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Inherent Power Found, Rule 11 Lost: Taking a Shortcut to Impose Sanctions in *Chambers v. NASCO*

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INHERENT POWER FOUND, RULE 11 LOST: TAKING A SHORTCUT TO IMPOSE SANCTIONS IN *CHAMBERS v. NASCO*[*]

INTRODUCTION

A court's authority to regulate the conduct of those who appear before it is essential to the maintenance of an orderly system of justice. Accordingly, federal courts have numerous sanction mechanisms at their disposal for those instances when a litigant has acted in a manner that evinces a callous disregard for the sanctity and authority of the court. These mechanisms come in several forms. Congress has provided statutory authority principally in 28 U.S.C. section 1927 ("section 1927").[1] By contrast, Rule 11 of the Federal Rules of Civil Procedure ("Rule 11")[2] is promulgated by the Supreme Court

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[*] 111 S. Ct. 2123 (1991).

[1] Section 1927 provides:

> Any attorney or other person admitted to conduct cases in any court in the United States or any Territory thereof 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 (1989).

[2] At the time *Chambers* was decided Rule 11 provided:

> Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is

under authority provided by Congress in the Rules Enabling Act.[3] A final source of authority to punish litigants for improper practices is found in the inherent powers of the judiciary. Unlike the two preceding it, this third source of authority is not embodied in codified law but is derived from the equity powers of the judiciary.[4] The Supreme Court has described these powers as "[c]ertain implied powers [that] must necessarily result to our Courts of justice from the nature of their institution . . . . [They] are powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others . . . ."[5] Thus, implied powers concern not only the authority to sanction litigants, but also those matters that are considered procedural or house-keeping as well as other traditional equity powers of courts.[6] Indeed, the inherent power is a broad form of implied power that permits courts to act in a manner consistent with their judicial authority.

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signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, *shall impose upon the person who signed it, a represented party, or both, an appropriate sanction,* which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, *including a reasonable attorney's fee.*

FED. R. CIV. P. 11 (emphasis added). Rule 11 has since been amended. *See infra* note 213 and accompanying text.

[3] The Rules Enabling Act provides:

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge, or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

28 U.S.C. § 2072 (1992).

[4] GREGORY P. JOSEPH, SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE § 25, at 371 (1989); *see also* Link v. Wabash R.R., 370 U.S. 626, 629-31 (1962) (noting that a court's inherent authority to dismiss actions with prejudice for failure to prosecute had its origins in bills in equity).

[5] United States v. Hudson, 11 U.S. (7 Cranch) 32, 34 (1812). The question the Court faced in *Hudson* was whether the circuit courts could exercise a common law jurisdiction in criminal cases. *Id.* at 32. The Court concluded that although certain implied powers are necessary, "all exercise of criminal jurisdiction in common law cases . . . is not within their implied powers." *Id.* at 34.

[6] *See infra* notes 11-42 and accompanying text.

In *Chambers v. NASCO*,[7] the Supreme Court considered the interplay between a codified provision and the inherent power to sanction. The defendant had engaged in a protracted, bad-faith effort to prevent the plaintiff from enforcing a valid contract, both through court proceedings and malicious out-of-court acts.[8] The district court determined that some of the conduct violated codified sanction provisions such as Rule 11 and section 1927. In imposing sanctions, however, the court relied entirely on its inherent power to sanction attorneys for bad-faith conduct.[9] Like the circuit court, the Supreme Court affirmed the district court's reasoning. In essence, the Court concluded that federal courts are not obligated to apply codified sanction provisions when not all of the conduct is sanctionable under such provisions if requiring a district court to apply statutory or rule-based sanctions before resorting to its inherent power would result in loss of expediency.[10]

This Comment analyzes the Supreme Court's arguments in favor of a broad inherent power that district courts can use to the exclusion of applicable statutory and rule-based sanctioning mechanisms, and concludes that the Court's present analysis is plainly inconsistent with its own prior decisions.

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[7] 111 S. Ct. 2123 (1991).

