89 L.Ed. 2079, and Hanna v. Plumer, 380 U.S. 460, 85 S.Ct. 1136, 14 L.Ed.2d 8, for fee shifting here is not a matter of substantive remedy, but is a matter of vindicating judicial authority. Thus, although Louisiana law prohibits punitive damages for a bad-faith breach of contract, this substantive state policy is not

implicated. Pp. 2136-2138.

(d) Based on the circumstances of this case, the District Court acted within its discretion in assessing as a sanction for Chambers' bad-faith conduct the entire amount of NASCO's attorney's fees. Chambers' arguments to the contrary are without merit. First, although the sanction was not assessed until the conclusion of the litigation, the court's reliance on its inherent power did not represent an end run around Rule 11's notice requirements, since Chambers received repeated timely warnings both from NASCO and the court that his conduct was sanctionable. Second, the fact that the entire amount of fees was awarded does not mean that the court failed to tailor the sanction to the particular wrong, in light of the frequency and severity of Chambers' abuses of the judicial system and the resulting need to ensure that such abuses were not repeated. Third, the court did not abuse its discretion by failing to require NASCO to mitigate its expenses, since Chambers himself made a swift conclusion to the litigation by means of summary judgment impossible by continuing to assert that material factual disputes existed. Fourth, the court did not err in imposing sanctions for conduct before other tribunals, since, as long as Chambers received an appropriate hearing, he may be sanctioned for abuses of process beyond the courtroom. Finally, the claim that the award is not "personalized" as to Chambers' responsibility for the challenged conduct is flatly contradicted ***35** by the court's detailed factual findings concerning Chambers' involvement in the sequence of events at issue. Pp. 2138-2140.

894 F.2d 696 (CA5 1990), affirmed.

WHITE, J., delivered the opinion of the Court, in which MARSHALL, BLACKMUN, STEVENS, and O'CONNOR, JJ., joined. SCALIA, J., filed a dissenting opinion, post, p. 2140. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C.J., and SOUTER, J., joined, post, p. 2141.

Mack E. Barham argued the cause for petitioner. With him on the briefs were Robert E. Arceneaux and Russell T. Tritico.

Joel I. Klein argued the cause for respondent. With him on the brief were Christopher D. Cerf, David A. Bono, Aubrey B. Harwell, Jr., Jon D. Ross, John B. Scofield, and David L. Hoskins.

****2128** Justice WHITE delivered the opinion of the Court.

This case requires us to explore the scope of the inherent power of a federal court to sanction a litigant for bad-faith conduct. Specifically, we are asked to determine whether the District Court, sitting in diversity, properly invoked its inherent power in assessing as a sanction for a party's bad-faith conduct attorney's fees and related expenses paid by the party's opponent to its attorneys. We hold that the District Court acted within its discretion, and we therefore affirm the judgment of the Court of Appeals.

I

This case began as a simple action for specific performance of a contract, but it did not remain so. [FN1] Petitioner G. Russell Chambers was the sole shareholder and director of Calcasieu Television and Radio, Inc. (CTR), which operated television station KPLC-TV in Lake Charles, Louisiana. On August 9, 1983, Chambers, acting both in his individual capacity and on behalf of CTR, entered into a purchase agreement ***36** to sell the station's facilities and broadcast license to respondent NASCO, Inc., for a purchase price of $18 million. The agreement was not recorded in the parishes in which the two properties housing the station's facilities were located. Consummation of the agreement was subject to the approval of the Federal Communications Commission (FCC); both parties were obligated to file the necessary documents with the FCC no later than September 23, 1983. By late August, however, Chambers had changed his mind and tried to talk NASCO out of consummating the sale. NASCO refused. On September 23, Chambers, through counsel, informed NASCO that he would not file the necessary papers with the FCC.

> FN1. The facts recited here are taken from the findings of the District Court, which were not disturbed by the Court of Appeals.

NASCO decided to take legal action. On Friday, October 14, 1983, NASCO's counsel informed counsel for Chambers and CTR that NASCO would file suit the following Monday in the United States District Court for the Western District of Louisiana, seeking specific performance of the agreement, as well as a temporary restraining order (TRO) to prevent the alienation or encumbrance of the properties at issue. NASCO provided this notice in accordance with Federal Rule of Civil Procedure 65

containing sanctioning provisions to discrete occurrences before invoking inherent power to address remaining instances of sanctionable conduct. 28 U.S.C.A. § 1927; Fed.Rules Civ.Proc.Rules 11, 16(f), 26(g), 30(g), 37, 56(g), 28 U.S.C.A.

[15] Federal Civil Procedure k2757
170Ak2757

Federal courts sitting in diversity can use their inherent power to assess attorney fees as sanction for bad-faith conduct even if applicable state law does not recognize bad-faith exception to general rule against fee shifting.

[16] Damages k89(2)
115k89(2)

Under Louisiana law, there can be no punitive damages for breach of contract, even when party has acted in bad faith in breaching agreement.

[17] Federal Courts k813
170Bk813

Supreme Court uses abuse of discretion standard to review lower court's imposition of sanctions under its inherent power.

[18] Federal Civil Procedure k2814
170Ak2814

District court acted within its discretion when, pursuant to court's inherent power, it assessed as sanction for litigant's bad-faith conduct entire amount of opposing party's attorney fees, approximately $1 million; while sanction was not assessed until conclusion of litigation, litigant was repeatedly warned that his conduct was sanctionable and district court found his actions to be part of scheme of deliberate misuse of judicial process designed to defeat opposing party's claim by harassment, repeated and endless delay, mountainous expense and waste of financial resources.

[19] Federal Civil Procedure k2793
170Ak2793

[19] Federal Civil Procedure k2828
170Ak2828

As long as party receives appropriate hearing, party may be sanctioned for abuses of process occurring beyond courtroom, such as disobeying court's orders.

[20] Federal Civil Procedure k2793
170Ak2793

Litigant's attempt to gain Federal Communications Commission's (FCC's) permission to build new transmission tower was in direct contravention of district court's orders to maintain status quo pending outcome of litigation concerning television station purchase agreement and was therefore within scope of district court's sanctioning power.

**2125 Syllabus [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

*32 Petitioner Chambers, the sole shareholder and director of a company that operated a television station in Louisiana, agreed to sell the station's facilities and broadcast license to respondent NASCO, Inc. Chambers soon changed his mind and, both before and after NASCO filed this diversity action for specific performance in the District Court, engaged in a series of actions within and without that court and in proceedings before the Federal Communications Commission, the Court of Appeals, and this Court, which were designed to frustrate the sale's consummation. On remand following the Court of Appeals' affirmance of judgment on the merits for NASCO, the District Court, on NASCO's motion and following full briefing and a hearing, imposed sanctions against Chambers in the form of attorney's fees and expenses totaling almost $1 million, representing the entire amount of NASCO's litigation costs paid to its attorneys. The court noted that the alleged sanctionable conduct was that Chambers had (1) attempted to deprive the court of jurisdiction by acts of fraud, nearly **2126 all of which were performed outside the confines of the court, (2) filed false and frivolous pleadings, and (3) "attempted, by other tactics of delay, oppression, harassment and massive expense to reduce [NASCO] to exhausted compliance." The court deemed Federal Rule of Civil Procedure 11--which provides for the imposition of attorney's fees as a sanction for the improper filing of papers with a court--insufficient to support the sanction against Chambers, since the Rule does not reach conduct in the foregoing first

and Rule 11 of the District Court's Local Rules (now Rule 10), both of which are designed to give a defendant in a TRO application notice of the hearing and an opportunity to be heard.

The reaction of Chambers and his attorney, A.J. Gray III, was later described by the District Court as having "emasculated and frustrated the purposes of these rules and the powers of [the District] Court by utilizing this notice to prevent NASCO's access to the remedy of specific performance." NASCO, Inc. v. Calcasieu Television & Radio, Inc., 623 F.Supp. 1372, 1383 (1985). On Sunday, October 16, 1983, the pair acted to place the properties at issue beyond the reach of the District Court by means of the Louisiana Public Records Doctrine. Because the purchase agreement had never been recorded, they determined that if the properties ***37** were sold to a third party, and if the deeds were recorded before the issuance of a TRO, the District Court would lack jurisdiction over the properties.

To this end, Chambers and Gray created a trust, with Chambers' sister as trustee and Chambers' three adult children as beneficiaries. The pair then directed the president of CTR, who later became Chambers' wife, to execute warranty deeds conveying the two tracts at issue to the trust for a recited consideration of $1.4 million. Early Monday morning, the deeds were recorded. The trustee, as purchaser, had not signed the deeds; none of the consideration had been ****2129** paid; and CTR remained in possession of the properties. Later that morning, NASCO's counsel appeared in the District Court to file the complaint and seek the TRO. With NASCO's counsel present, the District Judge telephoned Gray. Despite the judge's queries concerning the possibility that CTR was negotiating to sell the properties to a third person, Gray made no mention of the recordation of the deeds earlier that morning. NASCO, Inc. v. Calcasieu Television & Radio, Inc., 124 F.R.D. 120, 126, n. 8 (1989). That afternoon, Chambers met with his sister and had her sign the trust documents and a $1.4 million note to CTR. The next morning, Gray informed the District Court by letter of the recordation of the deeds the day before and admitted that he had intentionally withheld the information from the court.

Within the next few days, Chambers' attorneys prepared a leaseback agreement from the trustee to CTR, so that CTR could remain in possession of the properties and continue to operate the station. The following week, the District Court granted a preliminary injunction against Chambers and CTR and entered a second TRO to prevent the trustee from alienating or encumbering the properties. At that hearing, the District Judge warned that Gray's and Chambers' conduct had been unethical.

***38** Despite this early warning, Chambers, often acting through his attorneys, continued to abuse the judicial process. In November 1983, in defiance of the preliminary injunction, he refused to allow NASCO to inspect CTR's corporate records. The ensuing civil contempt proceedings resulted in the assessment of a $25,000 fine against Chambers personally. NASCO, Inc. v. Calcasieu Television & Radio, Inc., 583 F.Supp. 115 (1984). Two subsequent appeals from the contempt order were dismissed for lack of a final judgment. See NASCO, Inc. v. Calcasieu Television & Radio, Inc., No. 84-9037 (CA5, May 29, 1984); NASCO, Inc. v. Calcasieu Television & Radio, Inc., 752 F.2d 157 (CA5 1985).

Undeterred, Chambers proceeded with "a series of meritless motions and pleadings and delaying actions." 124 F.R.D., at 127. These actions triggered further warnings from the court. At one point, acting sua sponte, the District Judge called a status conference to find out why bankers were being deposed. When informed by Chambers' counsel that the purpose was to learn whether NASCO could afford to pay for the station, the court canceled the depositions consistent with its authority under Federal Rule of Civil Procedure 26(g).

At the status conference nine days before the April 1985 trial date, [FN2] the District Judge again warned counsel that further misconduct would not be tolerated. [FN3] Finally, on the eve of trial, Chambers and CTR stipulated that the purchase agreement was enforceable and that Chambers had breached the agreement on September 23, 1983, by failing to file the ***39** necessary papers with the FCC. At trial, the only defense presented by Chambers was the Public Records Doctrine.

> FN2. The trial date itself reflected delaying tactics. Trial had been set for February 1985, but in January, Gray, on behalf of Chambers, filed a motion to recuse the judge. The motion was denied, as was the subsequent writ of mandamus filed in the Court of Appeals.

FN3. To make his point clear, the District Judge gave counsel copies of Judge Schwarzer's then-recent article, Sanctions Under the New Federal Rule 11--A Closer Look, 104 F.R.D. 181 (1985).

In the interlude between the trial and the entry of judgment during which the District Court prepared its opinion, Chambers sought to render the purchase agreement meaningless by seeking permission from the FCC to build a new transmission tower for the station and to relocate the transmission facilities to that site, which was not covered by the agreement. Only after NASCO sought contempt sanctions did Chambers withdraw the application.

**2130 The District Court entered judgment on the merits in NASCO's favor, finding that the transfer of the properties to the trust was a simulated sale and that the deeds purporting to convey the property were "null, void, and of no effect." 623 F.Supp., at 1385. Chambers' motions, filed in the District Court, the Court of Appeals, and this Court, to stay the judgment pending appeal were denied. Undeterred, Chambers convinced CTR officials to file formal oppositions to NASCO's pending application for FCC approval of the transfer of the station's license, in contravention of both the District Court's injunctive orders and its judgment on the merits. NASCO then sought contempt sanctions for a third time, and the oppositions were withdrawn.

When Chambers refused to prepare to close the sale, NASCO again sought the court's help. A hearing was set for July 16, 1986, to determine whether certain equipment was to be included in the sale. At the beginning of the hearing, the court informed Chambers' new attorney, Edwin A. McCabe, [FN4] that further sanctionable conduct would not be tolerated. When the hearing was recessed for several days, Chambers, without notice to the court or NASCO, removed from service at the station all of the equipment at issue, forcing the District Court to order that the equipment be returned to service.

FN4. Gray had resigned as counsel for Chambers and CTR several months previously.

*40 Immediately following oral argument on Chambers' appeal from the District Court's judgment on the merits, the Court of Appeals, ruling from the bench, found the appeal frivolous. The court imposed appellate sanctions in the form of attorney's fees and double costs, pursuant to Federal Rule of Appellate Procedure 38, and remanded the case to the District Court with orders to fix the amount of appellate sanctions and to determine whether further sanctions should be imposed for the manner in which the litigation had been conducted. NASCO, Inc. v. Calcasieu Television & Radio, Inc., 797 F.2d 975 (CA5 1986) (per curiam) (unpublished order).

On remand, NASCO moved for sanctions, invoking the District Court's inherent power, Fed.Rule Civ.Proc. 11, and 28 U.S.C. § 1927. After full briefing and a hearing, see 124 F.R.D., at 141, n. 11, the District Court determined that sanctions were appropriate "for the manner in which this proceeding was conducted in the district court from October 14, 1983, the time that plaintiff gave notice of its intention to file suit to this date." Id., at 123. At the end of an extensive opinion recounting what it deemed to have been sanctionable conduct during this period, the court imposed sanctions against Chambers in the form of attorney's fees and expenses totaling $996,644.65, which represented the entire amount of NASCO's litigation costs paid to its attorneys. [FN5] *41 In so doing, the court rejected Chambers' argument that he had merely followed the advice of counsel, labeling him "the strategist," id., at 132, behind a scheme devised "first, to deprive this Court of jurisdiction and, second, to devise a plan of obstruction, delay, harassment, and expense sufficient to reduce NASCO to a **2131 condition of exhausted compliance," id., at 136.

FN5. In calculating the award, the District Court deducted the amounts previously awarded as compensatory damages for contempt, as well as the amount awarded as appellate sanctions. 124 F.R.D., at 133-134. The court also sanctioned other individuals, who are not parties to the action in this Court. Chambers' sister, the trustee, was sanctioned by a reprimand; attorney Gray was disbarred and prohibited from seeking readmission for three years; attorney Richard A. Curry, who represented the trustee, was suspended from practice before the court for six months; and attorney

McCabe was suspended for five years. Id., at 144-146. Although these sanctions did not affect the bank accounts of these individuals, they were nevertheless substantial sanctions and were as proportionate to the conduct at issue as was the monetary sanction imposed on Chambers. Indeed, in the case of the disbarment of attorney Gray, the court recognized that the penalty was among the harshest possible sanctions and one which derived from its authority to supervise those admitted to practice before it. See id., at 140-141.

In imposing the sanctions, the District Court first considered Federal Rule of Civil Procedure 11. It noted that the alleged sanctionable conduct was that Chambers and the other defendants had "(1) attempted to deprive this Court of jurisdiction by acts of fraud, nearly all of which were performed outside the confines of this Court, (2) filed false and frivolous pleadings, and (3) attempted, by other tactics of delay, oppression, harassment and massive expense to reduce plaintiff to exhausted compliance." 124 F.R.D., at 138. The court recognized that the conduct in the first and third categories could not be reached by Rule 11, which governs only papers filed with a court. As for the second category, the court explained that the falsity of the pleadings at issue did not become apparent until after the trial on the merits, so that it would have been impossible to assess sanctions at the time the papers were filed. Id., at 138-139. Consequently, the District Court deemed Rule 11 "insufficient" for its purposes. Id., at 139. The court likewise declined to impose sanctions under § 1927, [FN6] both because the statute applies only to attorneys, and therefore would not reach Chambers, and because the statute was not broad enough to reach "acts ***42** which degrade the judicial system," including "attempts to deprive the Court of jurisdiction, fraud, misleading and lying to the Court." Ibid. The court therefore relied on its inherent power in imposing sanctions, stressing that "[t]he wielding of that inherent power is particularly appropriate when the offending parties have practiced a fraud upon the court." Ibid.

FN6. That statute provides:
"Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927.

The Court of Appeals affirmed. NASCO, Inc. v. Calcasieu Television & Radio, Inc., 894 F.2d 696 (CA5 1990). The court rejected Chambers' argument that a federal court sitting in diversity must look to state law, not the court's inherent power, to assess attorney's fees as a sanction for bad-faith conduct in litigation. The court further found that neither 28 U.S.C. § 1927 nor Federal Rule of Civil Procedure 11 limits a court's inherent authority to sanction bad-faith conduct "when the party's conduct is not within the reach of the rule or the statute." [FN7] 894 F.2d, at 702-703. Although observing that the inherent power "is not a broad reservoir of power, ready at an imperial hand, but a limited source; an implied power squeezed from the need to make the court function," id., at 702, the court also concluded that the District Court did not abuse its discretion in awarding to NASCO the fees and litigation costs paid to its attorneys. Because of the importance of these issues, we granted certiorari, 498 U.S. 807, 111 S.Ct. 38, 112 L.Ed.2d 15 (1990).

FN7. The court remanded for a reconsideration of the proper sanction for attorney McCabe. 894 F.2d, at 708.

II

[1] Chambers maintains that 28 U.S.C. § 1927 and the various sanctioning provisions in the Federal Rules of Civil Procedure [FN8] reflect a legislative intent to displace the ****2132** inherent ***43** power. At least, he argues that they obviate or foreclose resort to the inherent power in this case. We agree with the Court of Appeals that neither proposition is persuasive.

FN8. A number of the Rules provide for the imposition of attorney's fees as a sanction. See Fed.Rules Civ.Proc. 11 (certification requirement for papers), 16(f) (pretrial conferences), 26(g) (certification requirement for discovery requests), 30(g) (oral depositions), 37 (sanctions for failure to cooperate with discovery), 56(g) (affidavits accompanying summary judgment motions). In some instances, the assessment of fees is one of a range of possible sanctions, see, e.g., Fed.Rule

Civ.Proc. 11, while in others, the court must award fees, see, e.g., Fed.Rule Civ.Proc. 16(f). In each case, the fees that may be assessed are limited to those incurred as a result of the Rule violation. In the case of Rule 11, however, a violation could conceivably warrant an imposition of fees covering the entire litigation, if, for example, a complaint or answer was filed in violation of the Rule. The court generally may act sua sponte in imposing sanctions under the Rules.

A

It has long been understood that "[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution," powers "which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." United States v. Hudson, 7 Cranch 32, 34, 3 L.Ed. 259 (1812); see also Roadway Express, Inc. v. Piper, 447 U.S. 752, 764, 100 S.Ct. 2455, 2463, 65 L.Ed.2d 488 (1980) (citing Hudson). For this reason, "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates." Anderson v. Dunn, 6 Wheat. 204, 227, 5 L.Ed. 242 (1821); see also Ex parte Robinson, 19 Wall. 505, 510, 22 L.Ed. 205 (1874). These powers are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." Link v. Wabash R. Co., 370 U.S. 626, 630-631, 82 S.Ct. 1386, 1388-1389, 8 L.Ed.2d 734 (1962).

Prior cases have outlined the scope of the inherent power of the federal courts. For example, the Court has held that a federal court has the power to control admission to its bar and to discipline attorneys who appear before it. See Ex parte Burr, 9 Wheat. 529, 531, 6 L.Ed. 152 (1824). While this power "ought to be exercised with great caution," it is nevertheless "incidental to all Courts." Ibid.

***44** [2] In addition, it is firmly established that "[t]he power to punish for contempts is inherent in all courts." Robinson, supra, at 510. This power reaches both conduct before the court and that beyond the court's confines, for "[t]he underlying concern that gave rise to the contempt power was not ... merely the disruption of court proceedings. Rather, it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial." Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 798, 107 S.Ct. 2124, 2132, 95 L.Ed.2d 740 (1987) (citations omitted).

[3][4] Of particular relevance here, the inherent power also allows a federal court to vacate its own judgment upon proof that a fraud has been perpetrated upon the court. See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944); Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 580, 66 S.Ct. 1176, 1179, 90 L.Ed. 1447 (1946). This "historic power of equity to set aside fraudulently begotten judgments," Hazel-Atlas, 322 U.S., at 245, 64 S.Ct., at 1001, is necessary to the integrity of the courts, for "tampering with the administration of justice in [this] manner ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." Id., at 246, 64 S.Ct., at 1001. Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. Universal Oil, supra, 328 U.S., at 580, 66 S.Ct., at 1179.

There are other facets to a federal court's inherent power. The court may bar from the courtroom a criminal defendant who disrupts a trial. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). It may dismiss an action on grounds of forum non conveniens, Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507-508, 67 S.Ct. 839, 842-843, 91 L.Ed. 1055 (1947); and it may act sua sponte to dismiss a suit for failure to prosecute, Link, supra, 370 U.S., at 630-631, 82 S.Ct., at 1388-1389.

[5][6] Because of their very potency, inherent powers must be exercised with restraint and discretion. See Roadway Express, supra, 447 U.S., at 764, 100 S.Ct., at 2463. A primary aspect of that discretion is ****2133** the ability to fashion an appropriate sanction for conduct ***45** which abuses the judicial process. As we recognized in Roadway Express, outright dismissal of a lawsuit, which we had upheld in Link, is a particularly severe sanction, yet is within the court's discretion. 447 U.S., at 765, 100 S.Ct., at 2463. Consequently, the "less severe sanction" of an assessment of attorney's fees is undoubtedly within a court's inherent power as well. Ibid. See also Hutto v. Finney, 437 U.S. 678, 689, n. 14, 98 S.Ct. 2565, 2573, n. 14, 57 L.Ed.2d

522 (1978).

[7] Indeed, "[t]here are ample grounds for recognizing ... that in narrowly defined circumstances federal courts have inherent power to assess attorney's fees against counsel," Roadway Express, supra, 447 U.S., at 765, 100 S.Ct., at 2463, even though the so-called "American Rule" prohibits fee shifting in most cases. See Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 259, 95 S.Ct. 1612, 1622, 44 L.Ed.2d 141 (1975). As we explained in Alyeska, these exceptions fall into three categories. [FN9] The first, known as the "common fund exception," derives not from a court's power to control litigants, but from its historic equity jurisdiction, see Sprague v. Ticonic National Bank, 307 U.S. 161, 164, 59 S.Ct. 777, 778, 83 L.Ed. 1184 (1939), and allows a court to award attorney's fees to a party whose litigation efforts directly benefit others. Alyeska, 421 U.S., at 257-258, 95 S.Ct., at 1621-1622. Second, a court may assess attorney's fees as a sanction for the " 'willful disobedience of a court order.' " Id., at 258, 95 S.Ct., at 1622 (quoting Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 718, 87 S.Ct. 1404, 1407, 18 L.Ed.2d 475 (1967)). Thus, a court's discretion to determine "[t]he degree of punishment for contempt" permits the court to impose as part of the fine attorney's fees representing the entire cost of the litigation. Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 428, 43 S.Ct. 458, 466, 67 L.Ed. 719 (1923).

> FN9. See also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 561-562, and n. 6, 106 S.Ct. 3088, 3096-3097, and n. 6, 92 L.Ed.2d 439 (1986); Summit Valley Industries, Inc. v. Carpenters, 456 U.S. 717, 721, 102 S.Ct. 2112, 2114, 72 L.Ed.2d 511 (1982); F.D. Rich Co. v. United States ex rel. Industrial Lumber Co., 417 U.S. 116, 129-130, 94 S.Ct. 2157, 2165-2166, 40 L.Ed.2d 703 (1974).

Third, and most relevant here, a court may assess attorney's fees when a party has " 'acted in bad faith, vexatiously, ***46** wantonly, or for oppressive reasons.' " Alyeska, supra, 421 U.S., at 258-259, 95 S.Ct., at 1622-1623 (quoting F.D. Rich Co. v. United States ex rel. Industrial Lumber Co., 417 U.S. 116, 129, 94 S.Ct. 2157, 2165, 40 L.Ed.2d 703 (1974)). See also Hall v. Cole, 412 U.S. 1, 5, 93 S.Ct.1943, 1946, 36 L.Ed.2d 702 (1973); Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402, n. 4, 88 S.Ct. 964, 966, n. 4, 19 L.Ed.2d 1263 (1968) (per curiam). In this regard, if a court finds "that fraud has been practiced upon it, or that the very temple of justice has been defiled," it may assess attorney's fees against the responsible party, Universal Oil, supra, 328 U.S., at 580, 66 S.Ct., at 1179, as it may when a party "shows bad faith by delaying or disrupting the litigation or by hampering enforcement of a court order," [FN10] Hutto, 437 U.S., at 689, n. 14, 98 S.Ct., at 2573, n. 14. The imposition of sanctions in this instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the dual purpose of "vindicat[ing] judicial authority without resort to the more drastic sanctions available for contempt of court and mak[ing] the prevailing party whole for expenses caused by his opponent's obstinacy." Ibid.

> FN10. In this regard, the bad-faith exception resembles the third prong of Rule 11's certification requirement, which mandates that a signer of a paper filed with the court warrant that the paper "is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

****2134 B**

[8] We discern no basis for holding that the sanctioning scheme of the statute and the rules displaces the inherent power to impose sanctions for the bad-faith conduct described above. These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions. First, whereas each of the other mechanisms reaches only certain individuals or conduct, the inherent power extends to a full range of litigation abuses. At the very least, the inherent power must continue to exist to fill in the interstices. Even Justice KENNEDY'S dissent so ***47** concedes. See post, at 2143. Second, while the narrow exceptions to the American Rule effectively limit a court's inherent power to impose attorney's fees as a sanction to cases in which a litigant has engaged in bad-faith conduct or willful disobedience of a court's orders, many of the other mechanisms permit a court to impose attorney's fees as a sanction for conduct which merely fails to meet a reasonableness

and Rule 11 of the District Court's Local Rules (now Rule 10), both of which are designed to give a defendant in a TRO application notice of the hearing and an opportunity to be heard.

The reaction of Chambers and his attorney, A.J. Gray III, was later described by the District Court as having "emasculated and frustrated the purposes of these rules and the powers of [the District] Court by utilizing this notice to prevent NASCO's access to the remedy of specific performance." NASCO, Inc. v. Calcasieu Television & Radio, Inc., 623 F.Supp. 1372, 1383 (1985). On Sunday, October 16, 1983, the pair acted to place the properties at issue beyond the reach of the District Court by means of the Louisiana Public Records Doctrine. Because the purchase agreement had never been recorded, they determined that if the properties ***37** were sold to a third party, and if the deeds were recorded before the issuance of a TRO, the District Court would lack jurisdiction over the properties.

To this end, Chambers and Gray created a trust, with Chambers' sister as trustee and Chambers' three adult children as beneficiaries. The pair then directed the president of CTR, who later became Chambers' wife, to execute warranty deeds conveying the two tracts at issue to the trust for a recited consideration of $1.4 million. Early Monday morning, the deeds were recorded. The trustee, as purchaser, had not signed the deeds; none of the consideration had been ****2129** paid; and CTR remained in possession of the properties. Later that morning, NASCO's counsel appeared in the District Court to file the complaint and seek the TRO. With NASCO's counsel present, the District Judge telephoned Gray. Despite the judge's queries concerning the possibility that CTR was negotiating to sell the properties to a third person, Gray made no mention of the recordation of the deeds earlier that morning. NASCO, Inc. v. Calcasieu Television & Radio, Inc., 124 F.R.D. 120, 126, n. 8 (1989). That afternoon, Chambers met with his sister and had her sign the trust documents and a $1.4 million note to CTR. The next morning, Gray informed the District Court by letter of the recordation of the deeds the day before and admitted that he had intentionally withheld the information from the court.

Within the next few days, Chambers' attorneys prepared a leaseback agreement from the trustee to CTR, so that CTR could remain in possession of the properties and continue to operate the station. The following week, the District Court granted a preliminary injunction against Chambers and CTR and entered a second TRO to prevent the trustee from alienating or encumbering the properties. At that hearing, the District Judge warned that Gray's and Chambers' conduct had been unethical.

***38** Despite this early warning, Chambers, often acting through his attorneys, continued to abuse the judicial process. In November 1983, in defiance of the preliminary injunction, he refused to allow NASCO to inspect CTR's corporate records. The ensuing civil contempt proceedings resulted in the assessment of a $25,000 fine against Chambers personally. NASCO, Inc. v. Calcasieu Television & Radio, Inc., 583 F.Supp. 115 (1984). Two subsequent appeals from the contempt order were dismissed for lack of a final judgment. See NASCO, Inc. v. Calcasieu Television & Radio, Inc., No. 84-9037 (CA5, May 29, 1984); NASCO, Inc. v. Calcasieu Television & Radio, Inc., 752 F.2d 157 (CA5 1985).

Undeterred, Chambers proceeded with "a series of meritless motions and pleadings and delaying actions." 124 F.R.D., at 127. These actions triggered further warnings from the court. At one point, acting sua sponte, the District Judge called a status conference to find out why bankers were being deposed. When informed by Chambers' counsel that the purpose was to learn whether NASCO could afford to pay for the station, the court canceled the depositions consistent with its authority under Federal Rule of Civil Procedure 26(g).

At the status conference nine days before the April 1985 trial date, [FN2] the District Judge again warned counsel that further misconduct would not be tolerated. [FN3] Finally, on the eve of trial, Chambers and CTR stipulated that the purchase agreement was enforceable and that Chambers had breached the agreement on September 23, 1983, by failing to file the ***39** necessary papers with the FCC. At trial, the only defense presented by Chambers was the Public Records Doctrine.

> FN2. The trial date itself reflected delaying tactics. Trial had been set for February 1985, but in January, Gray, on behalf of Chambers, filed a motion to recuse the judge. The motion was denied, as was the subsequent writ of mandamus filed in the Court of Appeals.

FN3. To make his point clear, the District Judge gave counsel copies of Judge Schwarzer's then-recent article, Sanctions Under the New Federal Rule 11--A Closer Look, 104 F.R.D. 181 (1985).

In the interlude between the trial and the entry of judgment during which the District Court prepared its opinion, Chambers sought to render the purchase agreement meaningless by seeking permission from the FCC to build a new transmission tower for the station and to relocate the transmission facilities to that site, which was not covered by the agreement. Only after NASCO sought contempt sanctions did Chambers withdraw the application.

**2130 The District Court entered judgment on the merits in NASCO's favor, finding that the transfer of the properties to the trust was a simulated sale and that the deeds purporting to convey the property were "null, void, and of no effect." 623 F.Supp., at 1385. Chambers' motions, filed in the District Court, the Court of Appeals, and this Court, to stay the judgment pending appeal were denied. Undeterred, Chambers convinced CTR officials to file formal oppositions to NASCO's pending application for FCC approval of the transfer of the station's license, in contravention of both the District Court's injunctive orders and its judgment on the merits. NASCO then sought contempt sanctions for a third time, and the oppositions were withdrawn.

When Chambers refused to prepare to close the sale, NASCO again sought the court's help. A hearing was set for July 16, 1986, to determine whether certain equipment was to be included in the sale. At the beginning of the hearing, the court informed Chambers' new attorney, Edwin A. McCabe, [FN4] that further sanctionable conduct would not be tolerated. When the hearing was recessed for several days, Chambers, without notice to the court or NASCO, removed from service at the station all of the equipment at issue, forcing the District Court to order that the equipment be returned to service.

FN4. Gray had resigned as counsel for Chambers and CTR several months previously.

*40 Immediately following oral argument on Chambers' appeal from the District Court's judgment on the merits, the Court of Appeals, ruling from the bench, found the appeal frivolous. The court imposed appellate sanctions in the form of attorney's fees and double costs, pursuant to Federal Rule of Appellate Procedure 38, and remanded the case to the District Court with orders to fix the amount of appellate sanctions and to determine whether further sanctions should be imposed for the manner in which the litigation had been conducted. NASCO, Inc. v. Calcasieu Television & Radio, Inc., 797 F.2d 975 (CA5 1986) (per curiam) (unpublished order).

On remand, NASCO moved for sanctions, invoking the District Court's inherent power, Fed.Rule Civ.Proc. 11, and 28 U.S.C. § 1927. After full briefing and a hearing, see 124 F.R.D., at 141, n. 11, the District Court determined that sanctions were appropriate "for the manner in which this proceeding was conducted in the district court from October 14, 1983, the time that plaintiff gave notice of its intention to file suit to this date." Id., at 123. At the end of an extensive opinion recounting what it deemed to have been sanctionable conduct during this period, the court imposed sanctions against Chambers in the form of attorney's fees and expenses totaling $996,644.65, which represented the entire amount of NASCO's litigation costs paid to its attorneys. [FN5] *41 In so doing, the court rejected Chambers' argument that he had merely followed the advice of counsel, labeling him "the strategist," id., at 132, behind a scheme devised "first, to deprive this Court of jurisdiction and, second, to devise a plan of obstruction, delay, harassment, and expense sufficient to reduce NASCO to a **2131 condition of exhausted compliance," id., at 136.

FN5. In calculating the award, the District Court deducted the amounts previously awarded as compensatory damages for contempt, as well as the amount awarded as appellate sanctions. 124 F.R.D., at 133-134. The court also sanctioned other individuals, who are not parties to the action in this Court. Chambers' sister, the trustee, was sanctioned by a reprimand; attorney Gray was disbarred and prohibited from seeking readmission for three years; attorney Richard A. Curry, who represented the trustee, was suspended from practice before the court for six months; and attorney

McCabe was suspended for five years. Id., at 144-146. Although these sanctions did not affect the bank accounts of these individuals, they were nevertheless substantial sanctions and were as proportionate to the conduct at issue as was the monetary sanction imposed on Chambers. Indeed, in the case of the disbarment of attorney Gray, the court recognized that the penalty was among the harshest possible sanctions and one which derived from its authority to supervise those admitted to practice before it. See id., at 140-141.

In imposing the sanctions, the District Court first considered Federal Rule of Civil Procedure 11. It noted that the alleged sanctionable conduct was that Chambers and the other defendants had "(1) attempted to deprive this Court of jurisdiction by acts of fraud, nearly all of which were performed outside the confines of this Court, (2) filed false and frivolous pleadings, and (3) attempted, by other tactics of delay, oppression, harassment and massive expense to reduce plaintiff to exhausted compliance." 124 F.R.D., at 138. The court recognized that the conduct in the first and third categories could not be reached by Rule 11, which governs only papers filed with a court. As for the second category, the court explained that the falsity of the pleadings at issue did not become apparent until after the trial on the merits, so that it would have been impossible to assess sanctions at the time the papers were filed. Id., at 138-139. Consequently, the District Court deemed Rule 11 "insufficient" for its purposes. Id., at 139. The court likewise declined to impose sanctions under § 1927, [FN6] both because the statute applies only to attorneys, and therefore would not reach Chambers, and because the statute was not broad enough to reach "acts ***42** which degrade the judicial system," including "attempts to deprive the Court of jurisdiction, fraud, misleading and lying to the Court." Ibid. The court therefore relied on its inherent power in imposing sanctions, stressing that "[t]he wielding of that inherent power is particularly appropriate when the offending parties have practiced a fraud upon the court." Ibid.

FN6. That statute provides:
"Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927.

The Court of Appeals affirmed. NASCO, Inc. v. Calcasieu Television & Radio, Inc., 894 F.2d 696 (CA5 1990). The court rejected Chambers' argument that a federal court sitting in diversity must look to state law, not the court's inherent power, to assess attorney's fees as a sanction for bad-faith conduct in litigation. The court further found that neither 28 U.S.C. § 1927 nor Federal Rule of Civil Procedure 11 limits a court's inherent authority to sanction bad-faith conduct "when the party's conduct is not within the reach of the rule or the statute." [FN7] 894 F.2d, at 702-703. Although observing that the inherent power "is not a broad reservoir of power, ready at an imperial hand, but a limited source; an implied power squeezed from the need to make the court function," id., at 702, the court also concluded that the District Court did not abuse its discretion in awarding to NASCO the fees and litigation costs paid to its attorneys. Because of the importance of these issues, we granted certiorari, 498 U.S. 807, 111 S.Ct. 38, 112 L.Ed.2d 15 (1990).

FN7. The court remanded for a reconsideration of the proper sanction for attorney McCabe. 894 F.2d, at 708.

II

[1] Chambers maintains that 28 U.S.C. § 1927 and the various sanctioning provisions in the Federal Rules of Civil Procedure [FN8] reflect a legislative intent to displace the ****2132** inherent ***43** power. At least, he argues that they obviate or foreclose resort to the inherent power in this case. We agree with the Court of Appeals that neither proposition is persuasive.

FN8. A number of the Rules provide for the imposition of attorney's fees as a sanction. See Fed.Rules Civ.Proc. 11 (certification requirement for papers), 16(f) (pretrial conferences), 26(g) (certification requirement for discovery requests), 30(g) (oral depositions), 37 (sanctions for failure to cooperate with discovery), 56(g) (affidavits accompanying summary judgment motions). In some instances, the assessment of fees is one of a range of possible sanctions, see, e.g., Fed.Rule

Civ.Proc. 11, while in others, the court must award fees, see, e.g., Fed.Rule Civ.Proc. 16(f). In each case, the fees that may be assessed are limited to those incurred as a result of the Rule violation. In the case of Rule 11, however, a violation could conceivably warrant an imposition of fees covering the entire litigation, if, for example, a complaint or answer was filed in violation of the Rule. The court generally may act sua sponte in imposing sanctions under the Rules.

A

It has long been understood that "[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution," powers "which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." United States v. Hudson, 7 Cranch 32, 34, 3 L.Ed. 259 (1812); see also Roadway Express, Inc. v. Piper, 447 U.S. 752, 764, 100 S.Ct. 2455, 2463, 65 L.Ed.2d 488 (1980) (citing Hudson). For this reason, "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates." Anderson v. Dunn, 6 Wheat. 204, 227, 5 L.Ed. 242 (1821); see also Ex parte Robinson, 19 Wall. 505, 510, 22 L.Ed. 205 (1874). These powers are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." Link v. Wabash R. Co., 370 U.S. 626, 630-631, 82 S.Ct. 1386, 1388-1389, 8 L.Ed.2d 734 (1962).

Prior cases have outlined the scope of the inherent power of the federal courts. For example, the Court has held that a federal court has the power to control admission to its bar and to discipline attorneys who appear before it. See Ex parte Burr, 9 Wheat. 529, 531, 6 L.Ed. 152 (1824). While this power "ought to be exercised with great caution," it is nevertheless "incidental to all Courts." Ibid.

***44** [2] In addition, it is firmly established that "[t]he power to punish for contempts is inherent in all courts." Robinson, supra, at 510. This power reaches both conduct before the court and that beyond the court's confines, for "[t]he underlying concern that gave rise to the contempt power was not ... merely the disruption of court proceedings. Rather, it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial." Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 798, 107 S.Ct. 2124, 2132, 95 L.Ed.2d 740 (1987) (citations omitted).

[3][4] Of particular relevance here, the inherent power also allows a federal court to vacate its own judgment upon proof that a fraud has been perpetrated upon the court. See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944); Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 580, 66 S.Ct. 1176, 1179, 90 L.Ed. 1447 (1946). This "historic power of equity to set aside fraudulently begotten judgments," Hazel-Atlas, 322 U.S., at 245, 64 S.Ct., at 1001, is necessary to the integrity of the courts, for "tampering with the administration of justice in [this] manner ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." Id., at 246, 64 S.Ct., at 1001. Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. Universal Oil, supra, 328 U.S., at 580, 66 S.Ct., at 1179.

There are other facets to a federal court's inherent power. The court may bar from the courtroom a criminal defendant who disrupts a trial. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). It may dismiss an action on grounds of forum non conveniens, Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507-508, 67 S.Ct. 839, 842-843, 91 L.Ed. 1055 (1947); and it may act sua sponte to dismiss a suit for failure to prosecute, Link, supra, 370 U.S., at 630-631, 82 S.Ct., at 1388-1389.

[5][6] Because of their very potency, inherent powers must be exercised with restraint and discretion. See Roadway Express, supra, 447 U.S., at 764, 100 S.Ct., at 2463. A primary aspect of that discretion is ****2133** the ability to fashion an appropriate sanction for conduct ***45** which abuses the judicial process. As we recognized in Roadway Express, outright dismissal of a lawsuit, which we had upheld in Link, is a particularly severe sanction, yet is within the court's discretion. 447 U.S., at 765, 100 S.Ct., at 2463. Consequently, the "less severe sanction" of an assessment of attorney's fees is undoubtedly within a court's inherent power as well. Ibid. See also Hutto v. Finney, 437 U.S. 678, 689, n. 14, 98 S.Ct. 2565, 2573, n. 14, 57 L.Ed.2d

522 (1978).

[7] Indeed, "[t]here are ample grounds for recognizing ... that in narrowly defined circumstances federal courts have inherent power to assess attorney's fees against counsel," Roadway Express, supra, 447 U.S., at 765, 100 S.Ct., at 2463, even though the so-called "American Rule" prohibits fee shifting in most cases. See Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 259, 95 S.Ct. 1612, 1622, 44 L.Ed.2d 141 (1975). As we explained in Alyeska, these exceptions fall into three categories. [FN9] The first, known as the "common fund exception," derives not from a court's power to control litigants, but from its historic equity jurisdiction, see Sprague v. Ticonic National Bank, 307 U.S. 161, 164, 59 S.Ct. 777, 778, 83 L.Ed. 1184 (1939), and allows a court to award attorney's fees to a party whose litigation efforts directly benefit others. Alyeska, 421 U.S., at 257-258, 95 S.Ct., at 1621-1622. Second, a court may assess attorney's fees as a sanction for the " 'willful disobedience of a court order.' " Id., at 258, 95 S.Ct., at 1622 (quoting Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 718, 87 S.Ct. 1404, 1407, 18 L.Ed.2d 475 (1967)). Thus, a court's discretion to determine "[t]he degree of punishment for contempt" permits the court to impose as part of the fine attorney's fees representing the entire cost of the litigation. Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 428, 43 S.Ct. 458, 466, 67 L.Ed. 719 (1923).

> FN9. See also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 561-562, and n. 6, 106 S.Ct. 3088, 3096-3097, and n. 6, 92 L.Ed.2d 439 (1986); Summit Valley Industries, Inc. v. Carpenters, 456 U.S. 717, 721, 102 S.Ct. 2112, 2114, 72 L.Ed.2d 511 (1982); F.D. Rich Co. v. United States ex rel. Industrial Lumber Co., 417 U.S. 116, 129-130, 94 S.Ct. 2157, 2165-2166, 40 L.Ed.2d 703 (1974).

Third, and most relevant here, a court may assess attorney's fees when a party has " 'acted in bad faith, vexatiously, ***46** wantonly, or for oppressive reasons.' " Alyeska, supra, 421 U.S., at 258-259, 95 S.Ct., at 1622-1623 (quoting F.D. Rich Co. v. United States ex rel. Industrial Lumber Co., 417 U.S. 116, 129, 94 S.Ct. 2157, 2165, 40 L.Ed.2d 703 (1974)). See also Hall v. Cole, 412 U.S. 1, 5, 93 S.Ct.1943, 1946, 36 L.Ed.2d 702 (1973); Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402, n. 4, 88 S.Ct. 964, 966, n. 4, 19 L.Ed.2d 1263 (1968) (per curiam). In this regard, if a court finds "that fraud has been practiced upon it, or that the very temple of justice has been defiled," it may assess attorney's fees against the responsible party, Universal Oil, supra, 328 U.S., at 580, 66 S.Ct., at 1179, as it may when a party "shows bad faith by delaying or disrupting the litigation or by hampering enforcement of a court order," [FN10] Hutto, 437 U.S., at 689, n. 14, 98 S.Ct., at 2573, n. 14. The imposition of sanctions in this instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the dual purpose of "vindicat[ing] judicial authority without resort to the more drastic sanctions available for contempt of court and mak[ing] the prevailing party whole for expenses caused by his opponent's obstinacy." Ibid.

> FN10. In this regard, the bad-faith exception resembles the third prong of Rule 11's certification requirement, which mandates that a signer of a paper filed with the court warrant that the paper "is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

****2134** B

[8] We discern no basis for holding that the sanctioning scheme of the statute and the rules displaces the inherent power to impose sanctions for the bad-faith conduct described above. These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions. First, whereas each of the other mechanisms reaches only certain individuals or conduct, the inherent power extends to a full range of litigation abuses. At the very least, the inherent power must continue to exist to fill in the interstices. Even Justice KENNEDY'S dissent so ***47** concedes. See post, at 2143. Second, while the narrow exceptions to the American Rule effectively limit a court's inherent power to impose attorney's fees as a sanction to cases in which a litigant has engaged in bad-faith conduct or willful disobedience of a court's orders, many of the other mechanisms permit a court to impose attorney's fees as a sanction for conduct which merely fails to meet a reasonableness

standard. Rule 11, for example, imposes an objective standard of reasonable inquiry which does not mandate a finding of bad faith. [FN11] See Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., 498 U.S. 533, 548-549, 111 S.Ct. 922, 931-932, 112 L.Ed.2d 1140 (1991).

> FN11. Indeed, Rule 11 was amended in 1983 precisely because the subjective bad-faith standard was difficult to establish and courts were therefore reluctant to invoke it as a means of imposing sanctions. See Advisory Committee's Notes on 1983 Amendment to Rule 11, 28 U.S.C.App., pp. 575-576. Consequently, there is little risk that courts will invoke their inherent power "to chill the advocacy of litigants attempting to vindicate all other important federal rights." See post, at 2145 (KENNEDY, J., dissenting). To the extent that such a risk does exist, it is no less present when a court invokes Rule 11. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393, 110 S.Ct. 2447, 2454, 110 L.Ed.2d 359 (1990).

[9] It is true that the exercise of the inherent power of lower federal courts can be limited by statute and rule, for "[t]hese courts were created by act of Congress." Robinson, 19 Wall., at 511. Nevertheless, "we do not lightly assume that Congress has intended to depart from established principles" such as the scope of a court's inherent power. Weinberger v. Romero-Barcelo, 456 U.S. 305, 313, 102 S.Ct. 1798, 1803, 72 L.Ed.2d 91 (1982); see also Link, 370 U.S., at 631-632, 82 S.Ct., at 1389-1390. In Alyeska we determined that "Congress ha[d] not repudiated the judicially fashioned exceptions" to the American Rule, which were founded in the inherent power of the courts. 421 U.S., at 260, 95 S.Ct., at 1623. Nothing since then has changed that assessment, [FN12] and we have thus ***48** reaffirmed the scope and the existence of the exceptions since the most recent amendments to § 1927 and Rule 11, the other sanctioning mechanisms invoked by NASCO here. See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 561-562, and n. 6, 106 S.Ct. 3088, 3096-3097, and n. 6, 92 L.Ed.2d 439 (1986). As the Court of Appeals recognized, 894 F.2d, at 702, the amendment to § 1927 allowing an assessment of fees against an attorney says nothing about a court's power to assess fees against a party. Likewise, the Advisory Committee's Notes on the 1983 Amendment to Rule 11, 28 U.S.C.App., p. 575, declare that the Rule "build[s] upon and expand[s] the equitable doctrine permitting the court to award expenses, including ****2135** attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation," citing as support this Court's decisions in Roadway Express and Hall. [FN13] Thus, as the Court of Appeals for the Ninth Circuit has recognized, Rule 11 "does not repeal or modify existing authority of federal courts to deal with abuses ... under the court's ***49** inherent power." Zaldivar v. Los Angeles, 780 F.2d 823, 830 (1986).