[8] *Id.* at 2128. For example, Chambers and his attorney tried to "place the property at issue beyond the reach of the District Court by means of the Louisiana Public Records Doctrine." *Id.* The contract at issue, a purchase agreement, had never been recorded. Thus, Chambers and his attorney determined that if they sold the property to a third party and recorded the deeds before the issuance of a temporary restraining order, the court would lack jurisdiction. The pair created a trust with Chambers' sister as its trustee and directed the execution of warranty deeds conveying the tracts to the trust. The trustee did not sign the deeds and no consideration was paid. When the judge telephoned Chambers' attorney to inquire about a possible sale, he made no mention of the deeds which he had just recorded. *Id.* at 2128-29.

[9] *Id.* at 2131. Although the Court found that sanctions were not appropriate under Rule 11 or § 1927, it determined that sanctions were appropriate under a court's inherent power especially "when the offending parties have practiced a fraud upon the court." *Id.* (quoting NASCO v. Calcasieu Television and Radio, Inc., 124 F.R.D. 120, 139 (W.D. La. 1989)).

[10] *Chambers*, 111 S. Ct. at 2135. The Court expressed its opinion by stating:

> [W]hen 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.

Id. at 2136.

Those decisions indicate that the inherent power should not be used in a manner inconsistent with the application of rules and statutes. The majority also disregarded longstanding rules of statutory interpretation which would have required the application of Rule 11 sanctions in *Chambers*. Similarly, the Court paid little notice to the potential *Erie* Doctrine problems attending an overly broad application of this inherent power. Specifically, it appears that the district court disregarded Louisiana's prohibition on the imposition of punitive damages for bad-faith breach of contract when it punished the defendant for his initial prelitigation transgressions.

Part I of this Comment examines the historical background and Supreme Court precedent concerning the nature and scope of a trial court's inherent powers. Part II next reviews the facts and the procedural history of the *Chambers* litigation. Part III then argues that through its misapplication of precedent, the Supreme Court has succeeded in vastly expanding this form of equitable authority. Finally, Part IV recommends an approach to the application of inherent power sanctions that achieves a balance between providing courts with sufficient authority to punish improper conduct and respecting the very limited nature of this equitable authority.

I. BACKGROUND: THE INHERENT POWERS OF THE JUDICIARY

A. *Inherent Power Generally*

Historically, the rule in the United States has been that the prevailing party in a litigation ordinarily is not entitled to collect his or her attorneys' fees from the losing party except as provided for by statute.[11] This prohibition on fee-shifting,

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[11] Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247 (1975); *see, e.g.*, Arcambel v. Wiseman, 3 U.S. (3 Dall.) 306 (1796) (in rejecting a $1600 allowance for attorneys' fees, the Court stated that "[t]he general practice of the United States is in opposition to it; and even if that practice were not strictly correct in principle, it is entitled to the respect of the court, till it is changed, or modified, by statute"); *see also* F.D. Rich Co. v. United States *ex rel.* Indus. Lumber Co., 417 U.S. 116, 126-31 (1974); Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 717-18 (1967); Stewart v. Sonneborn, 98 U.S. 187 (1878); Flanders v. Tweed, 82 U.S. (15 Wall.) 450 (1872); Oelrichs v. Spain, 82 U.S. (15 Wall.) 211 (1872); Day v. Woodworth, 54 U.S. (13 How.) 363 (1851).

Unlike the American Rule, under the "European Rule" (which is applied in

commonly known as the American Rule, is largely an outgrowth of developments that occurred in the practice of formulating attorneys' fees during the post-colonial period and into the late nineteenth century.[12] The Supreme Court has observed various policy considerations underlying the American Rule. First, a party "should not be penalized for merely defending or prosecuting a lawsuit."[13] Second, "'the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included the fees of their opponents' counsel.'"[14] Third, courts are often faced with difficulties in determining what constitutes reasonable attorneys' fees.[15] Finally, the principle of independent advocacy is potentially threatened by providing a financial link between the bench and the bar.[16]

Although the American Rule is well established, federal courts nonetheless have formulated exceptions that allow the awarding of attorneys' fees in certain limited circumstances, despite the absence of any codified law permitting such awards.[17] These exceptions have their basis in Supreme Court precedent dating from 1812, which asserts that federal courts possess certain inherent powers.[18] In the early case of *United*

England) courts historically have been authorized to award attorneys' fees to a successful litigant. *See Alyeska*, 421 U.S. at 247 n.18.