> FN12. Chambers also asserts that all inherent powers are not created equal. Relying on Eash v. Riggins Trucking Inc., 757 F.2d 557, 562- 563 (CA3 1985) (en banc), he suggests that inherent powers fall into three tiers: (1) irreducible powers derived from Article III, which exist despite contrary legislative direction; (2) essential powers that arise from the nature of the court, which can be legislatively regulated but not abrogated; and (3) powers that are necessary only in the sense of being useful, which exist absent legislation to the contrary. Brief for Petitioner 17. Chambers acknowledges that this Court has never so classified the inherent powers, and we have no need to do so now. Even assuming, arguendo, that the power to shift fees falls into the bottom tier of this alleged hierarchy of inherent powers, Chambers' argument is unavailing, because we find no legislative intent to limit the scope of this power.

> FN13. The Advisory Committee's Notes on the 1983 Amendments to other Rules reflect a similar intent to preserve the scope of the inherent power. While the Notes to Rule 16, 28 U.S.C.App., p. 591, point out that the sanctioning provisions are designed "to obviate dependence upon Rule 41(b) or the court's inherent power," there is no indication of an intent to displace the inherent power, but rather simply to provide courts with an additional tool by which to control the judicial process. The Notes to Rule 26(g), 28 U.S.C.App., p. 622, point out that the rule "makes explicit the authority judges now have to impose appropriate sanctions and requires them to

use it. This authority derives from Rule 37, 28 U.S.C. § 1927, and the court's inherent power.". (Citations omitted.)

The Court's prior cases have indicated that the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct. In Link, it was recognized that a federal district court has the inherent power to dismiss a case sua sponte for failure to prosecute, even though the language of Federal Rule of Civil Procedure 41(b) appeared to require a motion from a party:

"The authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. That it has long gone unquestioned is apparent not only from the many state court decisions sustaining such dismissals, but even from language in this Court's opinion in Redfield v. Ystalyfera Iron Co., 110 U.S. 174, 176 [3 S.Ct. 570, 571, 28 L.Ed. 109 (1884)]. It also has the sanction of wide usage among the District Courts. It would require a much clearer expression of purpose than Rule 41(b) provides for us to assume that it was intended to abrogate so well- acknowledged a proposition." 370 U.S., at 630-632, 82 S.Ct., at 1388-1390 (footnotes omitted).

In Roadway Express, a party failed to comply with discovery orders and a court order concerning the schedule for filing briefs. 447 U.S., at 755, 100 S.Ct., at 2458. After determining that § 1927, as it then existed, would not allow for the assessment of attorney's fees, we remanded the case for a consideration of sanctions under both Federal Rule of Civil Procedure 37 and the court's inherent power, while recognizing that invocation of the inherent power would require a finding of bad faith. [FN14] Id., at 767, 100 S.Ct., at 2464.

FN14. The decision in Societe Internationale pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255 (1958), is not to the contrary. There it was held that the Court of Appeals had erred in relying on the District Court's inherent power and Rule 41(b), rather than Federal Rule of Civil Procedure 37(b)(2)(iii), in dismissing a complaint for a plaintiff's failure to comply with a discovery order. Because Rule 37 dealt specifically with discovery sanctions, id., at 207, 78 S.Ct., at 1093, there was "no need" to resort to Rule 41(b), which pertains to trials, or to the court's inherent power. ibid. Moreover, because individual rules address specific problems, in many instances it might be improper to invoke one when another directly applies. Cf. Zaldivar v. Los Angeles, 780 F.2d 823, 830 (CA9 1986).

***50** [10][11][12] There is, therefore, nothing in the other sanctioning mechanisms or prior cases interpreting them that warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct. This is plainly the case where the conduct at issue is not covered by one of the other sanctioning provisions. But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also ****2136** be sanctioned under the statute or the Rules. A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees, see Roadway Express, supra, at 767, 100 S.Ct., at 2464. Furthermore, when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on the Rules rather than the inherent power. But if in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power.

[13][14] Like the Court of Appeals, we find no abuse of discretion in resorting to the inherent power in the circumstances of this case. It is true that the District Court could have employed Rule 11 to sanction Chambers for filing "false and frivolous pleadings," 124 F.R.D., at 138, and that some of the other conduct might have been reached through other Rules. Much of the bad-faith conduct by Chambers, however, was ***51** beyond the reach of the Rules; his entire course of conduct throughout the lawsuit evidenced bad faith and an attempt to perpetrate a fraud on the court, and the conduct sanctionable under the Rules was intertwined within conduct that only the inherent power could address. In circumstances such as these in which all of a litigant's conduct is deemed sanctionable, requiring a court first to apply Rules and statutes containing

sanctioning provisions to discrete occurrences before invoking inherent power to address remaining instances of sanctionable conduct would serve only to foster extensive and needless satellite litigation, which is contrary to the aim of the Rules themselves. See, e.g., Advisory Committee's Notes on 1983 Amendment to Rule 11, 28 U.S.C.App., pp. 575-576.

We likewise do not find that the District Court's reliance on the inherent power thwarted the purposes of the other sanctioning mechanisms. Although Justice Kennedy's dissent makes much of the fact that Rule 11 and Rule 26(g) "are cast in mandatory terms," post, at 2144, the mandate of these provisions extends only to whether a court must impose sanctions, not to which sanction it must impose. Indeed, the language of both Rules requires only that a court impose "an appropriate sanction." Thus, this case is distinguishable from Bank of Nova Scotia v. United States, 487 U.S. 250, 108 S.Ct. 2369, 101 L.Ed.2d 228 (1988), in which this Court held that a district court could not rely on its supervisory power as a means of circumventing the clear mandate of a procedural rule. Id., at 254-255, 108 S.Ct., at 2373- 2374.

III

[15] Chambers asserts that even if federal courts can use their inherent power to assess attorney's fees as a sanction in some cases, they are not free to do so when they sit in diversity, unless the applicable state law recognizes the "bad-faith" exception to the general rule against fee shifting. He relies on footnote 31 in Alyeska, in which we stated with regard to the exceptions to the American Rule that "[a] very different situation ***52** is presented when a federal court sits in a diversity case. '[I]n an ordinary diversity case where the state law does not run counter to a valid federal statute or rule of court, and usually it will not, state law denying the right to attorney's fees or giving a right thereto, which reflects a substantial policy of the state, should be followed.' 6 J. Moore, Federal Practice ¶ 54.77[2], pp. 1712-1713 (2d ed. 1974) (footnotes omitted)." 421 U.S., at 259, n. 31, 95 S.Ct., at 1622, n. 31.

We agree with NASCO that Chambers has misinterpreted footnote 31. The limitation on a court's inherent power described there applies only to fee- shifting rules that embody a substantive policy, such as a statute which permits a prevailing party in certain classes of litigation to recover fees. That was precisely the issue in Sioux County v. National Surety Co., 276 U.S. 238, 48 S.Ct. 239, 72 L.Ed. 547 (1928), the only case cited in footnote ****2137** 31. There, a state statute mandated that in actions to enforce an insurance policy, the court was to award the plaintiff a reasonable attorney's fee. See id., at 242, 48 S.Ct., at 240, and n. 2. In enforcing the statute, the Court treated the provision as part of a statutory liability which created a substantive right. Id., at 241-242, 48 S.Ct., at 240. Indeed, Alyeska itself concerned the substantive nature of the public policy choices involved in deciding whether vindication of the rights afforded by a particular statute is important enough to warrant the award of fees. See 421 U.S., at 260-263, 95 S.Ct., at 1623-1625.

Only when there is a conflict between state and federal substantive law are the concerns of Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), at issue. As we explained in Hanna v. Plumer, 380 U.S. 460, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965), the "outcome determinative" test of Erie and Guaranty Trust Co. v. York, 326 U.S. 99, 65 S.Ct. 1464, 89 L.Ed. 2079 (1945), "cannot be read without reference to the twin aims of the Erie rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws." 380 U.S., at 468, 85 S.Ct., at 1142. Despite Chambers' protestations to the contrary, neither of these twin aims is implicated by the assessment of attorney's fees as a sanction for bad-faith conduct before the ***53** court which involved disobedience of the court's orders and the attempt to defraud the court itself. In our recent decision in Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., 498 U.S., at 553, 111 S.Ct., at 934, we stated, "Rule 11 sanctions do not constitute the kind of fee shifting at issue in Alyeska [because they] are not tied to the outcome of litigation; the relevant inquiry is whether a specific filing was, if not successful, at least well founded." Likewise, the imposition of sanctions under the bad-faith exception depends not on which party wins the lawsuit, but on how the parties conduct themselves during the litigation. Consequently, there is no risk that the exception will lead to forum-shopping. Nor is it inequitable to apply the exception to citizens and noncitizens alike, when the party, by controlling his or her conduct in litigation, has the power to determine whether sanctions will be assessed. As the Court of Appeals expressed it: "Erie guarantees a litigant that if he takes his state law cause of action

to federal court, and abides by the rules of that court, the result in his case will be the same as if he had brought it in state court. It does not allow him to waste the court's time and resources with cantankerous conduct, even in the unlikely event a state court would allow him to do so." 894 F.2d, at 706.

As Chambers has recognized, see Brief for Petitioner 15, in the case of the bad-faith exception to the American Rule, "the underlying rationale of 'fee shifting' is, of course, punitive." Hall, 412 U.S., at 4-5, 93 S.Ct., at 1945-1946. Cf. Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. 120, 126, 110 S.Ct. 456, 460, 107 L.Ed.2d 438 (1989). "[T]he award of attorney's fees for bad faith serve[s] the same purpose as a remedial fine imposed for civil contempt," because "[i]t vindicate[s] the District Court's authority over a recalcitrant litigant." Hutto, 437 U.S., at 691, 98 S.Ct., at 2574. "That the award ha[s] a compensatory effect does not in any event distinguish it from a fine for civil contempt, which also compensates ***54** a private party for the consequences of a contemnor's disobedience." [FN15] Id., at 691, n. 17, 98 S.Ct., at 2974, n. 17.

> FN15. Consequently, Chambers' reformulated argument in his reply brief that the primary purpose of a fee shift under the bad-faith exception "has always been compensatory," Reply Brief for Petitioner 15-16, fails utterly.

[16] Chambers argues that because the primary purpose of the sanction is punitive, assessing attorney's fees violates the State's prohibition on punitive damages. Under Louisiana law, there can be no punitive damages for breach of contract, even when a ****2138** party has acted in bad faith in breaching the agreement. Lancaster v. Petroleum Corp. of Delaware, 491 So.2d 768, 779 (La.App.1986). Cf. La.Civ.Code Ann., Art. 1995 (West 1987). Indeed, "as a general rule attorney's fees are not allowed a successful litigant in Louisiana except where authorized by statute or by contract." Rutherford v. Impson, 366 So.2d 944, 947 (La.App.1978). It is clear, though, that this general rule focuses on the award of attorney's fees because of a party's success on the underlying claim. Thus, in Frank L. Beier Radio, Inc. v. Black Gold Marine, Inc., 449 So.2d 1014 (La.1984), the state court considered the scope of a statute which permitted an award of attorney's fees in a suit seeking to collect on an open account. Id., at 1015. This substantive state policy is not implicated here, where sanctions were imposed for conduct during the litigation.

Here, the District Court did not attempt to sanction petitioner for breach of contract, [FN16] but rather imposed sanctions for the fraud he perpetrated on the court and the bad faith he displayed toward both his adversary and the court throughout the course of the litigation. [FN17] See 124 F.R.D., at 123, ***55** 143. We agree with the Court of Appeals that "[w]e do not see how the district court's inherent power to tax fees for that conduct can be made subservient to any state policy without transgressing the boundaries set out in Erie, Guaranty Trust Co., and Hanna," for "[f]ee-shifting here is not a matter of substantive remedy, but of vindicating judicial authority." 894 F.2d, at 705.

> FN16. We therefore express no opinion as to whether the District Court would have had the inherent power to sanction Chambers for conduct relating to the underlying breach of contract, or whether such sanctions might implicate the concerns of Erie.

> FN17. Contrary to Chambers' assertion, the District Court did not sanction him for failing to file the requisite papers with the FCC in September 1983, although the District Court did find that this conduct was a deliberate violation of the agreement and was done "in absolute bad faith," 124 F.R.D., at 125. As the court noted, "the allegedly sanctionable acts were committed in the conduct and trial of the very proceeding in which sanctions [were] sought," id., at 141, n. 11, and thus the sanctions imposed "appl[ied] only to sanctionable acts which occurred in connection with the proceedings in the trial Court," id., at 143. Although the fraudulent transfer of assets took place before the suit was filed, it occurred after Chambers was given notice, pursuant to court rule, of the pending suit. Consequently, the sanctions imposed on Chambers were aimed at punishing not only the harm done to NASCO, but also the harm done to the court itself. Indeed, the District Court made clear that it was policing abuse of its own process when it imposed sanctions "for the manner in which

this proceeding was conducted in the district court from October 14, 1983, the time that plaintiff gave notice of its intention to file suit." Id., at 123.

IV

[17][18] We review a court's imposition of sanctions under its inherent power for abuse of discretion. Link, 370 U.S., at 633, 82 S.Ct., at 1390; see also Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 399-405, 110 S.Ct. 2447, 2457-2461, 110 L.Ed.2d 359 (1990) (Rule 11). Based on the circumstances of this case, we find that the District Court acted within its discretion in assessing as a sanction for Chambers' bad-faith conduct the entire amount of NASCO's attorney's fees.

Relying on cases imposing sanctions under Rule 11, [FN18] Chambers proffers five criteria for imposing attorney's fees as a sanction under a court's inherent power, and argues that the District Court acted improperly with regard to each of ***56** them. First, he asserts that sanctions must be timely in order to have the desired deterrent effect, and that the post-judgment sanction imposed here fails to achieve that aim. As NASCO points out, however, we have made clear that, even under Rule 11, sanctions may be imposed years ****2139** after a judgment on the merits. [FN19] Id., at 395-396, 110 S.Ct., at 2455-2456. Interrupting the proceedings on the merits to conduct sanctions hearings may serve only to reward a party seeking delay. More importantly, while the sanction was not assessed until the conclusion of the litigation, Chambers received repeated timely warnings both from NASCO and the court that his conduct was sanctionable. Cf. Thomas v. Capital Security Services, Inc., 836 F.2d 866, 879-881 (CA5 1988) (en banc). Consequently, the District Court's reliance on the inherent power did not represent an end run around the notice requirements of Rule 11. The fact that Chambers obstinately refused to be deterred does not render the District Court's action an abuse of discretion.

FN18. See, e.g., In re Kunstler, 914 F.2d 505 (CA4 1990), cert. denied, 499 U.S. 969, 111 S.Ct. 1607, 113 L.Ed.2d 669 (1991); White v. General Motors Corp., 908 F.2d 675 (CA10 1990); Thomas v. Capital Security Services, Inc., 836 F.2d 866 (CA5 1988) (en banc).

FN19. Cf. Advisory Committee Notes on 1983 Amendment to Rule 11, 28 U.S.C.App., p. 576 ("The time when sanctions are to be imposed rests in the discretion of the trial judge. However, it is anticipated that in the case of pleadings the sanctions issue under Rule 11 normally will be determined at the end of the litigation, and in the case of motions at the time when the motion is decided or shortly thereafter").

Second, Chambers claims that the fact that the entire amount of fees was awarded means that the District Court failed to tailor the sanction to the particular wrong. As NASCO points out, however, the District Court concluded that full attorney's fees were warranted due to the frequency and severity of Chambers' abuses of the judicial system and the resulting need to ensure that such abuses were not repeated. [FN20] Indeed, the court found Chambers' actions were ***57** "part of [a] sordid scheme of deliberate misuse of the judicial process" designed "to defeat NASCO's claim by harassment, repeated and endless delay, mountainous expense and waste of financial resources." 124 F.R.D., at 128. It was within the court's discretion to vindicate itself and compensate NASCO by requiring Chambers to pay for all attorney's fees. Cf. Toledo Scale, 261 U.S., at 428, 43 S.Ct., at 466.

FN20. In particular, Chambers challenges the assessment of attorney's fees in connection with NASCO's claim for delay damages and with the closing of the sale. As NASCO points out, however, Chambers' bad-faith conduct in the course of the litigation caused the delay for which damages were sought and greatly complicated the closing of the sale, through the cloud on the title caused by the fraudulent transfer.

Third, Chambers maintains that the District Court abused its discretion by failing to require NASCO to mitigate its expenses. He asserts that had NASCO sought summary disposition of the case, the litigation could have been concluded much sooner. But, as NASCO notes, Chambers himself made a swift conclusion to the litigation by means of summary judgment impossible by continuing to assert that material factual disputes existed.

[19][20] Fourth, Chambers challenges the District Court's imposition of sanctions for conduct before

other tribunals, including the FCC, the Court of Appeals, and this Court, asserting that a court may sanction only conduct occurring in its presence. Our cases are to the contrary, however. As long as a party receives an appropriate hearing, as did Chambers, see 124 F.R.D., at 141, n. 11, the party may be sanctioned for abuses of process occurring beyond the courtroom, such as disobeying the court's orders. See Young, 481 U.S., at 798, 107 S.Ct., at 2132; Toledo Scale, supra, 261 U.S., at 426-428, 43 S.Ct., at 465-466. Here, for example, Chambers' attempt to gain the FCC's permission to build a new transmission tower was in direct contravention of the District Court's orders to maintain the status quo pending the outcome of the litigation and was therefore within the scope of the District Court's sanctioning power.

Finally, Chambers claims the award is not "personalized," because the District Court failed to conduct any inquiry into whether he was personally responsible for the challenged conduct. This assertion is flatly contradicted by the District ***58** Court's detailed factual findings concerning Chambers' involvement in the sequence of events at issue. Indeed, the court specifically held that "the extraordinary ****2140** amount of costs and expenses expended in this proceeding were caused not by lack of diligence or any delays in the trial of this matter by NASCO, NASCO's counsel or the Court, but solely by the relentless, repeated fraudulent and brazenly unethical efforts of Chambers" and the others. 124 F.R.D., at 136. The Court of Appeals saw no reason to disturb this finding. 894 F.2d, at 706. Neither do we.

For the foregoing reasons, the judgment of the Court of Appeals for the Fifth Circuit is

Affirmed.

Justice SCALIA, dissenting.

I agree with the Court that Article III courts, as an independent and coequal Branch of Government, derive from the Constitution itself, once they have been created and their jurisdiction established, the authority to do what courts have traditionally done in order to accomplish their assigned tasks. Some elements of that inherent authority are so essential to "[t]hejudicial Power," U.S. Const., Art. III, § 1, that they are indefeasible, among which is a court's ability to enter orders protecting the integrity of its proceedings.

> "Certain implied powers must necessarily result to our Courts of justice from the nature of their institution.... To fine for contempt--imprison for contumacy--inforce the observance of order, & c. are powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others: and so far our Courts no doubt possess powers not immediately derived from statute...." United States v. Hudson, 7 Cranch 32, 34, 3 L.Ed. 259 (1812).

I think some explanation might be useful regarding the "bad-faith" limitation that the Court alludes to today, see ante, at 2134. Since necessity does not depend upon a litigant's ***59** state of mind, the inherent sanctioning power must extend to situations involving less than bad faith. For example, a court has the power to dismiss when counsel fails to appear for trial, even if this is a consequence of negligence rather than bad faith.

> "The authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." Link v. Wabash R. Co., 370 U.S. 626, 630-631, 82 S.Ct. 1386, 1388-1389, 8 L.Ed.2d 734 (1962).

However, a "bad-faith" limitation upon the particular sanction of attorney's fees derives from our jurisprudence regarding the so-called American Rule, which provides that the prevailing party must bear his own attorney's fees and cannot have them assessed against the loser. See Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 247, 95 S.Ct. 1612, 1616, 44 L.Ed.2d 141 (1975). That rule, "deeply rooted in our history and in congressional policy," id., at 271, 95 S.Ct., at 1628, prevents a court (without statutory authorization) from engaging in what might be termed substantive fee shifting, that is, fee shifting as part of the merits award. It does not in principle bar fee shifting as a sanction for procedural abuse, see id., at 258-259, 95 S.Ct., at 1622-1623. We have held, however--in my view as a means of preventing erosion or evasion of the American Rule--that even fee shifting as a sanction can only be imposed for litigation conduct characterized by bad faith. See Roadway Express, Inc. v. Piper, 447 U.S. 752, 766, 100 S.Ct. 2455, 2464, 65 L.Ed.2d 488 (1980). But that in no way means that all sanctions imposed under the courts' inherent authority require a finding of bad faith. They do not. See Redfield v. Ystalyfera Iron Co.,

110 U.S. 174, 176, 3 S.Ct. 570-571, 28 L.Ed. 109 (1884) (dismissal appropriate for unexcused delay in prosecution); cf. Link, supra.

Just as Congress may to some degree specify the manner in which the inherent or **2141 constitutionally assigned powers of *60 the President will be exercised, so long as the effectiveness of those powers is not impaired, cf. Myers v. United States, 272 U.S. 52, 128, 47 S.Ct. 21, 29, 71 L.Ed. 160 (1926), so also Congress may prescribe the means by which the courts may protect the integrity of their proceedings. A court must use the prescribed means unless for some reason they are inadequate. In the present case they undoubtedly were. Justice KENNEDY concedes that some of the impairments of the District Court's proceedings in the present case were not sanctionable under the Federal Rules. I have no doubt of a court's authority to go beyond the Rules in such circumstances. And I agree with the Court that an overall sanction resting at least in substantial portion upon the court's inherent power need not be broken down into its component parts, with the actions sustainable under the Rules separately computed. I do not read the Rules at issue here to require that, and it is unreasonable to import such needless complication by implication.

I disagree, however, with the Court's statement that a court's inherent power reaches conduct "beyond the court's confines" that does not " 'interfer[e] with the conduct of trial,' " ante, at 2132 (quoting Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 798, 107 S.Ct. 2124, 2132, 95 L.Ed.2d 740 (1987)). See id., at 819-822, 107 S.Ct., at 2144-2145 (SCALIA, J., concurring in judgment); Bank of Nova Scotia v. United States, 487 U.S. 250, 264, 108 S.Ct. 2369, 2378, 101 L.Ed.2d 228 (1988) (SCALIA, J., concurring). I emphatically agree with Justice KENNEDY, therefore, that the District Court here had no power to impose any sanctions for petitioner's flagrant, bad-faith breach of contract; and I agree with him that it appears to have done so. For that reason, I dissent.

Justice KENNEDY, with whom THE CHIEF JUSTICE and Justice SOUTER join, dissenting.

Today's decision effects a vast expansion of the power of federal courts, unauthorized by Rule or statute. I have no doubt petitioner engaged in sanctionable conduct that warrants severe corrective measures. But our outrage at his *61 conduct should not obscure the boundaries of settled legal categories.

With all respect, I submit the Court commits two fundamental errors. First, it permits the exercise of inherent sanctioning powers without prior recourse to controlling Rules and statutes, thereby abrogating to federal courts Congress' power to regulate fees and costs. Second, the Court upholds the wholesale shift of respondent's attorney's fees to petitioner, even though the District Court opinion reveals that petitioner was sanctioned at least in part for his so-called bad-faith breach of contract. The extension of inherent authority to sanction a party's prelitigation conduct subverts the American Rule and turns the Erie doctrine upside down by punishing petitioner's primary conduct contrary to Louisiana law. Because I believe the proper exercise of inherent powers requires exhaustion of express sanctioning provisions and much greater caution in their application to redress prelitigation conduct, I dissent.

I

The Court's first error lies in its failure to require reliance, when possible, on the panoply of express sanctioning provisions provided by Congress.

A

The American Rule prohibits federal courts from awarding attorney's fees in the absence of a statute or contract providing for a fee award. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 258-259, 95 S.Ct. 1612, 1622-1623, 44 L.Ed.2d 141 (1975). The Rule recognizes that Congress defines the procedural and remedial powers of federal courts, Sibbach v. Wilson & Co., 312 U.S. 1, 9-10, 61 S.Ct. 422, 424-425, 85 L.Ed. 479 (1941); McIntire v. Wood, 7 Cranch 504, **2142 505-506, 3 L.Ed. 420 (1813), and controls the costs, sanctions, and fines available there, Kaiser Aluminum & Chemical Corp. v. Bonjorno, 494 U.S. 827, 835, 110 S.Ct. 1570, 1576, 108 L.Ed.2d 842 (1990) ("[T]he allocation of the costs accruing from litigation is a matter for the legislature, not the courts"); Alyeska Pipeline Co., supra, 421 U.S., at262, 95 S.Ct., at 1624 ("[T]he circumstances *62 under which attorney's fees are to be awarded and the range of discretion of the courts in making those awards are matters for Congress to determine").

By direct action and delegation, Congress has

exercised this constitutional prerogative to provide district courts with a comprehensive arsenal of Federal Rules and statutes to protect themselves from abuse. A district court can punish contempt of its authority, including disobedience of its process, by fine or imprisonment, 18 U.S.C. § 401; award costs, expenses, and attorney's fees against attorneys who multiply proceedings vexatiously, 28 U.S.C. § 1927; sanction a party and/or the party's attorney for filing groundless pleadings, motions, or other papers, Fed.Rule Civ.Proc. 11; sanction a party and/or his attorney for failure to abide by a pretrial order, Fed.Rule Civ.Proc. 16(f); sanction a party and/or his attorney for baseless discovery requests or objections, Fed.Rule Civ.Proc. 26(g); award expenses caused by a failure to attend a deposition or to serve a subpoena on a party to be deposed, Fed.Rule Civ.Proc. 30(g); award expenses when a party fails to respond to discovery requests or fails to participate in the framing of a discovery plan, Fed.Rules Civ.Proc. 37(d) and (g); dismiss an action or claim of a party that fails to prosecute, to comply with the Federal Rules, or to obey an order of the court, Fed.Rule Civ.Proc. 41(b); punish any person who fails to obey a subpoena, Fed.Rule Civ.Proc. 45(f); award expenses and/or contempt damages when a party presents an affidavit in a summary judgment motion in bad faith or for the purpose of delay, Fed.Rule Civ.Proc. 56(g); and make rules governing local practice that are not inconsistent with the Federal Rules, Fed.Rule Civ.Proc. 81. See also 28 U.S.C. § 1912 (power to award just damages and costs on affirmance); Fed.Rule App.Proc. 38 (power to award damages and costs for frivolous appeal).

The Court holds nonetheless that a federal court may ignore these provisions and exercise inherent power to sanction bad-faith misconduct "even if procedural rules exist which ***63** sanction the same conduct." Ante, at 2135. The Court describes the relation between express sanctioning provisions and inherent power to shift fees as a sanction for bad-faith conduct in a number of ways. At one point it states that where "neither the statute nor the Rules are up to the task [i.e., cover all the sanctionable conduct], the court may safely rely on its inherent power." Ante, at 2136. At another it says that courts may place exclusive reliance on inherent authority whenever "conduct sanctionable under the Rules was intertwined within conduct that only the inherent power could address." Ante, at 2136. While the details of the Court's rule remain obscure, its general approach is clear: When express Rules and statutes provided by Congress do not reach the entirety of a litigant's bad-faith conduct, including conduct occurring before litigation commenced, a district court may disregard the requirements of otherwise applicable Rules and statutes and instead exercise inherent power to impose sanctions. The only limitation on this sanctioning authority appears to be a finding at some point of "bad faith," a standard the Court fails to define.

This explanation of the permitted sphere of inherent powers to shift fees as a sanction for bad-faith litigation conduct is as illegitimate as it is unprecedented. The American Rule recognizes that the Legislature, not the Judiciary, possesses constitutional responsibility for defining sanctions and fees; the bad-faith exception to the Rule allows courts to assess fees not provided for by Congress "in narrowly defined circumstances." Roadway ****2143** Express, Inc. v. Piper, 447 U.S. 752, 765, 100 S.Ct. 2455, 2463, 65 L.Ed.2d 488 (1980). By allowing courts to ignore express Rules and statutes on point, however, the Court treats inherent powers as the norm and textual bases of authority as the exception. And although the Court recognizes that Congress in theory may channel inherent powers through passage of sanctioning Rules, it relies on Weinberger v. Romero-Barcelo, 456 U.S. 305, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982), a decision that has nothing to do with ***64** inherent authority, to create a powerful presumption against congressional control of judicial sanctions. Ante, at 2134.

The Court has the presumption backwards. Inherent powers are the exception, not the rule, and their assertion requires special justification in each case. Like all applications of inherent power, the authority to sanction bad-faith litigation practices can be exercised only when necessary to preserve the authority of the court. See Roadway Express, Inc. v. Piper, supra, 447 U.S., at 764, 100 S.Ct., at 2463 (inherent powers "are those which 'are necessary to the exercise of all others' "); Young v. United States ex rel. Vuitton et Fils, S.A., 481 U.S. 787, 819-820, 107 S.Ct. 2124, 2144, 95 L.Ed.2d 740 (1987) (SCALIA, J., concurring in judgment) (inherent powers only those "necessary to permit the courts to function").

The necessity limitation, which the Court brushes aside almost without mention, ante, at 2132, prescribes the rule for the correct application of inherent powers. Although this case does not require articulation of a comprehensive definition of

the term "necessary," at the very least a court need not exercise inherent power if Congress has provided a mechanism to achieve the same end. Consistent with our unaltered admonition that inherent powers must be exercised "with great caution," Ex parte Burr, 9 Wheat. 529, 531, 6 L.Ed. 152 (1824), the necessity predicate limits the exercise of inherent powers to those exceptional instances in which congressionally authorized powers fail to protect the processes of the court. Inherent powers can be exercised only when necessary, and there is no necessity if a Rule or statute provides a basis for sanctions. It follows that a district court should rely on text-based authority derived from Congress rather than inherent power in every case where the text-based authority applies.

Despite the Court's suggestion to the contrary, ante, at 2134-2135, our cases recognize that Rules and statutes limit the exercise of inherent authority. In Societe Internationale pour Participations Industrielles et Commerciales, S.A. v. Rogers, ***65** 357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255 (1958), we rejected the Court of Appeals' reliance on inherent powers to uphold a dismissal of a complaint for failure to comply with a production order. Noting that "[r]eliance upon ... 'inherent power' can only obscure analysis of the problem," we held that "whether a court has power to dismiss a complaint because of noncompliance with a production order depends exclusively upon Rule 37." Id., at 207, 78 S.Ct., at 1093. Similarly, in Bank of Nova Scotia v. United States, 487 U.S. 250, 254, 108 S.Ct. 2369, 2373, 101 L.Ed.2d 228 (1988), we held that a federal court could not invoke its inherent supervisory power to circumvent the harmless-error inquiry prescribed by Federal Rule of Criminal Procedure 52(a). And Ex parte Robinson, 19 Wall. 505, 22 L.Ed. 205 (1874), the very case the Court cites for the proposition that " '[t]he power to punish for contempts is inherent in all courts,' " ante, at2132, held that Congress had defined and limited this inherent power through enactment of the contempt statute. "The enactment is a limitation upon the manner in which the [contempt] power shall be exercised." 19 Wall., at 512.

The Court ignores these rulings and relies instead on two decisions which "indicat[e] that the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct." Ante, at 2135. The "indications" the Court discerns in these decisions do not withstand scrutiny. In ****2144** Roadway Express, Inc. v. Piper, supra, we held that the costs recoverable under a prior version of 28 U.S.C. § 1927 for discovery abuse did not include attorney's fees. In the remand instruction, the Court mentioned that the District Court might consider awarding attorney's fees under either Federal Rule of Civil Procedure 37 or its inherent authority to sanction bad-faith litigation practices. 447 U.S., at 767-768, 100 S.Ct., at 2464-2465. The decision did not discuss the relation between Rule 37 and the inherent power of federal courts, and certainly did not suggest that federal courts could rely on inherent powers to the exclusion of a Federal Rule on point.

***66** The Court also misreads Link v. Wabash R. Co., 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962). Link held that a Federal District Court possessed inherent power to dismiss a case sua sponte for failure to prosecute. The majority suggests that this holding contravened a prior version of Federal Rule of Civil Procedure 41(b), which the Court today states "appeared to require a motion from a party," ante, at 2135 (emphasis added). Contrary to the Court's characterization, the holding in Link turned on a determination that Rule 41(b) contained "permissive language ... which merely authorizes a motion by the defendant," 370 U.S., at 630, 82 S.Ct., at 1388 (emphasis added). Link reasoned that "[n]either the permissive language of the Rule ... nor its policy" meant that the Rule "abrogate[d]" the inherent power of federal courts to dismiss sua sponte. The permissive language at issue in Link distinguishes it from the present context, because some sanctioning provisions, such as Rules 11 and 26(g), are cast in mandatory terms.

In addition to dismissing some of our precedents and misreading others, the Court ignores the commands of the Federal Rules of Civil Procedure, which support the conclusion that a court should rely on rules, and not inherent powers, whenever possible. Like the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure are "as binding as any statute duly enacted by Congress, and federal courts have no more discretion to disregard the Rule[s'] mandate than they do to disregard constitutional or statutory provisions." Bank of Nova Scotia v. United States, supra, 487 U.S., at 255, 108 S.Ct., at 2373-2374. See also Fed.Rule Civ.Proc. 1 (Federal Rules "govern the procedure in the United States district courts in all suits of a civil nature") (emphasis added). Two of the most prominent sanctioning provisions, Rules 11 and 26(g), mandate the imposition of sanctions when litigants violate the

Rules' certification standards. See Fed.Rule Civ.Proc. 11 (court "shall impose ... an appropriate sanction" for violation of certification standard); Fed.Rule Civ.Proc. 26(g) (same); see also Business Guides, Inc. v. Chromatic Communications Enterprises, *67 Inc., 498 U.S. 533, 543, 111 S.Ct. 922, 929, 112 L.Ed.2d 1140 (1991) (Rule 11 "requires that sanctions be imposed where a signature is present but fails to satisfy the certification standard").

The Rules themselves thus reject the contention that they may be discarded in a court's discretion. Disregard of applicable Rules also circumvents the rulemaking procedures in 28 U.S.C. § 2071 et seq., which Congress designed to assure that procedural innovations like those announced today "shall be introduced only after mature consideration of informed opinion from all relevant quarters, with all the opportunities for comprehensive and integrated treatment which such consideration affords." Miner v. Atlass, 363 U.S. 641, 650, 80 S.Ct. 1300, 1306, 4 L.Ed.2d 1462 (1960).

B

Upon a finding of bad faith, courts may now ignore any and all textual limitations on sanctioning power. By inviting district courts to rely on inherent authority as a substitute for attention to the careful distinctions contained in the Rules and statutes, today's decision will render these sources of authority superfluous in many instances. A number of pernicious practical effects will follow.

**2145 The Federal Rules establish explicit standards for, and explicit checks against, the exercise of judicial authority. Rule 11 provides a useful illustration. It requires a district court to impose reasonable sanctions, including attorney's fees, when a party or attorney violates the certification standards that attach to the signing of certain legal papers. A district court must (rather than may) issue sanctions under Rule 11 when particular individuals (signers) file certain types (groundless, unwarranted, vexatious) of documents (pleadings, motions and papers). Rule 11's certification requirements apply to all signers of documents, including represented parties, see Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., supra, but law firms are not responsible for the signatures of their attorneys, see Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. *68 120, 125-127, 110 S.Ct. 456, 459-460, 107 L.Ed.2d 438 (1989), and the Rule does not apply to papers filed in fora other than district courts, see Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405-409, 110 S.Ct. 2447, 2460-2463, 110 L.Ed.2d 359 (1990). These definite standards give litigants notice of proscribed conduct and make possible meaningful review for misuse of discretion--review which focuses on the misapplication of legal standards. See id., at 402, 110 S.Ct., at 2459 (misuse of discretion standard does "not preclude the appellate court's correction of a district court's legal errors").

By contrast, courts apply inherent powers without specific definitional or procedural limits. True, if a district court wishes to shift attorney's fees as a sanction, it must make a finding of bad faith to circumvent the American Rule. But today's decision demonstrates how little guidance or limitation the undefined bad faith predicate provides. The Court states without elaboration that courts must "comply with the mandates of due process ... in determining that the requisite bad faith exists," ante, at 2136, but the Court's bad- faith standard, at least without adequate definition, thwarts the first requirement of due process, namely, that "[a]ll are entitled to be informed as to what the State commands or forbids." Lanzetta v. New Jersey, 306 U.S. 451, 453, 59 S.Ct. 618, 619, 83 L.Ed. 888 (1939). This standardless exercise of judicial power may appear innocuous in this litigation between commercial actors. But the same unchecked power also can be applied to chill the advocacy of litigants attempting to vindicate all other important federal rights.

In addition, the scope of sanctionable conduct under the bad-faith rule appears unlimited. As the Court boasts, "whereas each of the other mechanisms [in Rules and statutes] reaches only certain individuals or conduct, the inherent power extends to a full range of litigation abuses." Ante, at 2134. By allowing exclusive resort to inherent authority whenever "conduct sanctionable under the Rules was intertwined within conduct that only the inherent power could address," ante, at 2136, the Court encourages all courts *69 in the federal system to find bad-faith misconduct in order to eliminate the need to rely on specific textual provisions. This will ensure the uncertain development of the meaning and scope of these express sanctioning provisions by encouraging their disuse, and will defeat, at least in the area of sanctions, Congress' central goal in enacting the Federal Rules-- "

'uniformity in the federal courts.' " Hanna v. Plumer, 380 U.S. 460, 472, 85 S.Ct. 1136, 1145, 14 L.Ed.2d 8 (1965). Finally, as Part IV of the Court's opinion demonstrates, the lack of any legal requirement other than the talismanic recitation of the phrase "bad faith" will foreclose meaningful review of sanctions based on inherent authority. See Cooter & Gell v. Hartmarx Corp., supra, 496 U.S., at 402, 110 S.Ct., at 2459.

Despite these deficiencies, the Court insists that concern about collateral litigation requires courts to place exclusive reliance on inherent authority in cases, like this one, which involve conduct sanctionable under **2146 both express provisions and inherent authority:

> "In circumstances such as these in which all of a litigant's conduct is deemed santionable, requiring a court first to apply Rules and statutes containing sanctioning provisions to discrete occurrences before invoking inherent power to address remaining instances of sanctionable conduct would serve only to foster extensive and needless satellite litigation, which is contrary to the aim of the Rules themselves." Ante, at 2136.

We are bound, however, by the Rules themselves, not their "aim," and the Rules require that they be applied, in accordance with their terms, to much of the conduct in this case. We should not let policy concerns about the litigation effects of following the Rules distort their clear commands.

Nothing in the foregoing discussion suggests that the fee-shifting and sanctioning provisions in the Federal Rules and Title 28 eliminate the inherent power to impose sanctions for certain conduct. Limitations on a power do not constitute its abrogation. Cases can arise in which a federal court must *70 act to preserve its authority in a manner not provided for by the Federal Rules or Title 28. But as the number and scope of Rules and statutes governing litigation misconduct increase, the necessity to resort to inherent authority--a predicate to its proper application--lessens. Indeed, it is difficult to imagine a case in which a court can, as the District Court did here, rely on inherent authority as the exclusive basis for sanctions.

C

The District Court's own findings concerning abuse of its processes demonstrate that the sanctionable conduct in this case implicated a number of Rules and statutes upon which it should have relied. Rule 11 is the principal provision on point. The District Court found that petitioner and his counsel filed a number of "frivolous pleadings" (including "baseless, affirmative defenses and counterclaims") that contained "deliberate untruths and fabrications." NASCO, Inc. v. Calcasieu Television & Radio, Inc., 124 F.R.D. 120, 127-128, 135 (WD La.1989). Rule 11 sanctions extend to "the person who signed [a paper], a represented party, or both." The court thus had a nondefeasible duty to impose sanctions under Rule 11.

The Court concedes that Rule 11 applied to some of the conduct in this case, ante, at 2136, and even hints that the Rule might have sufficed as a basis for all of the sanctions imposed, ante, at 2131, n. 8. It fails to explain, however, why the District Court had the discretion to ignore Rule 11's mandatory language and not impose sanctions under the Rule against Chambers. Nor does the Court inform us why Chambers' attorneys were not sanctioned under Rule 11. Although the District Court referred to Chambers as the "strategist" for the abusive conduct, it made plain that petitioner's attorneys as well as petitioner were responsible for the tactics. For example, the District Court stated:

> "[Petitioner's] attorneys, without any investigation whatsoever, filed [the baseless charges and counterclaims]. *71 We find ... that these attorneys knew, at the time that they were filed, that they were false." 124 F.R.D., at 128.

The court further stressed that "Chambers, through his attorneys, filed answers and counterclaims ... which both Chambers and his attorneys knew were false at the time they were filed." Id., at 143. In light of Rule 11's mandatory language, the District Court had a duty to impose at least some sanctions under Rule 11 against Chambers' attorneys.

The District Court should have relied as well upon other sources of authority to impose sanctions. The court found that Chambers and his attorneys requested "[a]bsolutely needless depositions" as well as "continuances of trial dates, extensions of deadlines and deferments of scheduled discovery" that "were simply part of the sordid scheme of deliberate misuse of the judicial process ... **2147 to defeat NASCO's claim by harassment, repeated and endless delay, mountainous expense and waste of financial resources." Id., at 128. The intentional pretrial delays could have been sanctioned under Federal Rule of Civil Procedure 16(f), which enables

courts to impose sanctions, including attorney's fees, when a party or attorney "fails to participate in good faith" in certain pretrial proceedings; the multiple discovery abuses should have been redressed by "an appropriate sanction, ... including a reasonable attorney's fee," under Federal Rule of Civil Procedure 26(g). The District Court also could have sanctioned Chambers and his attorneys for the various bad-faith affidavits they presented in their summary judgment motions, see 124 F.R.D., at 128, 135, under Federal Rule of Civil Procedure 56(g), a Rule that permits the award of expenses and attorney's fees and the additional sanction of contempt. In addition, the District Court could have relied to a much greater extent on 18 U.S.C. § 401 to punish the "contempt of its authority" and "[d]isobedience ... to its ... process" that petitioner and his counsel displayed throughout the proceedings.

*72 Finally, the District Court was too quick to dismiss reliance on 28 U.S.C. § 1927, which allows it to award costs and attorney's fees against an "attorney ... who ... multiplies the proceedings in any case unreasonably and vexatiously." The District Court refused to apply the provision because it did not reach petitioner's conduct as a nonattorney. 124 F.R.D., at 138-139. While the District Court has discretion not to apply § 1927, it cannot disregard the statute in the face of attorney misconduct covered by that provision to rely instead on inherent powers which by definition can be invoked only when necessary.

II

When a District Court imposes sanctions so immense as here under a power so amorphous as inherent authority, it must ensure that its order is confined to conduct under its own authority and jurisdiction to regulate. The District Court failed to discharge this obligation, for it allowed sanctions to be awarded for petitioner's prelitigation breach of contract. The majority, perhaps wary of the District Court's authority to extend its inherent power to sanction prelitigation conduct, insists that "the District Court did not attempt to sanction petitioner for breach of contract, but rather imposed sanctions for the fraud he perpetrated on the court and the bad faith he displayed toward both his adversary and the court throughout the course of the litigation." Ante, at 2138 (footnote omitted). Based on this premise, the Court appears to disclaim that its holding reaches prelitigation conduct. Ante, at 2138, and nn. 16-17. This does not make the opinion on this point correct, of course, for the District Court's opinion, in my view, sanctioned petitioner's prelitigation conduct in express terms. Because I disagree with the Court's characterization of the District Court opinion, and because I believe the Court's casual analysis of inherent authority portends a dangerous extension of that authority to prelitigation conduct, I explain why inherent *73 authority should not be so extended and why the District Court's order should be reversed.

The District Court's own candid and extensive opinion reveals that the bad faith for which petitioner was sanctioned extended beyond the litigation tactics and comprised as well what the District Court considered to be bad faith in refusing to perform the underlying contract three weeks before the lawsuit began. The court made explicit reference, for instance, to "this massive and absolutely unnecessary lawsuit forced on NASCO by Chambers' arbitrary and arrogant refusal to honor and perform this perfectly legal and enforceable contract." 124 F.R.D., at 136. See also id., at 143 ("Chambers arbitrarily and without legal cause refused to perform, forcing NASCO to bring its suit for specific performance"); ibid. ("Chambers, knowing that NASCO had a good and valid contract, hired Gray to find a defense and arbitrarily **2148 refused to perform, thereby forcing NASCO to bring its suit for specific performance and injunctive relief"); id., at 125 (petitioner's "unjustified and arbitrary refusal to file" the FCC application "was in absolute bad faith"). The District Court makes the open and express concession that it is sanctioning petitioner for his breach of contract:

> "[T]he balance of ... fees and expenses included in the sanctions, would not have been incurred by NASCO if Chambers had not defaulted and forced NASCO to bring this suit. There is absolutely no reason why Chambers should not reimburse in full all attorney's fees and expenses that NASCO, by Chambers' action, was forced to pay." Id., at 143.

The trial court also explained that "[t]he attorney's fees and expenses charged to NASCO by its attorneys ... flowed from and were a direct result of this suit. We shall include them in the attorney's fees sanctions." Id., at 142 (emphasis added).

*74 Despite the Court's equivocation on the subject, ante, at 2138, n. 16, it is impermissible to allow a District Court acting pursuant to its inherent

authority to sanction such prelitigation primary conduct. A court's inherent authority extends only to remedy abuses of the judicial process. By contrast, awarding damages for a violation of a legal norm, here the binding obligation of a legal contract, is a matter of substantive law, see Marek v. Chesny, 473 U.S. 1, 35, 105 S.Ct. 3012, 3030, 87 L.Ed.2d 1 (1985) ("right to attorney's fees is 'substantive' under any reasonable definition of that term"); see also Alyeska, 421 U.S., at 260-261, and n. 33, 95 S.Ct., at 1623-1624, and n. 33, which must be defined either by Congress (in cases involving federal law) or by the States (in diversity cases).

The American Rule recognizes these principles. It bars a federal court from shifting fees as a matter of substantive policy, but its bad-faith exception permits fee shifting as a sanction to the extent necessary to protect the judicial process. The Rule protects each person's right to go to federal court to define and to vindicate substantive rights. "[S]ince litigation is at best uncertain one should not be penalized for merely defending or prosecuting a lawsuit." Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 718, 87 S.Ct. 1404, 1407, 18 L.Ed.2d 475 (1967). When a federal court, through invocation of its inherent powers, sanctions a party for bad-faith prelitigation conduct, it goes well beyond the exception to the American Rule and violates the Rule's careful balance between open access to the federal court system and penalties for the willful abuse of it.