[12] *See* John Leubsdorf, *Toward a History of the American Rule on Attorney Fee Recovery*, 47 LAW & CONTEMP. PROBS. 9, 17 (1984). During the early post-colonial period, the amount an attorney could charge his client in the form of fees was, at least theoretically, strictly limited. Supported by free-market and laissez-faire principles, however, courts and legislatures began to accept that the measure of compensation was a matter best left to the agreement between attorney and client. *Id.* at 18. Leubsdorf suggests that this evident departure from prior practice stemmed from several reasons, including the growing influence of lawyers, the desire of businessmen to retain the best lawyers, and, a possible decline in the intensity of the anti-lawyer feeling. *Id.* at 17. As a result, Congress and state legislatures became increasingly unwilling to allow for the recovery of attorneys' fees from the opposing party, despite the lack of a clear reason. *Id.* at 21-23. Courts soon began to adhere to this general rule without evincing a willingness to justify it. *Id.* at 23.

[13] *F.D. Rich*, 417 U.S. at 129 (citing *Fleishmann*, 386 U.S. at 718).

[14] *Id.* (quoting *Fleishmann*, 386 U.S. at 718).

[15] *Id.* (citing *Fleishmann*, 386 U.S. at 718).

[16] *Id.* For further discourse on the reasoning behind the general prohibition on fee shifting, see generally *Alyeska Pipeline*, 421 U.S. at 261.

[17] *See, e.g., F.D. Rich*, 417 U.S. at 129; Vaughan v. Atkinson, 369 U.S. 527 (1962); *cf.* Universal Oil Prods. Co. v. Root Refining Co., 328 U.S. 575, 580 (1946).

[18] *See* United States v. Hudson, 11 U.S. (7 Cranch) 32, 33 (1812) (finding that

States v. Hudson,[19] the Court noted that "[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution."[20] These inherent 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."[21] They also seek to protect the sanctity of the judiciary and its proceedings.[22]

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courts have "an implied power to preserve [their] own existence and promote the end and object of [their] creation"). English courts had come to recognize such an equitable power at an even earlier point. *See, e.g.*, Ex parte Simpson, 33 Eng. Rep. 834 (1809) (awarding fees for filing an irrelevant affidavit); Dungey v. Angove, 30 Eng. Rep. 644 (1794) (equity court awarded fees for vexatious litigation through its inherent authority to ensure that justice is achieved); Ladd v. Wright, 72 Eng. Rep. 800 (1601) (awarding fees "pur le unjust vexacom").

[19] *Hudson*, 11 U.S. (7 Cranch) at 32.

[20] *Hudson*, 11 U.S. (7 Cranch) at 34; *see also* Hall v. Cole, 412 U.S. 1, 5 (1973) (courts possess "inherent equitable power[s]").

[21] Link v. Wabash R.R., 370 U.S. 626, 630-31 (1962).

[22] *See* Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 258-59 (1985) ("[A] court may assess attorneys' fees for 'willful disobedience of a court order' . . . or when the losing party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons . . . .'") (citations omitted).

In fact, this inherent judicial power is best viewed as consisting of three distinct categories of power. Eash v. Riggins Trucking, Inc., 757 F.2d 557, 562 (3d Cir. 1985). First, federal courts have the inherent authority to exercise their Article III powers. *Id.* This aspect of inherent power "encompasses an extremely narrow range of authority involving activity so fundamental to the essence of a court as a constitutional tribunal that to divest the court of absolute command within this sphere is really to render practically meaningless the terms 'court' and 'judicial power.'" *Id.* This strand of inherent power, grounded in the framework of the separation of powers among the several branches of government, empowers courts to disregard legislation that is inconsistent with it. *See, e.g.*, State *ex rel.* Bushman v. Vandenberg, 280 P.2d 344 (Or. 1955) (voiding legislation providing for the automatic disqualification of judges simply upon the application of a party); Vaughan v. Harp, 4 S.W. 751 (Ark. 1887) (voiding legislation requiring a written opinion in every case).