By exercising inherent power to sanction prelitigation conduct, the District Court exercised authority where Congress gave it none. The circumstance that this exercise of power occurred in a diversity case compounds the error. When a federal court sits in diversity jurisdiction, it lacks constitutional authority to fashion rules of decision governing primary contractual relations. See Erie R. Co. v. Tompkins, 304 U.S. 64, 78, 58 S.Ct. 817, 822, 82 L.Ed. 1188 (1938); Hanna v. Plumer, 380 U.S., at 471-472, 85 S.Ct., at 1143-1145. See generally Ely, The Irrepressible Myth of Erie, ***75** 87 Harv.L.Rev. 693, 702-706 (1974). The Erie principle recognizes that "[e]xcept in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any [diversity] case is the law of the State." 304 U.S., at 78, 58 S.Ct., at 822. The inherent power exercised here violates the fundamental tenet of federalism announced in Erie by regulating primary behavior that the Constitution leaves to the exclusive province of States.

The full effect of the District Court's encroachment on state prerogatives can be appreciated by recalling that the rationale for the bad- faith exception is punishment. Hall v. Cole, 412 U.S. 1, 5, 93 S.Ct. 1943, 1946, 36 L.Ed.2d 702 (1973). To the extent that the District Court imposed sanctions by reason of the so-called bad-faith breach of contract, its decree is an award of punitive damages ****2149** for the breach. Louisiana prohibits punitive damages "unless expressly authorized by statute," International Harvester Credit Corp. v. Seale, 518 So.2d 1039, 1041 (La.1988); and no Louisiana statute authorizes attorney's fees for breach of contract as a part of damages in an ordinary case, Ogea v. Loffland Brothers Co., 622 F.2d 186, 190 (CA5 1980); Rutherford v. Impson, 366 So.2d 944, 947 (La.App.1978). One rationale for Louisiana's policy is its determination that "an award of compensatory damages will serve the same deterrent purpose as an award of punitive damages." Ricard v. State, 390 So.2d 882, 886 (La.1980). If respondent had brought this suit in state court it would not have recovered extra damages for breach of contract by reason of the so-called willful character of the breach. Respondent's decision to bring this suit in federal rather than state court resulted in a significant expansion of the substantive scope of its remedy. This is the result prohibited by Erie and the principles that flow from it.

As the Court notes, there are some passages in the District Court opinion suggesting its sanctions were confined to litigation conduct. See ante, at 2138,n. 17. ("[T]he sanctions imposed 'appl[ied] only to sanctionable acts which occurred in ***76** connection with the proceedings in the trial Court' "). But these passages in no way contradict the other statements by the trial court which make express reference to prelitigation conduct. At most, these passages render the court's order ambiguous, for the District Court appears to have adopted an expansive definition of "acts which occurred in connection with" the litigation. There is no question but that some sanctionable acts did occur in court. The problem is that the District Court opinion avoids any clear delineation of the acts being sanctioned and the power invoked to do so. This confusion in the premises of the District Court's order highlights the mischief caused by reliance on undefined inherent powers rather than on Rules and statutes that proscribe particular behavior. The ambiguity of the scope of the sanctionable conduct cannot be resolved

against petitioner alone, who, despite the conceded bad-faith conduct of his attorneys, has been slapped with all of respondent's not inconsiderable attorney's fees. At the very least, adherence to the rule of law requires the case to be remanded to the District Court for clarification on the scope of the sanctioned conduct.

III

My discussion should not be construed as approval of the behavior of petitioner and his attorneys in this case. Quite the opposite. Our Rules permit sanctions because much of the conduct of the sort encountered here degrades the profession and disserves justice. District courts must not permit this abuse and must not hesitate to give redress through the Rules and statutes prescribed. It may be that the District Court could have imposed the full million dollar sanction against petitioner through reliance on Federal Rules and statutes, as well as on a proper exercise of its inherent authority. But we should remand here because a federal court must decide cases based on legitimate sources of power. I would reverse the Court of Appeals with instructions to remand *77 to the District Court for a reassessment of sanctions consistent with the principles here set forth. For these reasons, I dissent.

END OF DOCUMENT

888 F.Supp. 1427
(Cite as: 888 F.Supp. 1427)
<KeyCite History>
United States District Court,
N.D. Illinois,
Eastern Division.

GROVE FRESH DISTRIBUTORS, INC., an Illinois corporation, Plaintiff,
v.
JOHN LABATT LIMITED, a Canadian corporation, et al., Defendants.

No. 90 C 5009.

June 9, 1995.

Defendants petitioned for finding of contempt and for Rule 11 sanctions against plaintiff's counsel, alleging that counsel disclosed confidential information in violation of seal order and stipulated protective order entered by court, and that, nine months after plaintiff discharged counsel, he filed brief with Seventh Circuit Court of Appeals misrepresenting his attorney status and standing. The District Court, Zagel, J., held that: (1) counsel's disclosure of confidential information warranted civil and criminal contempt sanctions; (2) counsel's willful failure to appear at hearing on defendant's motion to enforce settlement or relief from judgment warranted civil and criminal contempt sanctions; and (3) counsel's misrepresentation of his status to Seventh Circuit warranted Rule 11 sanctions.

So ordered.

West Headnotes

[1] Contempt k3
93k3

[1] Contempt k4
93k4

[1] Contempt k70
93k70

While purpose of civil contempt is essentially remedial, purpose of criminal attempt is merely punitive, i.e., to vindicate court's authority.

[2] Contempt k3
93k3

[2] Contempt k4
93k4

Same conduct may be subject of criminal and civil contempt sanctions.

[3] Contempt k60(3)
93k60(3)

[3] Jury k24.5
230k24.5

Jury trial and standard of reasonable doubt are required for criminal contempt charges.

[4] Contempt k60(3)
93k60(3)

Elements of civil contempt must be established by clear and convincing evidence.

[5] Contempt k3
93k3

[5] Contempt k4
93k4

Critical features in determining whether contempt is civil or criminal are substance of proceeding and character of relief that proceeding will afford.

[6] Contempt k68
93k68

[6] Contempt k70
93k70

Courts have broad discretion in choosing means to grant relief under contempt petition; this includes awarding attorney fees and costs for preparing and prosecuting petition, and such fees may include factors such as overhead and support personnel.

[7] Records k32
326k32

While both sealing order and protective order are intended to ensure confidentiality, seal order can be seen as more sweeping and inclusive if entire case is ordered sealed. U.S.Dist.Ct.Rules N.D.Ill., Rule 10, subd. A(2, 5).

[8] Contempt k20
93k20

Determination of contempt requires order of "reasonable specificity" which has been violated.

[9] Contempt k10
93k10

[9] Federal Civil Procedure k1366
170Ak1366

[9] Federal Civil Procedure k1615.1
170Ak1615.1

Plaintiff's counsel's interpretations of protective order and seal order were both unreasonable and unbelievable, and thus, he was estopped from using them as defense in proceedings on petition for finding of contempt and for other sanctions for allegedly violating those orders by his disclosures of confidential discovery materials; although counsel testified that he believed order did not preclude him from revealing confidential discovery information, deposition testimony, or contents of documents marked "confidential," he was experienced member of bar who had reason to be familiar in his past work with orders of confidentiality, he was warned time and again about his conduct, and he chose not to avail himself of unlimited opportunity to clarify orders' scope as they related to specific disclosures. U.S.Dist.Ct.Rules N.D.Ill., Rule 10, subd. A(2, 5).

[10] Records k32
326k32

Prohibition of confidentiality order must be subject to reasonable interpretation, and while court cannot expand terms of order, it may look to nature of original proceedings to interpret and apply it.

[11] Records k32
326k32

Federal courts are not and should not be compelled to accept twisted interpretations or tortured constructions of confidentiality order, or to interpret it in such way as to render it nullity; rather, order should be interpreted to give effect to its purpose and spirit.

[12] Constitutional Law k90.1(3)
92k90.1(3)

[12] Records k32
326k32

Order precluding disclosure of discovery materials as well as other documents considered confidential, including confidential settlement agreements, did not violate First Amendment free speech rights of plaintiffs' counsel, who was sanctioned for disclosing information in violation of that order; there was no "prior restraint," as he was permitted to disclose information to which general public had access, but he nonetheless disclosed information pertaining to certain individuals' invocation of Fifth Amendment privilege and amount of settlement, which was not independently available from public source. U.S.C.A. Const.Amend. 1; Fed.Rules Civ.Proc.Rule 26, 28 U.S.C.A.

[13] Contempt k28(1)
93k28(1)

[13] Federal Civil Procedure k1366
170Ak1366

[13] Federal Civil Procedure k1615.1
170Ak1615.1

Attorney who was sanctioned for disclosing information that was subject to seal order and protective order was estopped from raising defense that information in question was available from public source and was thus not covered by seal and protective orders; court required, as part of procedure attorney was to follow prior to making further disclosures, that he identify to court his allegedly independent public source, but attorney voluntarily chose not to avail himself of that procedure prior to making subsequent disclosures. Fed.Rules Civ.Proc.Rule 26, 28 U.S.C.A.; U.S.Dist.Ct.Rules N.D.Ill., Rule 10, subd. A(2, 5).

[14] Contempt k21
93k21

If order underlying it is invalid, contempt judgment based on violation of that order may well fall with it.

[15] Records k32

326k32

District court must independently determine if good cause exists before issuing stipulated protective order.

[16] Records k32
326k32

In deciding to seal case, district court should articulate findings and reasoning that served as basis for seal; however, since absence of those findings and reasoning in record is not necessarily evidence that court never considered good cause, real question is whether there is any substantive decision behind court's "silence."

[17] Records k32
326k32

If lack of articulated findings by district court in ordering case sealed stems from complete failure to make good cause determination, order is likely to be found invalid.

[18] Records k32
326k32

Stipulated protective order and seal order were valid, even though district court never actually used phrase "good cause" in signing protective order; record amply attested to independent determination of good cause, including balancing of interests, which justified both orders.

[19] Contempt k74
93k74

[19] Contempt k75
93k75

Attorney's disclosure in appellate brief of information that certain defendants or their representatives invoked their Fifth Amendment privilege against self- incrimination, and his mischaracterization of record by asserting that other individuals had invoked that privilege when they had not, was willful violation of seal order and stipulated protective order entered by district court, thus warranting civil contempt sanction of compensating parties for losses they incurred as result of attorney's noncompliance with those orders, and criminal contempt sanction of $1,000 fine.

[20] Contempt k20
93k20

[20] Contempt k74
93k74

[20] Contempt k75
93k75

Plaintiff's counsel's violations of seal order and stipulated protective order by disclosing to intervenor information such as confidential settlement amount, potentially disparaging and scandalous designations contained in sealed complaint, and identity of eight individuals named in sealed complaint who he claimed were co-conspirators, warranted civil contempt sanction of compensation for parties' losses resulting attorney's noncompliance with those orders, and criminal contempt sanction of $1,000 fine exacted on behalf of United States.

[21] Contempt k20
93k20

[21] Contempt k74
93k74

[21] Contempt k75
93k75

Attorney's willful violations of seal order and stipulated protective order by disclosing to newspaper reporter information those orders covered, which resulted in front page story revealing contents of his disclosures, warranted civil contempt sanction of compensation for parties' losses arising from attorney's noncompliance with those orders, as well as criminal contempt sanction of $1,000 fine payable to United States.

[22] Contempt k70
93k70

Defendant's counsel would be required to post $50,000 bond for next five years to save defendants from significant risk of counsel's future disclosures of information covered by seal order and stipulated protective order entered by district court, in light of "press release" containing such information that counsel drafted and sent to defendants with intent that it would be released absent compliance with counsel's demands or court order, and in light of counsel's filings with Seventh Circuit that disclosed confidential settlement amount.

[23] Contempt k10
93k10

[23] Contempt k20
93k20

[23] Contempt k74
93k74

[23] Contempt k75
93k75

Evidence showed that plaintiff's counsel's nonappearance at hearing on defendant's motion to enforce settlement or relief from judgment was motivated by desire to prevent court order stopping him from filing in Seventh Circuit brief on which he had been working for several weeks, thus warranting civil contempt sanction of reimbursing parties for expenses they incurred due to counsel's noncompliance, and criminal contempt sanction of $1,000 fine payable to United States.

[24] Contempt k21
93k21

Order requiring court appearance will flunk "reasonable specificity" requirement for contempt finding if language of order leaves any doubt or uncertainty that appearance is required; ambiguity precludes essential finding of willfulness.

[25] Federal Civil Procedure k2791
170Ak2791

Plaintiff's counsel violated Rule 11 nine months after plaintiff discharged him, where counsel filed with Seventh Circuit Court of Appeals brief stating that "he was one of the attorneys of record," and in referring to himself as plaintiff's attorney and to plaintiff as "his client," and thus, attorney would be fined $1,000 and required to compensate defendants for any expenses incurred in addressing Seventh Circuit filing; although statement that he "is an attorney of record" was technically true, placement of that statement (first paragraph) and use of present tense ("is") implied connection with both case and client, and counsel failed to mention in his 42 page brief or 13 page affidavit that he was no longer plaintiff's attorney. Fed.Rules Civ.Proc.Rule 11, 28 U.S.C.A.

[26] Federal Courts k543.1
170Bk543.1

Person who brings appeal must have standing to do so.

***1430** Dale R. Crider and Warren S. Radler, Rivkin, Radler & Kremer, Chicago, IL, for plaintiff.

Jos. J. Duffy, Roger Pascal, Joseph Anthony Cancila, Jr., and Aphrodite Kokolis, Schiff, Hardin & Waite, Chicago, IL, for Labatt.

Jeffrey Stone, McDermott, Will & Emery, Chicago, IL, for Everfresh.

Royal B. Martin, Jr., Martin, Brown & Sullivan, and Locke E. Bowman, III, Chicago, IL, for Allen.

MEMORANDUM OPINION AND ORDER CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZAGEL, District Judge.

The perfect tragic figure, according to Aristotle, is "a man not preeminently virtuous or just, whose misfortune, however, is brought upon him not by vice and depravity but by some error of judgment...." Aristotle, The Poetics 238 (Friedrich Solmsen ed. & Ingram Bywater trans., Modern Library 1954). The great heroes of tragedy conformed to the Aristotelian conception of a great man whose unkind fate is precipitated by a tragic "flaw" in his personality. Thus, Othello's downfall was the result of his own jealousy, MacBeth fell victim to his blinding ambition, Lear's insecurity prompted his misfortunes, and Hamlet's tragedy was that of a man who could not make up his mind. John Messina fits the mold of the great tragic figure. His is the tragedy of an attorney who could not keep a confidence.

The confidences Mr. Messina could not keep were protected by court orders of confidentiality. Mr. Messina's past behavior played a pivotal role in the granting of these orders, since it appeared that he would go to any lengths to try his case on the courthouse steps rather than in the courtroom itself. That Mr. Messina sincerely, even fervently, believed in the unremitting badness of the defendants in this case is beyond doubt, as was his willingness to hurt them by disseminating information for purposes of damaging them outside the walls of the courtroom. The orders of confidentiality were meant to prevent Mr. Messina's misuse of the litigation to pursue his own agenda. But the evil to be prevented by the orders was the evil that actually ensued.

Undeterred by repeated court warnings, possible harm to his client's interests, and, apparently, his own fate, Mr. Messina continued to disclose protected information. His propensity to reveal court protected secrets is the Aristotelian flaw which precipitated his present predicament: possible sanctions for contempt and for violations of Rule 11. Mr. Messina stands accused not only of violating this court's orders of confidentially, but for ***1431** failing to appear in court as ordered and for making misrepresentations to the Seventh Circuit Court of Appeals. Since the "first essential, the life and soul, so to speak, of Tragedy, is the plot," id. at 232, some history is in order.

Background

Mr. Messina represented the plaintiff, Grove Fresh Distributors, Inc., in two separate but related suits filed against competing orange juice manufacturers for allegedly engaging in a conspiracy to unlawfully adulterate and misbrand orange juice in violation of various federal laws.

Grove Fresh filed the first suit against Everfresh Juice Company in 1989 (Grove Fresh Distributors v. Everfresh Juice Co., No. 89 C 1113) [FN1] The genesis of the second suit (Grove Fresh Distributors, Inc. v. John Labatt, Ltd., No. 90 C 5009) began when Mr. Messina concluded that Grove Fresh had claims against John Labatt, Ltd.--the parent of Everfresh--similar to its claims against Everfresh. Mr. Messina sent Everfresh's counsel a demand letter seeking payment of claims on 23 August 1990. The letter gave notice that Mr. Messina would file a new complaint on behalf of Grove Fresh if Labatt did not settle.

> FN1. This case was eventually dismissed pursuant to the defendants' successful motion for summary judgment in February of 1992.

On 24 August 1990, Labatt presented an emergency motion to seal the new complaint described in Mr. Messina's letter, arguing that the new complaint was an illegitimate attempt to amend the complaint in case No. 89 C 1113 (then 18 months old and nearing the close of discovery). Contending that Grove Fresh's motive in filing this new complaint was "to evade and disregard the earlier rulings made by this Court" in case No. 89 C 1113 on procedural issues and the discovery schedule, Labatt prayed for an order "requiring Grove Fresh to immediately submit its new complaint to this court under seal."

On 29 August 1990 I granted the motion to seal the complaint for case No. 90 C 5009. A key reason behind this decision was Mr. Messina himself. After presiding for the previous eighteen months over case No. 89 C 1113, I was familiar with certain tactics employed by Mr. Messina which I believed were questionable if not reprehensible. Specifically, I was wary of Mr. Messina's repeated attempts to beat the defendants into submission by disclosing materials previously designated as confidential to generate unfavorable publicity for them [FN2]. I had no reason to believe Mr. Messina would change his methods and every reason to suspect he would attempt to try his latest suit on the courthouse steps as well.

> FN2. Especially alarming was Messina's propensity to disregard court orders and include documents designated as confidential as attachments to his pleadings (which would then be put into the public record or forwarded to the press). An emergency motion seeking to restrain Messina from making prohibited disclosures would inevitably follow. See e.g., Minute Order of 10/3/90 Ordering Messina Not to Publish His 10/1/90 Letter to the Press and Ordering Him to Comply With the Court's Ruling; Minute Order of 7/18/90 Granting Motion to Enforce Protective Order in 89 C 1113.

Given the relatedness of the two cases and their litigants, and my familiarity with both, I felt it unnecessary to reiterate in my sealing order for the new case what seemed painfully clear from the lessons, and record, of No. 89 C 1113. The minute order granting the seal in No. 90 C 5009 therefore simply stated:

> Defendants' motion to file case under seal is granted. The complaint and all subsequent pleadings shall be filed under seal until further order of court.

Three days later I heard arguments regarding a motion by Grove Fresh to lift the seal. After a brief colloquy, I stated that the "motion to lift the seal is denied without prejudice to you raising it after we deal with whatever pretrial motions there are with respect to dismissing the complaint." I later denied various motions to dismiss the case, but did not explicitly refer to the emergency motion to seal.

On 1 May 1991 I signed a stipulated protective order "in order to provide protection of confidential and proprietary information ***1432** and to facilitate discovery." [FN3] As Grove Fresh's attorney at the time, and therefore a signatory to the order, Mr. Messina agreed that "[d]ocuments designated as 'confidential' shall be used only for the preparation and trial of this lawsuit, and for no other purpose except as may be required by law or court process."

> FN3. This protective order, similar if not identical to one entered in the earlier case, read as follows:
> IT IS HEREBY ORDERED:
> 1. A party (hereinafter referred to as a "Designating Party") may designate documents it considers to be of a confidential, proprietary or trade secret nature. Such designation can be made by applying a written statement such as "Confidential" or "Subject to Protective Order" on such documents. Such designation can also be made by the Designating Party informing other counsel in writing that certain documents or categories thereof are confidential. If the Designating Party has so informed other counsel of the confidential nature of documents, then the lack of a notation on documents shall not be considered a waiver of the right to seek protection of otherwise confidential information; however, the burden of avoiding confusion or mistake as to what is, or is not, confidential shall always remain with the Designating Party.
> 2. Documents designated as "confidential" shall be used only for the preparation and trial of this lawsuit, and for no other purpose except as may be required by law or court process. If confidential documents are to be disclosed pursuant to law or court process, the Designating Party shall be given at least 10 days advance notice, before any party makes the disclosure, to afford the Designating Party an opportunity to object to such disclosure or to seek further appropriate relief. 3. If a party objects to the designation of any document as confidential, the party shall advise the Designating Party promptly, in writing, of the objections and the reasons therefor. In that event, all items so designated shall be treated as confidential material pending resolution of the dispute. If the parties involved fail to resolve the dispute among themselves, it shall be the obligation of the Designating Party to move promptly (i.e., within 10 days of the parties' failure to resolve the dispute among themselves) for a ruling from the Court concerning the confidentiality of the items in dispute. Nothing contained in this paragraph shall alter the burden of proof respecting the confidentiality of materials.
> 4. All confidential documents and materials containing confidential information shall be returned to the Designating Party at the conclusion of this lawsuit.

On 9 October 1991, intervenors in the case moved to vacate the seal. Ordering a fresh round of briefs on the seal's merits, I offered the defendants another chance to justify the seal and identify what it wanted to protect. On 29 November, Everfresh argued that the seal

> was originally ordered in the 90 case at Everfresh's request because plaintiff had threatened to file the action in the public record, if Everfresh did not pay a multimillion dollar settlement, with unsubstantiated scandalous allegations that would damage the reputation of Everfresh and others. Plaintiff's pleadings also incorporate and attach protected confidential information obtained through discovery. Had this court not placed the 90 case under seal, the unsubstantiated, scandalous allegations and information that were subject to the protective order would have been improperly disseminated into the public realm.

I agreed with the premise of this argument. On 20 November 1992, in an order partially granting intervenors' motion, I stated on the record that "the seal order in 90 C 5009 served to effectuate the purposes of the protective order entered in the earlier case," No. 89 C 1113. [FN4] Thus did I seek to incorporate by reference the protective order in the older case as a justification for the seal in the newer one.

> FN4. The stated purpose of that protective order, as well as its counterpart in No. 90 C

5009, was "to provide protection of confidential and proprietary information and to facilitate discovery...."

I also put into the record my feeling that lifting the seal on the entire case was problematic, because the existence of the seal may have led the parties to believe that they could file papers containing discovery material that would not otherwise properly be put before the court. Another problem with lifting the seal stemmed from the nature of the complaint. As I said in the order,

> the complaint in this case contains allegations which would, if not filed in court and if untrue, be libelous. Some of those against whom allegations are made are not parties to the record and can never secure vindication. The business records, furthermore, contain information which the law customarily protects [such as] speculation and the unproved, untested conclusions*1433 in pleadings filed by lawyers under the loose requirements of Federal Rules of Civil Procedure 8 and 9.
>
> On 21 January 1993, Grove Fresh discharged Mr. Messina as its attorney in the Grove Fresh litigation. On 29 April 1993, case No. 90 C 5009 was dismissed with prejudice pursuant to settlement.
>
> Then, on 1 June 1993 intervenors renewed their motion to vacate the seal. This was denied. Intervenors appealed parts of this denial, which included the issue of whether this court should have issued a decision on the record justifying the seal.
>
> In remanding the case back to me, the Seventh Circuit reiterated that it had yet to find "reversal per se appropriate" where a court had not made a point of articulating its findings and reasoning for entering an order limiting access. Grove Fresh Distributors, Inc. v. Everfresh Juice Co., 24 F.3d 893, 898 (7th Cir.1994). The Court of Appeals asked "only that in reaching its decision in this matter on remand that the district court specify the basis for its conclusions."
>
> Id. at 899. This decision was issued on 12 May 1994.
>
> Continuing disclosures by Messina in apparent violation of the orders of confidentiality, and the motions that would inevitably follow to try and rein him in, gave me ample opportunity to follow the Court of Appeals request and elaborate for the record the seal's rationale. The first chance I had to do this was actually one month prior to the issuance of the Seventh Circuit's opinion. On 8 April 1994, acceding to Mr. Messina's request to clarify the seal order's scope, I discussed the reasons behind my orders of confidentiality at some length:
>
> Mr. Messina has not always been clear in his descriptions to me and perhaps even in his own mind as to what is in the public record and what is not otherwise in the public record and what had been discovered in the course of discovery and which is sealed here.
>
> ... [M]y past experience with Mr. Messina leads me to believe that I will then engage in a lengthy set of hearings in which we will have to carefully patrol the border between what came out of the court file and what's in the public arena, and I don't want that to occur. I don't think it's good for the case. I don't think it's good for Messina. I think it will increase everybody's costs.
>
> So my answer to you is that I would advise Mr. Messina not to speak about the case and what might possibly transgress the seal with anybody until we resolve the question of his alleged prior violation of the seal order.

To safeguard undue prejudice to anyone's rights, I laid out a process by which Mr. Messina should proceed before making any future disclosures:

> Now I recognize that there may be circumstances in which there is some urgent need for him to consult, and if that occurs, it would be appropriate for him to come in with a petition saying I want to consult with so and so. In fact, I don't even think he has to say who it is he wishes to consult with, but I think he does have to tell me what it is that he wishes to say, and it would be very helpful if he comes in with such a petition, he delineates with chapter and verse what his public record source of these statements are.
>
> So, basically it would be best if he spoke to no one about these matters until we resolve the questions of his liability for violating the seal on the one alleged--or two or three alleged violations that have already occurred without creating a problem for possible violations that I may also have to deal with. And the safety valve that I think I'm giving is that if he wants to show exactly what is in the public record and indicate that this is exactly what he wants to say, that's possible too, because I recognize it may be necessary for him to speak more quickly.
>
> It also is a reason why we ought to move as expeditiously as possible to get at least the question of breaking the seal resolved.
>
> And that's my response to your motion. So I guess in a sense I've granted your motion to clarify. I

don't know if you're entirely pleased with the clarification, but I ***1434** really think given Mr. Messina's history, that its best for him, best for this case, and certainly best in terms of consuming time with this Court that he hold his piece until the matter here is over, and I've given the one escape hatch in case that that's prejudicial to someone else's rights.

And the profound difficulty here is it's very difficult to erase from your mind what it is that you already know, and it's quite likely--at least it's quite risky that Mr. Messina may think that he's speaking from the public document, but because he hasn't laid out very carefully what he learned from each source, he's going to transgress the order and then we're going to have arguments about exactly what does fall within disclosure and what doesn't fall within the disclosure, and I don't want to get involved in that.

I sought to put Mr. Messina on his guard by giving him notice of the consequences that would follow any future transgressions:

But the fact of the matter is I can't assign anybody to follow Mr. Messina around, and what Mr. Messina says is what Mr. Messina says. What I am doing is I'm granting your motion for clarification and I'm giving you and your client through you a warning about the further difficulties that might very well be created. [FN5]

> FN5. Although my comments were directed to an absent Mr. Messina through his counsel, there is no doubt that they were subsequently read by Mr. Messina, who cited the transcript himself in a letter, dated 20 September 1994, sent to counsel for an intervenor. Mr. Messina admitted in deposition that he had reviewed, understood, and previously discussed the 8 April transcript prior to sending the letter. See infra part B.2.

To simply say, look the judge said you can talk about whatever it is you learned independent of this case is very, very cold comfort for Messina; and were I in his position I would not be charging ahead saying, well, thank God that dispute is over, because in my judgment given both my knowledge of Mr. Messina and what happens in other cases in which he's not involved, it just means the possibility that we're going to have more and expensive hearings.

Even Mr. Messina's then counsel recognized the danger in further disclosures when he expressly agreed with the propriety of increased sanctions:

THE COURT: What happens if he [Mr. Messina] breaches it [the sealing order] a second time?

MR. MINER: It would be appropriate to impose a more severe sanction on him.

THE COURT: Yes.

MR. MINER: I don't have any doubt of that.

It was not long after this that Mr. Messina once again made disclosures which appeared to violate my orders of confidentiality, and did so, moreover, without following the specific procedure I had laid down on 8 April. Thus on 27 October 1994 I reiterated for the record the relationship between the orders and Mr. Messina's own behavior:

... [T]he principal basis for the decision [to impose the sealing order] was the that I had litigation before me in which I had a lawyer for the plaintiff, Mr. Messina, who was convinced--I don't know about the justice of his own client's cause, but convinced beyond a shadow of a doubt, indeed the possibility of a doubt, of the badness of the defendants. And it also seemed to me that Mr. Messina was willing to use not the force of the law, but the force of public relations to beat the defendants into some sort of submission ...

....

But most of what we could do here depends on the fact that lawyers go about lawyer's business, and they serve their clients rather than their own principal concerns, and that they generally obey orders of court and custom and practice of lawyers regarding discovery materials.

I gained an impression of Mr. Messina very early on that he was not likely to follow the well trod paths of custom. Indeed, I thought Mr. Messina might in fact be reluctant to obey court orders. One of the reasons that the sealing order was so broad was my concern that Mr. Messina would ignore any order that was not broad.

***1435** After reading a round of briefs on the continued advisability about keeping case materials sealed, and after engaging in a document-by-document review of all materials under seal and subject to the protective order (a time consuming task given the sheer amount of materials generated during the four plus years of litigation), I asked intervenor's counsel, on 21 November 1994, to draft an order to unseal the case pursuant to my orally stated directions. On 1 February 1995, I ordered the file unsealed.

But although the case was unsealed, I was still faced with documents protected by a valid protective order, as well as confidential materials filed in reliance of the seal. My in camera inspection revealed that for some of these materials continued confidentiality was appropriate. [FN6] I therefore ordered the particularized redactions of certain words, phrases, names, etc., while allowing public access to most, if not all, of the documents in which the redactions were made.

> FN6. These consisted of commercially disparaging designations; references to alleged co-conspirators not named as defendants; discovery materials and revealing references to them; post-settlement proceedings; and confidential agreements (i.e., the settlement agreement) that would not have been filed but for the existence of a seal.

In response to Mr. Messina's conduct during the course of the litigation, American Citrus Products Corp., and John Labatt Ltd., the defendants in the case, jointly petitioned the court for a finding of contempt and for other sanctions against Mr. Messina. On 3 February 1995, a hearing was held to afford Mr. Messina an opportunity to respond to the following charges:

First, that Mr. Messina is in contempt of court for repeatedly violating the seal and protective order of the 1990 case by his disclosures of confidential discovery materials in a brief filed with Seventh Circuit; in a letter to counsel for intervenors; and in a conversation to a reporter for the New York Times.

Second, that Mr. Messina is in contempt of court for failing to appear before me when directed to do so, a nonappearance for which I had previously issued a rule to show cause.

Third, that Mr. Messina is subject to Rule 11 sanctions for allegedly making false or misleading representations to the Court of Appeals regarding his status as Grove Fresh's attorney.

Defendants jointly pray that Mr. Messina be substantially fined, required to reimburse them for legal fees and costs incurred from his actions, ordered to refrain from further comment, and required to deposit with the court a substantial sum of money which would be forfeited by subsequent disobedience.

Contempt: Civil and Criminal

"The ability to punish disobedience to judicial orders is regarded as essential to ensuring that the Judiciary has a means to vindicate its own authority without complete dependence on other Branches." Young v. U.S. ex. rel. Vuitton et Fils S.A., 481 U.S. 787, 796, 107 S.Ct. 2124, 2132, 95 L.Ed.2d 740 (1987). Without such authority, the courts would be helpless in the face of open defiance of their orders:

> If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls "the judicial power of the United States" would be a mere mockery.

Id., quoting Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 450, 31 S.Ct. 492, 501, 55 L.Ed. 797 (1911).

The nature of contempt may be civil, criminal, or both. The enforcement of an order through a civil contempt action is designed to serve either of two purposes: (1) to compel or coerce obedience to a court order; or (2) to compensate the parties for losses resulting from the contemnors non-compliance with a court order. United States v. United Mine Workers of America, 330 U.S. 258, 303-04, 67 S.Ct. 677, 701, 91 L.Ed. 884 (1947).

[1][2] While the purpose of civil contempt is essentially remedial, Shakman v. Democratic Organization of Cook County, 533 F.2d 344, 349 (7th Cir.1976), the purpose of criminal contempt is primarily punitive, "to vindicate the authority of the court." U.S. v. ***1436** Bayshore Associates, Inc., 934 F.2d 1391, 1400 (6th Cir.1991), citing Gompers, 221 U.S. at 441, 31 S.Ct. at 498. The same conduct may be subject to both criminal and civil contempt sanctions. Id.

[3][4] To support a federal civil contempt conviction, it must be proved: "(1) that the court entered a lawful order of reasonable specificity; (2) the order was violated." Matter of Betts, 927 F.2d 983, 986 (7th Cir.1991). Criminal contempt requires an extra element be shown: "(3) the violation was willful." [FN7] Id. A jury trial and a standard of reasonable doubt are required for criminal contempt charges. [FN8] Young, 481 U.S.

at 798-99, 107 S.Ct. at 2133. The elements of civil contempt must be established by "clear and convincing evidence." [FN9] Stotler & Co. v. Able, 870 F.2d 1158, 1163 (7th Cir.1989).

FN7. While it is not necessary in instances of civil contempt for the petitioner to establish that the defendant's violation of the order was willful, McComb v. Jacksonville Paper Co., 336 U.S. 187, 191, 69 S.Ct. 497, 499, 93 L.Ed. 599 (1949), evidence of "willful and intentional conduct is relevant to determine the appropriate remedial relief." Connolly v. J.T. Ventures, 851 F.2d 930, 935 (7th Cir.1988).

FN8. In the recently decided International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994), the Supreme Court suggested that in criminal contempt sanctions, the right to a jury trial and proof beyond a reasonable doubt were now required for (1) "serious" criminal contempts involving imprisonment of more than six months; (2) indirect contempts involving out-of-court disobedience to complex injunctions (especially if elaborate and reliable factfinding is required), and which neither obstruct the court's ability to adjudicate nor pose substantial risk of deprivation from lack of a neutral factfinder; (3) "serious" fines (i.e., $52 million); and for (4) fines related to widespread, ongoing, out-of-court violations of a complex injunction, thereby making the court police the compliance with an entire code of conduct that the court itself has imposed. Id. at ----, 114 S.Ct. at 2556-63.

FN9. Civil contempt sanctions, or those penalties designed to compel future compliance with a court order, do not require a jury trial--just notice and the opportunity to be heard--if (1) the fine is compensatory and coercive (rather than merely punitive); (2) the fine is not compensatory, as long as it is petty and/or the contemnor is afforded the opportunity to purge; (3) the conduct occurring outside the court's presence impeded its ability to adjudicate the proceedings before it; and if (4) the indirect contempts involve discrete, readily ascertainable acts requiring little need for extensive, impartial factfinding. Bagwell, 512 U.S. at ---- - ----, 114 S.Ct. at 2557-62.

[5] The critical features in determining whether contempt is civil or criminal are the substance of the proceeding and the character of the relief that the proceeding will afford. Hicks on Behalf of Feiock v. Feiock, 485 U.S. 624, 631, 108 S.Ct. 1423, 1429, 99 L.Ed.2d 721 (1988). "If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court." Id., quoting Gompers, 221 U.S. at 441, 31 S.Ct. at 498.

The line between civil and criminal contempt, however, is often blurred since

> both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority to enter the initial court order, but it is also seeking to give effect to the law's purpose of modifying the contemnor's behavior to conform to the terms required in the order.

Id. at 635, 108 S.Ct. at 1431.

[6] Courts have broad discretion in choosing the means to grant such relief. See McComb, 336 U.S. at 193, 69 S.Ct. at 500. This includes awarding attorney's fees and costs for preparing and prosecuting a contempt petition, and such fees may include factors such as overhead and support personnel. Matter of Establishment Inspection of Microcosm, 951 F.2d 121 (7th Cir.1991), citing Illinois v. Sangamo Constr. Co., 657 F.2d 855, 862 (7th Cir.1981); Squillacote v. Local 248, Meat & Allied Food Workers, 534 F.2d 735, 748 (7th Cir.1976).

A. The Orders of Confidentiality [FN10]

FN10. The 1990 case was subject to both a sealing order and a protective order. The simultaneous use of a seal and a protective order is not unusual. See e.g., Leucadia, Inc. v. Applied Extrusion Technologies, Inc., 998 F.2d 157, 158-59, 167 (3d Cir.1993). While there is a definite overlap between the two types of orders in terms of the

> prohibition on the dissemination of content, the two are technically different, although the terms are often used interchangeably. See Brian T. FitzGerald, Note, Sealed v. Sealed: A Public Court System Going Secretly Private, 6 J.L. & Pol. 381, 382 n. 7 (1990) (using "confidentiality orders," "protective orders," and "sealing orders" interchangeably throughout the text). Under Local Rule 10(C), the court "may on written motion and for good cause shown enter an order directing that one or more documents to be used in a proceeding be suppressed...." A "suppressed document" is "a document or an exhibit filed in a proceeding in this Court to which access has been restricted either by a written order, including a protective order...." Local Rule 10(A)(1).
>
> A "protective order" is "an order which provides that certain documents of exhibits to be filed with the court at a future date may be filed as suppressed or sealed documents as determined by the order." Local Rule 10(A)(5).
>
> A "sealed document," on the other hand, is "a suppressed document which the court has directed to be maintained within a sealed enclosure such that access to the document requires breaking the seal of the enclosure." Local Rule 10(A)(2).
>
> While the purpose of both orders is to ensure confidentiality, a seal order can be seen as more sweeping and inclusive if the entire case is ordered sealed. See FitzGerald, Sealed v. Sealed, at 382 n. 7, 383 & n. 10, (distinguishing as "total sealing orders" those orders that make the entire record of a proceeding confidential--the identity of the parties, all pre- trial discovery material, the contents of the pleadings, etc.).
>
> In the present instance, there was both a protective order for documents designated as confidential and a seal on the entire case. I have therefore tried, despite their overlap in effect and purpose, to analyze the two types of orders separately. I may, however, refer to them collectively as orders of confidentiality.

[7] At issue before me are three instances where it is alleged that Mr. Messina made ***1437** prohibited disclosures: in a letter, in a legal brief filed with the Seventh Circuit, and in a conversation to a New York Times reporter. That Mr. Messina made the disclosures at issue is not contested; only that the disclosures violated the orders of confidentiality and therefore are subject to sanctions for contempt.

Mr. Messina has raised several general defenses to the contempt charges regarding the disclosures at issue, both in his briefs and during his testimony at the contempt hearings. These have to do primarily with the scope and interpretation of the orders of confidentiality; the First Amendment; and the underlying validity of the orders. To give context to the cited incidents of ostensibly contemptuous conduct, and for the sake of prolepsis, I examine the scope, constitutionality, and validity of the orders before addressing the specific acts in question.

1. Scope

Mr. Messina's primary defense is his assertion that the scope of the orders of confidentiality was so limited that neither the protective order nor the seal prohibited his disclosures. According to Mr. Messina, the protective order prohibited the dissemination of very little. Mr. Messina testified that he did not understand the protective order to prohibit him from revealing the contents of pleadings. Nor from revealing confidential discovery information such as answers to interrogatories nor answers to requests to admit. Nor from disclosing the deposition testimony of witnesses. Nor from disseminating the contents of documents marked "confidential."

Mr. Messina's interpretation of the seal order is similarly cramped. Mr. Messina testified that he did not understand the seal order as preventing him from revealing the contents of depositions under seal, other discovery materials under seal, or quoting verbatim from sealed materials. The only thing that Mr. Messina believed the sealing order actually prohibited was the public disclosure of the actual pleadings--the physical documents themselves-- filed in the case.

[8] A determination of contempt requires an order of "reasonable specificity" which has been violated. Matter of Betts, 927 F.2d 983, 986 (7th Cir.1991). Whether an order is reasonably specific is "a question of fact to be resolved with reference to the context in which the order is entered and the audience to which it is addressed." Id., quoting United States v. Burstyn, 878 F.2d 1322, 1324 (11th Cir.1989).

[9] Vital to the context in which the orders of confidentiality were entered was Mr. Messina's propensity to generate adverse publicity for the defendants by disclosing protected materials in order to get them to ***1438** settle. I had observed this behavior firsthand over a course of almost two years in the initial Grove Fresh suit, No. 89 C 1113, and I watched as this familiar pattern played itself out in No. 90 C 5009. Also vital is the audience to whom the orders were addressed. Matter of Betts, 927 F.2d at 986. See also United States v. Cutler, 815 F.Supp 599 (E.D.N.Y.1993), citing United States v. Turner, 812 F.2d 1552, 1565 (11th Cir.1987). When the audience is a member of the bar, that fact will be taken into account in determining reasonable specificity, and orders that would otherwise require greater specificity for a layperson will require less for a lawyer. See, e.g., Cutler, 815 F.Supp. at 607; Turner, 812 F.2d at 1565 ("it may well be necessary that the specificity of orders directed to laypersons be greater than that of orders to lawyers").

Mr. Messina earned a bachelor of arts in social science from the State University of New York at Stonybrook in 1971. He received a J.D. from the Boston College Law School in 1975. During the academic year 1975-1976 he was a teaching fellow at the University of Illinois College of Law. From around 1976 to 1981 he was an associate at the Chicago firm of Jenner & Block. From 1981 until 1987 he was an associate and from July of 1982 to 1987 a partner in the firm of Goldberg, Kohn, Bell, Black, Rosenbloom & Ritz. Since the fall of 1987 he has been a sole practitioner. Mr. Messina is an experienced member of the bar who had reason to be familiar in his past work with orders of confidentiality, as well as the consequences of violating those orders.

Even if Mr. Messina's past general legal experience had not given him a firm understanding about protective orders and seals, his specific experience as leading counsel in the Grove Fresh litigation should have filled in that gap. Mr. Messina's understanding of the application of the order is relevant to a proper determination of its scope. Combs v. Ryan's Coal Co., Inc., 785 F.2d 970, 978 (11th Cir.1986); Duracell Inc. v. Global Imports Inc., 660 F.Supp. 690, 692 (S.D.N.Y.1987).

In both Grove Fresh suits, Mr. Messina was warned time and again about his conduct. His repeated attempts to circumvent my orders prompted me to observe on 3 May 1991 that it was apparently Mr. Messina's intention to beat one of the defendants in this case "over the head in public with what [he] believe[d] to be wrongdoing." Any proper interpretation and application of the orders requires that they be viewed in connection not only with Mr. Messina's attorney status, but with his past violations and the warnings he experienced during the course of the Grove Fresh litigation. [FN11]

> FN11. Mr. Messina repeatedly filed or attempted to file in a public manner documents that were confidential under the orders of confidentiality. See, e.g., Everfresh's Emergency Motion to Require Grove Fresh to File Its Motion and Reply Under Seal (filed 3 October 1990); Motion to Enforce Prior Orders of Court of Labatt and Everfresh/Canada (filed 1 May 1991); Everfresh's Motion (A) to Enforce This Court's Previous Orders; (B) To Strike and Seal Grove Fresh's Latest Pleadings; and (C) For Sanctions (filed 1 May 1991, and which contains a lengthy list of public filings contrary to explicit orders); Motion to Strike Memorandum Filed by Grove Fresh on January 15, 1993 (filed 20 January 1992, and which resulted in the Memorandum being withdrawn from the Court file by Mr. Messina's co-counsel); Petition of American Citrus Products Corporation and Henry Lang for a Rule to Show Cause Why John P. Messina Should Not Be Held in Contempt for a Violation of This Court's Sealing Order (filed 3 November 1993).

[10][11] Moreover, given the orders' context, audience, and nature, Mr. Messina's interpretation of them is unreasonable. The prohibition of an order must be subject to reasonable interpretation, and, while a court cannot expand the terms of the order, it may look to the nature of the original proceedings to interpret and apply it. United States

v. Greyhound Corp., 508 F.2d 529, 532, 537 (7th Cir.1974). Courts are not and should not be compelled to accept "twisted interpretations" or "tortured constructions" of an order. Id. at 532. Furthermore, a court order is issued to be obeyed. In effectuating this purpose, a court should not interpret the order in such a way as to render it a nullity. Id. at 533. Rather an order should be interpreted to give effect to its purpose and spirit. See Chase Industries, Inc. v. Frommelt Industries, Inc., 806 F.Supp. 1381, 1386 (N.D.Iowa 1992). Mr. Messina's construction of the orders ***1439** is tortured. [FN12] He interprets the seal as doing nothing more than regulating the public's access to the physical items on file at the clerk's office. Such an interpretation would render the sealing order a nullity by allowing the public to have the words, ideas, and facts contained in protected materials, while denying them access only to the documents which contained them. The purpose of the order is not fulfilled and the conduct at which it is aimed is not curtailed if Mr. Messina's interpretation is accepted.

> FN12. To listen to Mr. Messina on the scope of the orders is to hear a veritable potpourri of tortured constructions. An example: in the course of a deposition taken 29 August 1991, Mr. Messina stated that he understood the sealing order to protect disclosure obtained during discovery: "[U]ntil we reach an agreement or agree to disagree, the depositions [including this one] are being treated as though they are protected by the seal." Later, in his own deposition, Mr. Messina interpreted the phrase "as though" as meaning "we're going to pretend that it's protected by the seal."
> The game of "let's-pretend-the-deposition-was-protected-under-seal-when-it- really-isn't" is typical of Mr. Messina's methods. Not only is it unfair to the other players--i.e., Mr. Messina's opposing counsel--who interpret words less fancifully, but it exacerbates an insidious public stereotype of lawyers as untrustworthy manipulators of language.

Moreover, Mr. Messina's interpretation is twisted. By arguing that anything not expressly prohibited by the orders may be revealed, Mr. Messina engages in the fallacy of omission: he claims that he could reveal whatever information he wanted as long as the order on its face did not expressly prohibit it; that anything omitted was allowed. This not only defies common sense, but basically denies any prophylactic effect to orders intentionally written to be broad.

The sealing order, when viewed in conjunction with the protective order, must reasonably be viewed as protecting not just documents, but the contents of those documents. The orders, after all, were intended to protect the defendants against a resolution of this case prompted by Mr. Messina's unauthorized disclosures. That interest would not be served by an interpretation and application of the orders which permitted Mr. Messina to publicly disclose any information he deemed appropriate, but restrained only his distribution of the documents containing that information.

If Mr. Messina had any doubts about exactly what he could or could not disclose, he had the continued opportunity to seek clarification. When a defendant undertakes his own interpretation of an order, and does not seek clarification, then he proceeds at his peril. Failure to seek clarification of an order, "combined with actions based upon a twisted or implausible interpretation of the order will be strong evidence of a willful violation of the decree." Greyhound, 508 F.2d at 532. See Donovan v. Sureway Cleaners, 656 F.2d 1368, 1373 (9th Cir.1981). It follows that if one seeks clarification, gets it, and subsequently disregards it, the evidence of a willful violation is even stronger.

Mr. Messina sought clarification of the orders, and on 8 April 1994 I provided it, along with a specific procedure to be followed before any future disclosures were made: Mr. Messina was to present me with a petition setting out the information he sought to disclose, along with its independent public source. [FN13] In spite of my admonitions, and Mr. Messina's self-professed confusion, [FN14] he never once attempted to follow the required procedure or even consult me in a more informal manner. [FN15] I offered Mr. Messina ***1440** unlimited opportunities to clarify the orders' scope as they related to specific disclosures but he chose not to avail himself of these.

> FN13. That Mr. Messina knew and understood the procedure I had outlined is evident from his testimony: "[I]f I needed or wanted to consult with prospective clients ... what I should do is come in with a petition setting forth what it was I wanted to communicate and to identify, in the court's

words, chapter and verse the public sources."