Second, federal courts possess inherent power to fulfill their housekeeping and procedural needs. *Eash*, 757 F.2d at 563. The *Eash* court noted that this category of inherent judicial power is based not only on necessity but also on practicality. *Id.* For example, the Supreme Court has determined that courts possess inherent power to supply themselves with auditors to aid in decisionmaking. *Ex parte* Peterson, 253 U.S. 300, 312 (1920). "Courts [also] have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments" such as appointing "persons . . . to aid judges in the performance of specific judicial duties . . . ." *Id.* at 312; *see* Ruiz v. Estelle, 679 F.2d 1115, 1161 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983); Schwimmer v. United States, 232 F.2d 855, 865 (8th Cir.), *cert. denied*, 352 U.S. 833 (1956).

Finally, and most importantly for the issue in *Chambers*, federal courts possess inherent powers that are said to arise from the nature of the court, *Eash*,

Using these inherent powers, courts have claimed that judicially fashioned exceptions to the American Rule "inhere" in the nature of the judicial entity and are vested in the courts upon their creation.[23] Thus, when the awarding of attorneys' fees falls under the rubric of inherent power, the necessity to act under statutory authority is displaced.[24] Specifically, the Supreme Court has held that courts possess the inherent power to assess attorneys' fees for the willful disobedience of a court order.[25] Attorneys' fees may also be awarded when a party has acted "in bad faith, vexatiously, wantonly, or for oppressive reasons."[26] Fees may be further shifted when a successful litigant "has conferred a substantial benefit on a class of persons and the court's shifting of fees operates to spread the cost proportionately among the members of the benefited class."[27] Several circuit courts have also recognized that such awards are permitted on the basis of the "private attorney general" rationale.[28] This final exception acknowledges that equitable concerns may require such fee-shifting "based on the premise that the expense of litigation may often be a formidable if not insurmountable obstacle to the private litiga-

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757 F.2d at 562, and are "necessary to the exercise of all others." *Hudson*, 11 U.S. (7 Cranch) at 34; *see* Roadway Express, Inc. v. Piper, 447 U.S. 752, 764 (1980) (quoting *Hudson*). For example, the power to hold a party in contempt, although now codified at 18 U.S.C. § 401 and at Federal Rule of Criminal Procedure 42, historically has been considered "the most prominent of these powers." *Eash*, 757 F.2d at 562. Similarly, the power to dismiss a case *sua sponte* for failure to prosecute is considered to be an inherent power. *Link*, 370 U.S. at 629-30. A court also may assess attorneys' fees for the obstruction of a court order. Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 426-28 (1923).

[23] *Eash*, 757 F.2d at 561.

[24] *See id.*; Michaelson v. United States *ex rel.* Chicago, St. P., M. & D. Ry., 266 U.S. 42, 66 (1924); *see also* Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 718 (1967) ("Limited exceptions to the American [R]ule have . . . been sanctioned by this Court when overriding considerations of justice seemed to compel such a result.").

[25] *Alyeska*, 421 U.S. at 258; *Fleischmann*, 356 U.S. at 718; *Toledo Scale*, 261 U.S. at 426-28.

[26] F.D. Rich Co. v. United States *ex rel.* Indus. Lumber Co., 417 U.S. 116, 129 (1974); *Alyeska*, 421 U.S. at 258-59 (quoting *F.D. Rich*, 417 U.S. at 129).

[27] *F.D. Rich*, 417 U.S. at 130; *see* Hall v. Cole, 412 U.S. 1, 4-9 (1973) (respondent's suit under Labor-Management Reporting and Disclosure Act vindicated not only his own rights but rendered a substantial service to union and its members as well); *cf.* Peter Nussbaum, *Attorney's Fees in Public Interest Litigation*, 48 N.Y.U. L. REV. 301 (1973).