FN14. Mr. Messina admitted in Court that there were times when he was "confused" about whether the seal order was intended to apply to depositions and other discovery, but this confusion evidently did not prompt him to seek further clarification. Mr. Messina claims that for the "last year or so of the case I had come to the conclusion that the--the proper or the accurate construction of the sealing order was that it did not apply to discovery...." Given that this conclusion was made in a judicial void, its basis is dubious.

FN15. When asked whether he ever used that procedure during his hearing, Messina admitted he had not: "I thought about using it, and the more I thought about what would have to go into the petition, the more I thought I would only be inviting more problems rather than solving a problem." My feeling is that the problem Mr. Messina most feared he would invite by consulting me was that I would interpret the orders in ways with which he disagreed.

Even if Mr. Messina's arguments were credible, I find that Mr. Messina's belief in them at the time is not. Since his interpretations of the orders are both unreasonable and unbelievable, andthe result of a voluntarily- enforced ignorance, Mr. Messina is estopped from using them as a defense.

2. Constitutionality

[12] Mr. Messina also attempts to defend his disclosures from a finding of contempt by arguing that the orders of confidentiality unduly restricted his right to free speech under the First Amendment. But even though the broad sweep of the First Amendment seems to prohibit all restraints on free expression, the Supreme Court has observed that freedom of speech "does not comprehend the right to speak on any subject at any time." Seattle Times Co. v. Rhinehart, 467 U.S. 20, 31, 104 S.Ct. 2199, 2206, 81 L.Ed.2d 17 (1984) (citation omitted).

In Seattle Times--the most thorough exploration yet by the Supreme Court on orders of confidentiality--it was held that when a protective order is entered on a showing of "good cause" as required by Federal Rule of Civil Procedure 26(c), is limited to the context of pretrial civil discovery, and does not restrict the dissemination of information if gained from other sources, it does not offend the First Amendment. Id. at 37, 104 S.Ct. at 2209. While the context of the case was somewhat limited, the decision's reasoning strongly suggests that Mr. Messina's First Amendment defense cannot succeed. It is necessary to parse the holding to see why.

Although the Seattle Times Court focused exclusively on protective orders issued under Rule 26, [FN16] it recognized that courts "have inherent equitable power to grant confidentiality orders, whether or not such orders are specifically authorized by procedural rules." Id. at 35, 104 S.Ct. at 2209. How broad these equitable powers are is a matter left unexplored by Seattle Times, but, since discovery is the focus of both Rule 26 and Seattle Times, there is nothing in the opinion to suggest that those equitable powers are likewise limited to protecting discovery materials. Indeed, the reverse appears to be true.

FN16. Rule 26(c) allows for protective orders "on matters relating to a deposition." This has been interpreted more broadly to allow protective orders for all types of discovery materials. See Seattle Times, 467 U.S. at 34-37, 104 S.Ct. at 2208-2209. Under Local Rule 18(A), "discovery materials" includes "all interrogatories, requests for production and inspection, requests for admission, and responses and objections made pursuant to [specified] Federal Rules of Civil Procedure, and notices of depositions issued and depositions taken pursuant [to other specified Federal Rules]. The Seattle Times holding was specifically limited to those protective orders entered for "good cause" as required under Rule 26(c). Id. at 37, 104 S.Ct. at 2209. Whether "good cause" under Rule 26 is to be interpreted differently from whatever the necessary predicate is protective orders issued on another basis need not be decided here, since I believe the orders at issue here satisfy the Rule 26 "good cause" standard. See infra part A.3.

One important reason, the Court said, why "the trial court[s] have substantial latitude to fashion protective orders" is the "unique character of the discovery process." Id. at 36, 104 S.Ct. at 2209. An order

"prohibiting dissemination of discovered information before trial is not the kind of classic prior restraint that requires exacting First Amendment scrutiny" because discovery materials such as pretrial depositions and interrogatories are not considered "public components of a civil trial." Id. at 32-33, 104 S.Ct. at 2207.

But the Court did not go as far as to suggest that protective orders which cover a broader variety of materials than those pertaining to discovery are constitutionally infirm. This is especially true for those materials to which access could only be gained by parties to the litigation, since there is "no First Amendment right of access to information made available only for purposes of trying his suit." Id. at 32, 104 S.Ct. at 2207. Like discovery materials, the dissemination ***1441** of agreements intended by the parties to be confidential carries a "significant potential for abuse" which could "implicate privacy interests of litigants and third parties." Id at 34, 104 S.Ct. at 2206. The Court found that such rights and interests were "implicit in the broad purpose and language of the rule." Id. at 35 n. 21, 104 S.Ct. at 2209 n. 21.

The goal of protecting the litigants' privacy interests from abuse is as valid in the context of confidential agreements as it is for discovery. Thus, confidential agreements filed during the course of a lawsuit in reliance on an existing seal--such as confidential settlement agreements--are also worthy subjects for a protective order, because, like discovery material, they too cannot really be considered "public components of a civil trial." See id. at 33, 104 S.Ct. at 2208. See also City of Hartford v. Chase, 942 F.2d 130, 135-36 (2d Cir.1991) (upholding district court's power to prevent access to all documents related to settlement).

And while there is "simply no legitimate public interest" to be served by disclosing settlement agreements, the parties to the agreement are likely to have "a compelling interest in keeping the settlement amount confidential." Arthur R. Miller, Confidentiality, Protective Orders, and Public Access to the Courts, 105 Harv.L.Rev. 427, 486-87 (1991). In fact, confidential settlement agreements are likely in the long run to best serve the interests of the public and the parties alike: "[W]hatever the value of disclosure, it should not obscure the strong public interest in, and policy objectives furthered by, promoting settlement." Id. at 486. Thus, "absent special circumstances, a court should honor confidentialities that are bargained-for elements of settlement agreements." [FN17] Id.

> FN17. As Professor Miller has observed, "[a] number of courts have required a common law right of access when there has been judicial participation in the settlement process, but they have given it extremely different application." Id. at n. 290. Compare Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197, 206 (Minn.1986) (emphasizing the traditional privacy of settlements and the policy favoring settlements) with Bank of Am. Nat'l Trust & Sav. Ass'n v. Hotel Rittenhouse Assocs., 800 F.2d 339, 345 (3d Cir.1986) (stating that court approval of a settlement is something the public has a right to know about and evaluate).

The orders of confidentiality at issue here were not explicitly issued under Rule 26, but there is, and was meant to be, some overlap with Rule 26's protection of discovery materials (an express purpose behind the orders was "to facilitate discovery"). But the scope of my protective orders was meant and understood by Mr. Messina to be broader than the scope of a Rule 26 protective order, [FN18] covering not only discovery materials, but also other documents considered confidential, including confidential settlement agreements. Orders of such scope are within the trial court's discretion. See Chase, 942 F.2d at 135-36.

> FN18. As I stated on 27 October, "[o]ne of the reasons that the sealing order was so broad was my concern that Mr. Messina would ignore any order that was not broad."

But for his status as Plaintiff's attorney, Mr. Messina would never have had access to the confidential settlement agreement whose terms he disclosed. He cannot shield the abuse of his insider's knowledge of the settlement amount by references to the Constitution, since orders restricting disclosure of information gained, such as here, purely from inside access to the documents implicate constitutional rights "to a far lesser extent than would restraints on dissemination of information in a different context." Id. 467 U.S. at 33-34, 104 S.Ct. at 2208.

[13] Mr. Messina also claims he cannot be punished

for disclosing information independently available from a public source. Prohibiting the disclosure of information "gained through means independent of the court's processes" would raise the specter of prior restraint. Id. at 34, 104 S.Ct. at 2208. Putting aside the obvious problem of attempting to restrict information presumptively protected by the First Amendment, there are two commonsense policy reasons for not punishing someone from divulging information identical to that contained in a public source. One, it would be inherently unfair; and two, it would be too difficult, when considering sanctions for disclosure, to ***1442** determine which source--public or protected--was used.

Finding Mr. Messina in contempt in this case for revealing information to which the general public had access would be both unfair and unconstitutional. But my orders certainly cannot be seen as an attempt to prevent the dissemination of public information. Aside from the implicit restraints of the First Amendment on the orders (as per Seattle Times), I explicitly exempted the dissemination of publicly available information from the orders' reach in clarifying for Mr. Messina the orders' scope.

However, since it was by no means self-evident exactly which information was or was not independently available from a public source, [FN19] I required, as part of the procedure Mr. Messina was to follow prior to making further disclosures, that he identify to this court his allegedly independent public source. Putting this burden on Mr. Messina was reasonable, [FN20] since-- unlike his opposing counsel or the court itself--Mr. Messina was in the best position quickly to articulate the nature and location of his public source. Any restraints this procedure might have imposed on Mr. Messina's First Amendment rights were de minimis and ephemeral, and were substantially outweighed not only by the more compelling interests of the parties seeking confidentiality, but also by the interests of justice and judicial economy. [FN21]

FN19. Nor necessarily evident to Mr. Messina. As he himself testified, "[O]nce the case was filed ... there was an awful lot of discovery that was redundant with information that I had gotten from public sources. But there was also discovery that provided additional information on subjects that I had gotten from public sources."

FN20. This burden is not to be confused with the threshold burden of persuasion placed on the designating party to show "good cause" for a protective order under Rule 26(c). Leucadia, Inc. v. Applied Extrusion Technologies, Inc., 998 F.2d 157, 166 (3d Cir.1993); Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir.1986) ("Rule 26(c) places the burden of persuasion on the party seeking the protective order. To overcome the presumption, the party seeking the protective order must show good cause...."), cert. denied, 484 U.S. 976, 108 S.Ct. 487, 98 L.Ed.2d 485 (1987).
Nor is it to be confused with the burden, also borne by the designating party after a challenge to the designation, of proving that the information was appropriately subject to the confidentiality and sealing provisions in the order." Id. at 158-59. These burdens had already been surmounted to my satisfaction. Therefore this is not a Leucadia situation, where the district court had improperly placed the burden of persuasion on the party seeking access to sealed judicial records, rather than on the designating party, to justify continued secrecy. See Leucadia, 998 F.2d at 166-67.

FN21. Messina argues that the outlined procedure unconstitutionally conditioned his "fundamental right to practice law." Since the practice of a law in the United States is a privilege, not a fundamental right, I do not address this argument.

Mr. Messina voluntarily chose not to avail himself of a procedure personally tailored to meet his needs and protect his rights. Consequently he did not identify to me any independent public sources prior to making his disclosures. Having failed to meet his burden, he is therefore estopped from raising as a defense the alternate availability of a public source. [FN22]

FN22. This is especially true for those instances where Mr. Messina claims as "public" information he himself disclosed to the public. See infra part B.2.

Moreover, even if Mr. Messina is correct, and some of the information he disclosed was publicly

available, this will not necessarily shield him from revealing things which were not. For each of the alleged instances of contempt adequate and independent grounds exist for sanctioning Mr. Messina solely for those disclosures made without a separate public source. Specifically, disclosures concerning (1) the invocation of the Fifth Amendment privilege by certain individuals and (2) the amount of the settlement. [FN23] Neither piece of information, despite Mr. Messina's insistent and unsupported claims to the contrary, was independently available from a public source.

> FN23. These disclosures are more fully examined infra part B.

Because Mr. Messina could "disseminate the identical information covered by the protective order as long as the information [was] gained through means independent of the court's processes," Seattle Times, 467 U.S. at ***1443** 32-33, 104 S.Ct. at 2207, there was no prior restraint. Mr. Messina's unauthorized disclosures of protected information not gained by independent means are therefore constitutionally valid grounds for contempt.

3. Validity

[14] If the order underlying it is invalid, a contempt judgment based on a violation of that order may well fall with it. Marrese v. American Academy Orthopaedic Surgeons, 726 F.2d 1150, 1157 (7th Cir.1984), rev'd on other grounds, 470 U.S. 373, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985). Seeking to take advantage of this rule, Mr. Messina questions the underlying validity of the seal and the protective order as a way of preemptively neutralizing any determinations of contempt. [FN24] Even assuming that Mr. Messina was permitted to raise the invalidity of the contempt order as a defense during his hearing rather than having to wait to do so on appeal, see United States v. Pearce, 792 F.2d 397, 400 (3d Cir.1986), this defense still cannot succeed for the simple reason that the orders of confidentiality are, and were, valid. And "a continuing respect for the valid decrees of a court commands that they be obeyed until changed." Kindred v. Duckworth, 9 F.3d 638, 644 (7th Cir.1993), citing Pasadena Bd. Educ. v. Spangler, 427 U.S. 424, 439-40, 96 S.Ct. 2697, 2706, 49 L.Ed.2d 599 (1976).

> FN24. Assuming for the sake of argument that my orders were invalid, Mr. Messina's reliance on Marrese to exonerate him from a judgment of contempt for their violation is problematic. This is not only because there is no single majority opinion of the en banc court, nor even because the case focused exclusively on criminal, rather than civil, contempt. My reservations about the efficacy of Marrese as it relates to Mr. Messina's defense are rooted in more fundamental concerns.
>
> First, because as Judge Posner's opinion notes, there are many decisions which hold that a contempt citation remains intact even after invalidation of the underlying order which was violated. Marrese, 726 F.2d at 1157. See also Howat v. Kansas, 258 U.S. 181, 189-90, 42 S.Ct. 277, 281, 66 L.Ed. 550 (1922); United States v. Mine Workers, 330 U.S. 258, 291-94, 67 S.Ct. 677, 694-696, 91 L.Ed. 884 (1947); Maness v. Meyers, 419 U.S. 449, 458, 95 S.Ct. 584, 591, 42 L.Ed.2d 574 (1975); Blocksom & Co. v. Marshall, 582 F.2d 1122, 1124 (7th Cir.1978). Moreover, a more recent ruling by this court, and, unlike Marrese, one specifically addressed to orders of confidentiality, held that a "confidentiality order is effective until modified; the collateral bar doctrine requires litigants to obey invalid orders while they are outstanding." Matter of Krynicki, 983 F.2d 74, 78 (7th Cir.1992), citing Pasadena Bd. of Educ. v. Spangler, 427 U.S. 424, 439-40, 96 S.Ct. 2697, 2706, 49 L.Ed.2d 599 (1976). Even though Krynicki did not specifically refer to contempt, the enunciated rule would have no teeth if its violation could not be remedied through contempt sanctions. The unavoidable inference of Krynicki therefore is that Marrese does not include protective orders within its scope.
>
> Second, Judge Posner attempted to reconcile the apparent contradiction in the lines of precedent by noting that in those cases where the validity of the underlying order was held not to be reviewable on appeal from the judgment of contempt, the

order could have been appealed as of right directly, or otherwise reviewed other than by appeal from the contempt judgment. Marrese, 726 F.2d at 1157. Discovery orders, like the one at issue in Marrese, are not appealable. Id. But not only are orders of confidentiality appealable independent of any contempt judgment, the orders in this very case were actually appealed to the Seventh Circuit. See Grove Fresh Distributors, Inc. v. Everfresh Juice Co., 24 F.3d 893, 898-99 (7th Cir.1994). Thus, the orders at issue here fall outside the Marrese rule, and even a finding that the underlying order was invalid would not shield Mr. Messina from being found in contempt for its violation. See Maness, 419 U.S. at 458, 95 S.Ct. at 591 ("Persons who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect.").

[15] A district court must independently determine if "good cause" exists before issuing a stipulated protective order. Jepson, Inc. v. Makita Elec. Works, Ltd., 30 F.3d 854, 858 (7th Cir.1994); Leucadia, Inc. v. Applied Extrusion Technologies, Inc., 998 F.2d 157, 166 (3d Cir.1993) ("To overcome the presumption [of public access], the court may construct a broad 'umbrella' protective order upon a threshold showing by one party (the movant) of good cause.") (citation and internal quotation marks omitted). In considering whether good cause exists for a protective order, the federal courts have generally adopted a balancing process. [FN25] Pansy ***1444** v. Borough of Stroudsburg, 23 F.3d 772, 787 (3d Cir.1994), citing Miller, Confidentiality, 105 Harv.L.Rev. at 432-33. When a district court carefully considers "each of the factors which favor[ ] access or continued secrecy for the documents at issue" and assigns "appropriate weights to the various interests," there is no abuse of discretion. Leucadia, 998 F.2d at 167, citing Littlejohn v. BIC Corp., 851 F.2d 673, 685 (3d Cir.1988).

FN25. The Third Circuit recently has summarized a non-exhaustive list of factors to be considered in the balancing process. These include (1) whether parties have an interest in privacy; (2) whether information is being sought for legitimate purpose or for improper purpose; (3) whether there is a threat of serious embarrassment to a party; (4) whether information is important to public health and safety; (5) whether sharing of information among litigants would promote fairness and efficiency; (6) whether a party benefiting from the confidentiality order is a public entity or official; and (7) whether the case involves issues important to the public. Pansy, 23 F.3d at 787-88. As the record in the instant case shows, I felt that any presumptive right of access possibly merited by (4) was substantially outweighed by (1), (2), and, to some extent, (3). Although information concerning public health and safety was implicated-- this being a case involving the adulteration of orange juice--I was not convinced by the evidence before me at that time that (4) merited greater weight. Factor (7) overlapped with (4), and the two were considered together. Factors (5) and (6) were not relevant in this case, and were therefore not considered in my balancing of the interests.

[16] In deciding to seal a case, a district court should articulate the findings and reasoning that served as a basis for the seal. Grove Fresh Distributors, Inc. v. Everfresh Juice Co., 24 F.3d 893, 898 (7th Cir.1994). But, since an absence of those findings and reasoning in the record is not necessarily evidence that a court never considered good cause, the real question is whether or not there was any substantive decision behind the record's "silence."

[17] If the lack of articulated findings stems from a complete failure to make a good cause determination, the order is likely to be found invalid. See Jepson, 30 F.3d at 859. The consequence of that would be the reversal of any sanctions imposed for violating the order now adjudged to be invalid. See id. In Jepson, the Seventh Circuit reversed the district court's imposition of sanctions against counsel for disclosing information subject to a stipulated protective order because it determined that the underlying order was invalid. Id. at 858-60. The Court was not only disturbed by the lack of any implicit or explicit reference to "good cause" in the order itself, but also by the fact that no specific finding of this appeared anywhere in the record. Id. at 859.

Reversal in Jepson was appropriate because there

was "no indication that the magistrate judge made some independent determination that 'good cause' existed before issuing its [protective order]." Id. at 858-59 (emphasis added). But while the rationale for sealing cases should ideally be put on the record at the time of the sealing, the Seventh Circuit has "yet to hold that where such a description is [initially] lacking, reversal is per se appropriate." Grove Fresh, 24 F.3d at 898.

The Court of Appeals will independently determine if good cause existed only if the lower court obviously did not. See Jepson, 30 F.3d at 859. See also Leucadia, 998 F.2d at 167 ("The required balancing should be done in the first instance by the district court"). In this circuit, the preferred method to see whether good cause was determined (if not recorded) is to remand the matter back to the authorizing court. See Grove Fresh, 24 F.3d at 898. If on remand the district court can specify the basis for its sealing order, the order cannot be invalidated--and the sanctions for violating the order reversed--for a complete failure to decide good cause. See Jepson, 30 F.3d at 860. Moreover, the Court of Appeals will then have findings specific enough to "determine whether the closure order was properly entered." Grove Fresh, 24 F.3d at 898, quoting Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 510, 104 S.Ct. 819, 824, 78 L.Ed.2d 629 (1985).

[18] The court in Jepson was dealing with a stipulated protective order that was never submitted to the district court, never signed by it, and never entered. Id. at 856-57. How much weight this played in the Seventh Circuit's reasoning is unclear, [FN26] but ***1445** from the opinion this fact was considered. See id. at 856. Here, of course, the stipulated protective order at issue was submitted to me, I did sign it, and it was entered. And although I never actually used the phrase "good cause" to justify my reasons for signing it, the record amply attests to an independent determination of good cause, including a balancing of interests, which justified the seal as well as the protective order. [FN27]

> FN26. Unclear partly because there were two protective orders at issue in the case: a stipulated protective order that the district court never saw and an interim protective order that was signed by the magistrate judge without considering good cause. See Jepson, Inc., 30 F.3d at 856. Judge Kanne's analysis does not always distinguish between the two. See id. at 859.
>
> Perhaps this is because the orders overlapped to a certain extent, id. at 856, and perhaps because the attorney was sanctioned pursuant to a Motion for Enforcement of Protective Orders [plural] and for Sanctions. Id. at 857 (emphasis added). As both orders were involved, and as their purposes overlapped, the Court may have felt it expedient to treat them for purposes of analysis as interchangeable.
>
> FN27. Ironically, I elaborated on my reasons for issuing the orders one month prior to the Seventh Circuit's request that I "specify the basis" for the seal.

Given the purpose for the orders, the context in which they were issued, and the balancing of the respective interests, the orders are valid: there was good cause to find good cause. However, even assuming that the orders were invalid, Mr. Messina may still be punished for violating them. Krynicki, 983 F.2d at 78 (holding litigants must obey even invalid outstanding orders of confidentiality). Any alleged invalidity of the underlying orders would not affect the validity of a contempt judgment for their violation.

B. Violations of the Orders of Confidentiality

1. Disclosures in Appellate Brief

[19] The first charge of contempt against Mr. Messina stems from a forty-two page brief he filed with the Seventh Circuit Court of Appeals on 22 October 1993. [FN28] Within the brief, defendants American Citrus and John Labatt allege, Mr. Messina disclosed protected information that was not available from public sources and which could only have come from the discovery process in the case.

> FN28. At the time of filing, Mr. Messina was neither a party, nor an attorney for any party, in the Grove Fresh litigation. The Seventh Circuit struck the motion as frivolous, and asked him to show cause why he should not be sanctioned for improper conduct. Sanctions against Mr. Messina for mischaracterizing his attorney status and his standing are discussed infra part D.

Specifically, Messina is charged with having asserted that certain defendants, or representatives of

defendants, invoked the Fifth Amendment privilege against self incrimination. Moreover, it is alleged that Messina mischaracterized the record by asserting that other individuals had invoked the Fifth Amendment (and stating that adverse inferences should thereby be drawn against the corporate defendants) when in fact they had not, thus making Messina's disclosures to the Seventh Circuit deceptive as well as improper.

A perusal of the brief in question shows the above charges to be true: the disclosures about the Fifth Amendment were made, the disclosures were improper because the disseminated information was protected by both the seal and the protective order, the information was unavailable from any independent public source, and inaccuracies in that which was divulged distorted the record. Mr. Messina's revelations are all the more egregious for having been made with full knowledge--as he admitted under cross-examination--that at the time he made his disclosures I then had before me a motion in support of keeping under seal the very issues he disclosed.

The orders in this case were entered lawfully and were reasonably specific. Mr. Messina violated those orders, and the violation of those orders was willful. There are no valid defenses to his actions. The evidence of Mr. Messina's violation of the orders here is more than clear and convincing, it is beyond a reasonable doubt. Since the elements and the standard of criminal contempt are met, and since what will satisfy the stricter criminal contempt standards will necessarily satisfy its civil counterpart, the same acts by Mr. Messina may yield sanctions for both criminal and civil contempt.

For this first instance of civil contempt, I order Mr. Messina to compensate the parties for losses they can prove resulted from noncompliance, including attorney's fees and ***1446** costs incurred in preparing and prosecuting Mr. Messina for contempt (this may include overhead and support personnel). The defendants shall submit for review the total amount of this compensation within two weeks from the date of this opinion.

And for this first instance of Mr. Messina's criminal contempt, which not only subverted the authority of the court, but also wasted its time (and therefore the taxpayers money), I fine him $1000. This amount, which is meant to compensate the government as well as to punish Mr. Messina's disobedience, is due within three days after the issuance of this opinion, and shall be paid by a certified check made out to "the United States of America."

2. Disclosures in Letter

[20] The second contempt charge against Mr. Messina stems from a letter, dated 20 September 1994, written by Mr. Messina to John Elson, of the Northwestern University Legal Clinic, counsel for the Ad Hoc Coalition of In Depth Journalists, an intervenor. In this letter, defendants claim, Mr. Messina disclosed--and substantially mischaracterized--information obtained from discovery, and quoted verbatim from the sealed complaint.

Instead of consulting with me, as he was advised to do before making further disclosures, Mr. Messina--perhaps attempting to save this court the time and trouble of deciding the matter for itself--decided the legal issues on his own. Thus he begins his letter by unequivocally stating that the designations about materials to remain under seal are "not well grounded in fact," and that "[a]fter careful review of the applicable law and the procedural history of the seal in the Labatt case, I have concluded that I am free to provide you with [the] information ... set out below." And provide it he did.

At page 4, arguing that the settlement terms were no longer confidential and therefore did not justify closing the post-settlement proceedings, Mr. Messina disclosed the confidential settlement amount, which was part of the sealed record. [FN29] In doing so, he violated not only the orders of confidentiality, but also prejudiced the interests of his client by knowingly and willfully violating the terms of the confidential settlement agreement itself. [FN30]

> FN29. These disclosures were justified, Mr. Messina argues, because this information was "public." But he eventually (and reluctantly) admitted under cross-examination that the information was public only because of disclosures he made in his motion to the Seventh Circuit: "The information about the settlement amount [as published in national press] certainly came from my papers."
> Thus, Mr. Messina attempts to defend his actions by claiming as "public" protected information he himself disseminated to the public. The circularity of his argument is

audacious, even by his own standards of audacity.

FN30. Under cross-examination Mr. Messina admitted he understood that the settlement agreement between the defendants and Grove Fresh contained confidentiality provisions, that one of the terms that was to remain confidential was the amount of the settlement, and that the amount was defined as one of the material terms to remain confidential. He also admitted he knew that the defendants did not want the information disclosed, that confidentiality is valuable, and that he understood the value of confidentiality in an agreement.

At pages 6 through 8, arguing that American Citrus' objection to certain designations were groundless, [FN31] Mr. Messina revealed potentially disparaging and scandalous designations contained in the sealed complaint. Messina admitted under cross-examination that at the time he disclosed this information he knew that keeping those particular designations under seal was then an issue before me awaiting decision.

FN31. These designations, which plausibly had negative connotations, referred to the adulterated orange juice formula and the organization which utilized it.

Also at page 6, Mr. Messina revealed that certain individuals had invoked the Fifth Amendment privilege against self-incrimination. This information was exclusively contained in discovery materials covered by the seal and the protective order. [FN32]

FN32. Mr. Messina tries to claim that this information was unrelated to discovery, since it was supposedly information contained in a letter from one of the defendant's attorneys. But after much waffling, he finally admitted under cross-examination that the letter was only written in response to a deposition notice issued by Grove Fresh. Such a response was unquestionably related to discovery.

*1447 At page 7 of his letter Messina quoted paragraphs 99, 100, and 102 of the complaint, which was then under seal. The quotes were verbatim.

At page 8, arguing that American Citrus' objection to the naming of non-party co-conspirators was groundless, Messina disclosed the identity of eight individuals named in the sealed complaint who he alleged were co-conspirators. He did this even though, as he admitted under cross-examination, he knew that the identification of these individuals--and the issue of whether this information should be made public--was the subject of a brief before me, for which the parties were presently awaiting a judgment.

Again, I find that Mr. Messina willfully violated reasonably specific orders beyond a reasonable doubt. Again, there are no valid defenses to Mr. Messina's action. Again, both civil and criminal contempt sanctions are appropriate. These sanctions, for this second instance of contempt, are identical to those previously cited: compensation for the parties' losses and a fine exacted on behalf of the United States.

3. Disclosures in Conversation

[21] The third alleged instance of contempt springs from Mr. Messina's disclosure of protected information to a reporter for a national publication, resulting in a front page story revealing the contents of his disclosures. See Diana B. Henriquez, 10% of Fruit Juice Sold in U.S. Is Not All Juice, Regulators Say, N.Y. Times, Oct. 31, 1993, at A1.

Messina admitted in deposition that he had a private conversation with Diana Henriquez, the article's author, in which he divulged that certain named individuals had invoked the Fifth Amendment privilege. At the time he made his disclosures, that information was exclusively available from nonpublic, protected discovery materials. Moreover, Mr. Messina testified that he directed Ms. Henriquez to his recently filed Seventh Circuit brief, where the newly "public" information about the settlement amount was immediately discoverable. This amount appeared in the story. Id. at A11.

Once again, I find that Mr. Messina willfully violated reasonably specific orders beyond a reasonable doubt; that no valid defenses exist to his actions; and that both civil and criminal contempt sanctions are appropriate. The sanctions for this third instance of contempt are identical to, but separate from, those mentioned previously.

4. Future Disclosures

[22] Two recent instances of Mr. Messina's behavior make me question whether Mr. Messina has the necessary self restraint to curb his seemingly uncontrollable propensity to disclose protected materials. The first concerns a "press release" which Mr. Messina drafted, sent to the defendants on 24 January 1995, and threatened to disseminate on 27 January 1995. Headlined "Orange Juice Companies Seek to Punish Lawyer Who Uncovered Consumer Fraud," this "press release" disclosed the invocations of the Fifth Amendment privilege, as well as substantial (and often inaccurate) information about the settlement negotiations, including disclosures of communications with the Court, and with Mr. Messina's former client and co-counsel.

Whether Mr. Messina's methods are seen as tough negotiation or blackmail, his bad faith is evidenced by his threat to send his "press release" not only to the press, but to the Plaintiff's Bar as well. (Although he denied this particular audience was chosen to raise the specter of additional lawsuits against the defendants, he was unconvincing.) Mr. Messina evidently had no compunctions about coercing compliance with his demands by threatening the disclosure of protected information. And there is no question that he would have followed through with his threat: under cross-examination, Mr. Messina admitted that, absent compliance or a court order, "the press release would have been issued."

As disturbing as is Mr. Messina's willingness to hurt his perceived enemies, it pales beside his willingness to run roughshod over the best interests of his client. This incident prompted the sad spectacle of Mr. Messina's former client, Grove Fresh, filing a motion to preclude him from filing his "press release." Perhaps Mr. Messina felt no loyalty to Grove ***1448** Fresh since he had been "relieved" of his assignment, but no client-- present or former--should be treated the way Mr. Messina treated Grove Fresh. Had he been class counsel, I would have afforded him no fees, because he was seemingly incapable of placing his client's interests above his own.

The second recent incident which makes me question Mr. Messina's ability to restrain himself from future violations concerns his recent spate of filings-- nine documents filed between 9 March and 27 April 1995--with the Seventh Circuit. Seemingly impervious to the fact that among the questions currently before this court (indeed the subject of part of this opinion) are Mr. Messina's previous disclosures in an appellate brief of the confidential settlement amount, Mr. Messina, in his latest publicly-filed Seventh Circuit briefs, once again blithely discloses the confidential settlement amount. See, e.g., John Messina's Motion to Consolidate Appeals and Briefing Schedules at 3 (filed 24 April 1995).

These latest happenings prompt more than a sense of deja vu. Such a shamelessly willful subversion of this court's authority and business, performed with such reckless abandon, engenders the two feelings which Aristotle believed created the catharsis which accompanied great tragedy: fear and pity. See Poetics at 230. Fear that Mr. Messina will continue to disregard this court's express orders, and pity that in doing so he teeters so precariously on the abyss.

To save the Grove Fresh defendants from a significant risk of repetition of future disclosures (which from the evidence is clear and convincing), and perhaps to save Mr. Messina from himself, I require Mr. Messina to post a $50,000 bond for the next five years. Perhaps the forfeiture of this amount for future violations will give Mr. Messina something his tragic cousin Hamlet had in abundance: pause.

C. Failure to Appear

[23] The fourth contempt charge against Mr. Messina stems from his failure to show up in court, as ordered, on 21 October 1993. The circumstances behind the nonappearance are as follows:

On 20 August 1993, Everfresh filed a Motion to Enforce Settlement Or Relief From Judgment. When the motion was initially called, Mr. Messina did not appear. The Court ordered that either Mr. Messina or his legal representative appear in response to the motion when next heard, which was set to be 1 September 1993. As he acknowledged in both his deposition and hearing testimony, Mr. Messina was expressly advised of this order.

The matter was then put over at the request of Mr. Messina's lawyer. By letter dated October 5, 1993, Mr. Messina was informed that the Court would not be in session until 18 October 1993, but that the Everfresh motion would be called shortly thereafter. This was the same motion for which Mr. Messina had earlier failed to appear, and for which the court had ordered his appearance.

On 12 October 1994, Mr. Messina received formal notice that the Everfresh motion had been re-noticed to be heard on 21 October 1993. Mr. Messina admitted in court it was served on him and that he knew the renoticed motion was the same as that for which he was ordered to appear on 1 September 1993.

On the evening of 20 October, Mr. Messina decided he would not appear as ordered. Shortly after 6 a.m. on the morning of 21 October Mr. Messina faxed a letter to counsel for defendants "as a courtesy to let you know that I do not plan to attend the hearing which you have noticed [today]." (A similar courtesy was not extended to the court, which was given no advance notice of his planned absence.) In response, Mr. Messina received a letter reminding him of his obligation to appear as ordered. Although again put on notice that his appearance was required, Mr. Messina failed to show up.

[24] An order requiring a court appearance will flunk the "reasonable specificity" requirement for a contempt finding if the language of the order leaves any doubt or uncertainty that an appearance is required. See Matter of Betts, 927 F.2d 983, 987 (7th Cir.1991). If a court order is ambiguous, it precludes the essential finding in a criminal contempt proceeding of willfulness. Id. In Betts, the criminal contempt conviction was ***1449** reversed because the docket order did not state that an appearance was "de rigueur." Id. at 988.

Mr. Messina's excuses for his nonappearance are many and varied. [FN33] Given the evidence, few of them are plausible, many are disingenuous, and several are flatly contradicted by the chronology. None of them provides Mr. Messina with any real defense. After watching him testify, and after reviewing the record, I am convinced beyond any doubt that Mr. Messina had proper notice, fully understood his appearance was required, and knew the reasonable consequences of his actions.

> FN33. His first excuse is that because he never actually received an order signed by the judge requiring him to appear, he was not obliged to attend. (This conclusion was based on his status as "an attorney with about 17 years of experience at the Bar.") Mr. Messina's second excuse is that he discovered at the eleventh hour that his attorney could not appear on his behalf, and he did not think it "wise to appear without counsel."
> Excuses three and four are found in his letter of 21 October 1993, sent the day he was due to appear. The third excuse is that the court did not have jurisdiction over him. The fourth is that the motion was not well-grounded in fact, and therefore he not have to appear in what he assumed was a voluntary mediation process. The fifth is that the bare bones 60(b) motion did not make "a serious effort to plead fraud," and, since the court would only be involved as a mediator, he "respectfully decline[d] to participate voluntarily in any mediation process."

I find not only that Mr. Messina's choice not to appear was willful, but that it was made in bad faith. The evidence convincingly suggests Mr. Messina's nonappearance was motivated by a desire to prevent an order of this court: specifically, that he avoided the hearing so this court could not stop him from filing in the Seventh Circuit a brief on which he had been working for several weeks. On the day he was scheduled to appear, Mr. Messina instead had his affidavit for the brief notarized. On the following day, he filed the brief itself. I do not find the timing of all these events coincidental.

I find yet again that Mr. Messina willfully violated reasonably specific orders beyond a reasonable doubt; that no valid defenses exist to his actions; and that both civil and criminal contempt sanctions are appropriate. The sanctions for this instance of contempt is identical to, but separate from, those mentioned at the end of parts B.1-B.3: compensation to the defendants and a fine payable to "the United States of America."

D. Misrepresenting Attorney Status and Standing to Seventh Circuit

[25] The fifth charge against Mr. Messina, which stems from the motion Messina filed with the Seventh Circuit Court of Appeals on 22 October 1993, potentially carries sanctions not for contempt but for violations of Rule 11 of the Federal Rules of Civil Procedure. [FN34] Defendants charge that Mr. Messina made material misrepresentations to the Court, fudging his status as an attorney in the Grove Fresh litigation in order to claim standing to make a personal motion.

FN34. Rule 11 applies to "[e]very pleading, written motion, and other paper " signed by the attorney. Fed.R.Civ.P 11(a) (emphasis added). Briefs submitted to the Courts of Appeals, as well as those filed in district court, come within the scope of Rule 11, since the term "other paper" in Rule 11 "includes notices of appeal and appellate briefs...." Thornton v. Wahl, 787 F.2d 1151, 1153 (7th Cir.1986), cert. denied, 479 U.S. 851, 107 S.Ct. 181, 93 L.Ed.2d 116 (1986) Thus, Rule 11 applies to the certifications made by Mr. Messina in his appellate brief.

The relevant chronology is as follows:

On 21 January 1993, the president of Grove Fresh wrote a letter to Mr. Messina informing him that he was "hereby relieved of all responsibility in the handling of this matter [the Grove Fresh litigation]. [Two other attorneys] will act as our sole attorneys and trial lawyers."

Then, on 22 October 1993, nine months after being discharged by his client, Mr. Messina filed a motion with the Seventh Circuit asking for a hearing to respond to allegations about him in defendants' brief. Mr. Messina didn't file any type of motion to intervene in the case or move for leave to file a motion regarding allegations of misconduct, but instead proceeded to file his motion on the theory that he had standing. In paragraph 1 of his motion in the Court of Appeals, Mr. Messina stated:

> ***1450** Petitioner [Messina] is one of the attorney's of record for plaintiff, Grove Fresh Distributer's, Inc.

Moreover, in both the motion itself and in the accompanying affidavit, Mr. Messina refers to himself as "the Grove Fresh attorney" or "Grove Fresh's attorney," and to Grove Fresh as "his client." Nowhere in either document did he mention being relieved of all responsibility for the Grove Fresh litigation.

On 28 October 1993, in response to a motion by Mr. Messina that was before me, Grove Fresh sought to distance itself from its former counsel's actions:

> Grove Fresh Distributer, Inc. (Grove Fresh) did not authorize the filing of [Mr. Messina's motion]. Nor was the motion made on behalf of Grove Fresh. Mr. Messina was discharged as Grove Fresh's attorney on January 21, 1993. Although Mr. Messina has apparently not withdrawn his appearances in these cases, Mr. Messina has not been authorized to act on behalf of Grove Fresh since his discharge.

Even after Grove Fresh went on record disavowing a connection with him, Mr. Messina failed to either seek leave to withdraw as attorney of record or to amend his brief so that his stated attorney status more accurately conformed to his ex-client's conception of their relationship.

In an order dated 9 November 1993, the Seventh Circuit denied Messina's motion and granted motions by American Citrus, Labatt, and Everfresh to strike certain documents. The Court also asked Messina to show cause, pursuant to Federal Rule of Appellate Procedure 46(c), as to why he should not be sanctioned for filing a frivolous motion.

On 15 November 1993, American Citrus filed a motion in the Seventh Circuit for disciplinary action against Messina for misrepresenting his attorney status. The Court of Appeals, in an order dated 14 December 1993, denied this motion because "[t]he relief requested is appropriately sought in the district court." [FN35]

> FN35. The Court of Appeals may have wished only that I make the findings of fact which would have allowed it to sanction Mr. Messina on its own, under Fed.R.App.P. 38. If this is the case, the Court may, of course, vacate my disposition of the matter and substitute its own.

Finally, on 21 January 1994, American Citrus and Labatt filed a joint memorandum in support of sanctions against Messina for, among other things, his misrepresentations to the Court of Appeals. The defendants pray for the court to impose appropriate monetary sanctions for Mr. Messina's misrepresentations.

Rule 11 requires that all pleadings and motions of a party represented by an attorney be signed by that attorney, certifying

> that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact ... warranted by existing law ... [and] not interposed for any improper purpose....

Fed.R.Civ.P. 11(b); Goka v. Bobbitt, 862 F.2d 646, 650 (7th Cir.1988). It also provides that appropriate sanctions "shall be imposed if its provisions are violated." Goka v. Bobbitt, 862 F.2d at 650. The district courts are "best acquainted with the local bar's litigation practices and thus best situated to determine when a sanction is warranted to serve Rule 11's goal of specific and general deterrence." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 404, 110 S.Ct. 2447, 2460, 110 L.Ed.2d 359 (1990).

Mr. Messina violated Rule 11 in three ways, each of which would be independently sanctionable. First, because the recitationof his attorney status was not well grounded in fact. It would be reasonable, from Mr. Messina's representations in his brief and supporting affidavit, to infer that at the time of filing he was Grove Fresh's attorney in the Grove Fresh litigation. Reasonable, given what Mr. Messina says, but incorrect, given the material facts he omits.

Mr. Messina states in the first paragraph of the brief that he "is one of the attorney's of record for plaintiff, Grove Fresh Distributer's, Inc." Local Rule 3.15 states that "[o]nce an attorney has filed an appearance form pursuant to General Rule 3.14 he/she is the attorney of record for the party represented for all purposes incident to the proceeding in which the appearance was filed." ***1451** Moreover, "the attorney of record may not withdraw ... without first obtaining leave of the court." Id. An attorney who does not request and obtain leave to withdraw is still considered the attorney of record. See Daniels v. Brennan, 887 F.2d 783, 784-85 (7th Cir.1989). Thus, Mr. Messina's statement that he "is an attorney of record" is technically true.

But even if technically true, the placement of this statement (the first paragraph) and the use of the present tense ("is") implies a connection with both case and client that Mr. Messina no longer enjoyed. The misleading illusion that Mr. Messina was then currently representing Grove Fresh is perpetuated by Mr. Messina's numerous references--in both the brief and his supporting affidavit--to himself as "Grove Fresh's attorney" and Grove Fresh as "his client."

To make the illusion complete, Mr. Messina omits anything that might possibly contradict it. This silence is as misleading as anything that Mr. Messina says. Nowhere in the documents filed by Mr. Messina with the Seventh Circuit, including his forty-two page brief and thirteen page affidavit, does Mr. Messina mention the material fact that he was no longer Grove Fresh's attorney, was no longer working on the case, and had been discharged by Grove Fresh nine months earlier. Mr. Messina splits many linguistic hairs to exonerate himself, claiming that he did not consider himself to have been "discharged," merely "relieved of all responsibilities." Such distinctions are worse than implausible: they are insulting.

Mr. Messina claims he was simply trying to identify his relationship to the matter. But since he admitted he was acting on his own behalf, and filing on his own behalf, and the brief concerned not Grove Fresh but him personally, troubling questions arise: Why did he feel the need to describe his past relationship with a former client? And if he felt the need to do so, why not disclose he had been discharged--or relieved--by Grove Fresh? Given Mr. Messina's inclination for disclosing information I find it revealing--and not accidental--that he chose this particular occasion to be silent.

Having watched an evasive Mr. Messina under cross-examination waffle over his reasons for omitting the obvious, I cannot choose but to disbelieve them. Not just because of his long experience as a lawyer, and his demonstrated sensitivity to how false impressions may be fostered by relevant omissions, [FN36] but also because he admitted that for the purposes of the existing Grove Fresh litigation--and his appeal--he understood he was no longer a Grove Fresh lawyer, yet chose not to amend or withdraw as attorney of record after Grove Fresh voiced its objections. Mr. Messina's (implied) attorney status, therefore, is not well-grounded in fact for Rule 11 purposes.

> FN36. For example, in the very appellate brief in question, Mr. Messina argues that the defendants, in a Seventh Circuit brief of their own, wrongfully accused him of professional misconduct through "false statements and innuendoes created by the omission of relevant and material facts." Mr. Messina makes much of what the defendants "failed to disclose" and "falsely imply," and he goes into some detail over their alleged use of "misleading half-truth[s] to create [a certain] impression." Mr. Messina'sevident awareness of the potential of language to mislead makes his own

silences all the more suspicious, and his attempts to hold others to a standard which he himself did not follow all the more reprehensible.

Second, Mr. Messina violated Rule 11 because he certified the matter was filed with a proper purpose when it was not. Mr. Messina's purpose in mischaracterizing his status was improper: to piggyback his personal appeal onto the Grove Fresh suit to obtain a semblance of personal standing. Mr. Messina's long experience as a lawyer, if not the reasonable inquiry required by Rule 11, should have alerted him not only to the impropriety of appealing a personal matter without personal standing, but of filing an appeal before the issues had been properly placed before the district court. I find his protestations to the contrary are as disingenuous as the means by which he chose to approach the Court of Appeals.

[26] Third, Mr. Messina violated Rule 11 because the filing of his brief was not warranted by existing law. It was, in fact, precluded by it. A person who brings an appeal must have standing to do so. Moy v. Cowen, 958 F.2d 168, 170 (7th Cir.1992). It is a well-settled ***1452** rule that "only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment." Marino v. Ortiz, 484 U.S. 301, 304, 108 S.Ct. 586, 588, 98 L.Ed.2d 629 (1988). In most cases, this means parties of record at the time the judgment was entered, including those who have become parties by intervention, substitution or third-party practice. In re VMS Ltd. Partnership Sec. Litig., 976 F.2d 362, 366 (7th Cir.1992). But see In re Proceedings Before Federal Grand Jury, 643 F.2d 641, 643 (9th Cir.1981). Moreover, Local Rule 43 maintains

> [n]o pleading, motion, or other document shall be filed in any case by any person who is not a party thereto, except by leave of Court first had and obtained....

Mr. Messina was not a party to the action, did not then represent a party to the action, and had no adverse judgment to appeal. [FN37] A reasonable inquiry into the law would have shown Mr. Messina that he had no standing to appeal. There was no reasonable basis for his believing otherwise. After listening to Mr. Messina, and sifting through the record, I believe he filed not inadvertently or by mistake, but with the intent to deceive the Seventh Circuit into believing he had standing when he knew in fact he did not.

FN37. Mr. Messina's "appeal" was really a request for an evidentiary hearing and a declaration that a consulting agreement he signed was void.

Since Mr. Messina's brief was not well grounded in fact, was certified for an improper purpose, and was unwarranted by existing law, I find he violated Rule 11. I therefore fine Mr. Messina $1000, and require him to compensate the Grove Fresh defendants for any expenses incurred in addressing the Seventh Circuit filing. [FN38]

FN38. Although I am sanctioning Mr. Messina under Rule 11, Rule 11 "is not the exclusive source for control of improper presentations of claims, defenses, or contentions." Fed.R.Civ.P. 11 advisory committee's notes, 1993 amendment. My analysis would also support sanctions under the court's inherent powers or under 28 U.S.C. § 1927, and I summon both as alternate authority for the sanctions.

Summary

To sum up, I find Mr. Messina in contempt of this court for his actions in four separate instances. For his acts of civil contempt, Mr. Messina is ordered to compensate the parties for losses resulting from his noncompliance, including attorney's fees and costs incurred in preparing and prosecuting Mr. Messina for contempt (this may include overhead and support personnel). The defendants shall submit to me for review the total of these compensatory fines within two weeks from the date of this opinion.

For each of his four acts of criminal contempt, Mr. Messina is ordered to pay $1000 to "the United States of America."

Since there is a significant risk of repetition of Mr. Messina's disobedience of court orders, I require Mr. Messina to post a $50,000 bond for the next five years, with the admonition that any future disclosures--made without first consulting me and proving an independent public source--will lead to forfeiture of this amount, if not further sanctions.

Finally, for his violations of Rule 11, I fine Mr. Messina $1000, and require him to compensate the other side for the costs they have incurred.

Conclusion

In tragedy, the denouement "should arise out of the plot itself...." Poetics at 242. And so it does here: the sanctions imposed by this court on Mr. Messina arise naturally from his own errors of judgment. Like the ultimate fate of the great figures of literature, the spectacle of an experienced attorney brought so low by his own actions serves as a cautionary tale to others, and inspires the cathartic emotions of fear and pity recognized by Aristotle as the hallmarks of tragedy.

END OF DOCUMENT