[28] *F.D. Rich*, 417 U.S. at 130.

tion necessary to enforce important public policies."[29]

That a court may assess attorney fees as a penalty for bad-faith conduct is not controversial.[30] It is the power to sanction bad-faith conduct that was at issue in *Chambers*. The Supreme Court, however, has never formulated a comprehensive standard for identifying conduct that justifies the imposition of penalties under the bad faith exception.[31] One legal commentator, Professor Gregory Joseph, suggests that "inherent power sanctions may be imposed only when there is clear evidence that the challenged actions were entirely without color and made for reasons of harassment, delay or other improper purpose."[32] In addition, while attorneys' fees appear to be the

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[29] *Id.*; *see, e.g.*, Cooper v. Allen, 467 F.2d 836, 841 (5th Cir. 1972) (in § 1982 civil rights suit, attorneys' fees ordinarily awarded "to encourage individuals injured by racial discrimination to seek judicial relief"); *see also* Northcross v. Board of Educ. of the Memphis City Schs., 412 U.S. 427 (1973); Newman v. Piggie Park Enters., Inc., 390 U.S. 400 (1968); Knight v. Anciello, 453 F.2d 852 (1st Cir. 1972). The Supreme Court itself, however, has not applied the private attorney general rationale. *F.D. Rich*, 417 U.S. at 130; Note, *Awarding Attorneys' Fees to the "Private Attorney General:" Judicial Green Light to Private Litigation in the Public Interest*, 24 HASTINGS L.J. 733 (1973).

[30] *F.D. Rich*, 417 U.S. at 129. The bad faith exception applies to both plaintiffs and defendants regardless of whether they were successful in the underlying litigation. The *Alyeska* Court used the term "losing party." *Alyeska*, 421 U.S. at 258. The *Chambers* Court made it clear, however, that there should be no difference which party to a litigation acted in bad faith when determining whether to sanction the conduct because the policy serves the procedural purposes of vindicating judicial authority as well as reimbursing the party who was forced to expend energies to repel a meritless litigious assault. *See* Chambers v. NASCO, 111 S. Ct. 2123, 2135 (1991).

[31] The dissent in *Chambers* criticized the majority for its evident failure to establish a comprehensive framework by which courts and litigants alike could determine whether the conduct in question fell within the auspices of the bad faith exception. *Chambers*, 111 S. Ct. at 2142, 2145 (Kennedy, J., dissenting).

[32] JOSEPH, *supra* note 4, § 26(B), at 388. Recognizing the strongly punitive nature of imposing sanctions under such circumstances, the Second Circuit has established a fairly stringent standard for determining what constitutes bad-faith conduct. *See, e.g.*, Weinberger v. Kendrick, 698 F.2d 61, 80 (2d Cir. 1982) (requiring a "high degree of specificity in the factual findings of lower courts when attorneys' fees are awarded on the basis of bad faith . . . and that there be 'clear evidence' that the challenged actions 'are entirely without color and [are taken] for reasons of harassment delay or for other improper purposes'") (second alteration in original) (citations omitted). The *Weinberger* court went on to indicate that these requirements would ensure that "persons with colorable claims [would] not be deterred from pursuing their rights by the fear of an award of attorneys' fees against them." *Id.* at 80-81; *accord* Autorama Corp. v. Stewart, 802 F.2d 1284, 1288 (10th Cir. 1986) ("Clearly, courts are quite hesitant to find claims were pursued in bad faith unless the evidence is remarkably supportive of such a proposi-

sanction of choice where bad-faith conduct is concerned, they are by no means the exclusive remedy available to a court. One noted scholar, Gregory Joseph, indicates that courts may choose from among the following types of sanctions:[33] imposition of a fine,[34] disqualification of counsel,[35] preclusion of claims, defenses or evidence,[36] dismissal of an action for failure to prosecute,[37] entry of a default judgment,[38] suspension of counsel from practice before the court or disbarment,[39] vacation of judgment,[40] injunctive relief limiting a litigant's future access to the courts[41] or citation for contempt.[42] In sum, the inherent power to sanction litigants and their counsel provides courts with a readily adaptable means of tailoring an appropriate remedy, but one that should be limited to circumstances warranting its application.

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tion."); *see also* JOSEPH, *supra* note 4, § 26(B), at 388-91.

Litigants need not prove subjective bad faith but it may be inferred from the totality of the circumstances surrounding the conduct in question. *See generally* JOSEPH, *supra* note 4, § 26(B), at 390. Nor are they limited to punishing conduct that occurs within the confines of the courtroom. *See, e.g.*, Vaughan v. Atkinson, 369 U.S. 527, 530-31 (1962) (where respondent shipowner ignored petitioner seaman's claims for cost of medical care so that petitioner was forced to hire a lawyer to recover medical costs, award of attorneys' fees appropriate); *accord* Leubsdorf, *supra* note 12, at 29. An award of attorneys' fees under such circumstances "vindicates judicial authority without resort to the more drastic sanctions available for contempt of court and makes the prevailing party whole for expenses caused by his opponent's obstinacy." Hutto v. Finney, 437 U.S. 678, 690 (1970); *cf.* First Nat'l Bank v. Dunham, 471 F.2d 712 (8th Cir. 1973).

[33] *See generally* JOSEPH, *supra* note 4.

[34] *See, e.g.*, Donaldson v. Clark, 819 F.2d 1551, 1557 n.6 (11th Cir. 1987) (en banc) (monetary sanctions); Kleiner v. First Nat'l Bank of Atlanta, 751 F.2d 1193, 1209 (11th Cir. 1985) (sanctions include monetary penalties payable to the clerk of the court"); Titus v. Mercedes Benz of N. Am., 695 F.2d 746, 749 n.6 (3d Cir. 1982) (fine).

[35] *Kleiner*, 751 F.2d at 1209-10.

[36] *Titus*, 695 F.2d at 749 n.6.

[37] Eash v. Riggins Trucking, Inc., 757 F.2d 557, 561 (3d Cir. 1985); Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962).

[38] *Donaldson*, 819 F.2d at 1557 n.6; *Eash*, 757 F.2d at 561.

[39] *Eash*, 757 F.2d at 561; *Titus*, 695 F.2d at 749 n.6.

[40] Brockton Savings Bank v. Peat, Marwick, Mitchel & Co., 771 F.2d 5, 11 (1st Cir. 1985), *cert. denied*, 475 U.S. 1018 (1986).

[41] *In re* Martin-Trigona, 737 F.2d 1254, 1258-59, 1262-64 (2d Cir. 1984).

[42] Roadway Express, Inc. v. Piper, 447 U.S. 752, 764 (1980); *Brockton*, 771 F.2d at 11; *Eash*, 757 F.2d at 561.

B. *The Supreme Court's Inherent Power Precedents*

The Supreme Court has had several opportunities to consider the nature and scope of the inherent power. The Court's prior decisions concerning the appropriateness of exercising inherent power evince a deference to federal rules and statutes that on their face directly control a court's behavior. Indeed, before *Chambers*, the Court had warned that "[b]ecause inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion."[43] Accordingly, the pre-*Chambers* Court consistently sought to strike a balance between the inherent power and codified provisions.

1. Codified Authority Controls

Before *Chambers*, the Supreme Court had refused to permit the use of inherent power when rules or statutes were directly applicable to a case. In *Societé Internationale v. Rogers*,[44] the Court held that a district court's authority to dismiss a complaint because of noncompliance with a production order depended entirely upon Rule 37 of the Federal Rules of Civil Procedure ("Rule 37"),[45] and could not be sustained through use of the district court's inherent power.[46] The court of appeals in *Societé Internationale* had dismissed the case relying on a broad interpretation of Rule 41(b) of the Federal Rules of Civil Procedure ("Rule 41(b)")[47] and the district

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[43] *Roadway Express*, 447 U.S. at 764.

[44] 357 U.S. 197 (1958).

[45] When *Societé Internationale* was decided, Rule 37 provided in pertinent part:

> (b) *Failure to Comply with Order.*
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> . . . .
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> (2) . . . . If any party . . . refuses to obey . . . an order made under Rule 24 to produce any document or other thing for inspection . . . , the court may make such orders in regard to the refusal as are just, and among other the following:
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> . . . .
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> (iii) An order striking out pleadings or parts thereof . . . , or dismissing the action or proceeding or any part thereof . . . .

FED. R. CIV. P. 37 (1958).

[46] *Societé Internationale*, 357 U.S. at 206-07.

[47] Rule 41(b) was concerned with involuntary dismissal and read in part: "for failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him." FED. R. CIV. P. 41(b) (1958).

court's inherent power, rather than on Rule 37, which applied directly to the issue at hand.[48] In reversing that court's approach, the Supreme Court concluded that it was inappropriate for a court to resort to an obscure method of controlling litigants' conduct when the same result could be reached through the application of a rule specifically addressing that conduct (i.e., Rule 37).[49] The Court reasoned that, given the existence of a Federal Rule explicitly providing a remedy for noncompliance with a production order, a resort to inherent power would "only obscure analysis of the problem."[50]

While *Societé Internationale* dealt with the Federal Rules, the Court also determined prior to *Chambers* that inherent power similarly could not be applied in a manner that was inconsistent with a federal statute. In *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers,*[51] the Court ruled that federal courts do not possess the inherent power to disregard the limitations of an anti-injunction statute.[52] In holding that the district court was without power to act in a manner inconsistent with the limits of 28 U.S.C. section 2283, the Court looked to the plain meaning of the statute, which did not permit injunctive relief under the circumstances. The majority determined that the statute must be obeyed even though doing so would result in the continued interference of a protected federal right.[53] The Court went on to warn that Congress had set forth explicit exceptions to the statute and that, where the circumstances of the case did not fall under one of the recognized exceptions, the district court could not resort to an inherent power remedy.[54] Any such act would be inconsistent with the express language and plain meaning of the statute.[55]

The Court even followed this deferential rule in a pre-*Chambers* case involving attorneys' fees in the context of a statutory provision. Following the reasoning in *Atlantic Coast*

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[48] *Societé Internationale*, 357 U.S. at 206-07.
[49] *Id.* at 207.
[50] *Id.*
[51] 398 U.S. 281 (1970).
[52] *Id.* at 294-96.
[53] *Id.* at 294.
[54] *Id.* at 295-96.
[55] *See id.* at 286-87.

Line, the Court in *F.D. Rich Co. v. United States ex rel. Industrial Lumber Co.*[56] held that a district court had improperly permitted the awarding of attorneys' fees under the Miller Act, a federal statute concerning commercial litigation, even though applicable state law would have permitted such an award.[57] While recognizing that the American Rule had become increasingly unpopular, the Court warned that district courts should refrain from awarding attorneys' fees under the guise of their inherent power except when adhering to a recognized exception to the American Rule.[58]

2. Authority to Act Through Inherent Power Approved

By contrast, the Supreme Court has upheld the primacy of inherent power when a court is faced with a rule that is only indirectly applicable and, thus, not controlling of the court's actions. For example, while recognizing that Rule 41(b) permitted *litigants* to move to dismiss a complaint for failure to prosecute, the Court in *Link v. Wabash Railroad Co.*[59] held that the Rule did not displace a *district court's* inherent power to dismiss on the same grounds.[60] The majority reasoned that a rule that permitted a *litigant* to move for dismissal did not by negative implication prohibit the *court* from dismissing the case under its inherent power.[61] The Court emphasized that such a power, couched in the longstanding authority vested in courts to promote the orderly and expeditious disposition of cases, could not be abrogated absent a direct intent to do so.[62]

3. A Missed Opportunity to Set a Clear Standard

In *Roadway Express, Inc. v. Piper*,[63] the Court recognized that the inherent power to sanction and codified sanction provisions could co-exist but failed to establish a clear standard

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[56] 417 U.S. 116 (1974).
[57] *Id.* at 126-27.
[58] *Id.* at 128-31.
[59] 370 U.S. 626 (1962).
[60] *Id.* at 630-32.
[61] *Id.* at 630.
[62] *Id.* at 629-32.
[63] 447 U.S. 752 (1980).

governing their interaction. Despite this shortcoming, however, the Court's opinion does suggest that a district court first should rely on available codified sanction provisions. In holding that section 1927 did not allow for an award of attorneys' fees,[64] the *Roadway* Court held that such an award would be appropriate under Rule 37 *if the litigants so requested.*[65] The court also recognized that a district court might also have the inherent power to assess attorneys' fees *sua sponte* if it found that the parties or their counsel had acted in bad faith.[66] While the Court did not consider whether Rule 37 could be ignored, its emphasis on that Rule suggests that the proper approach should be as follows: Rule 37 should be applied if a party moves for sanctions under that Rule; however, if the party does not so move or if the Rule is found inapplicable, then a court may resort to its inherent power to sanction if bad faith is found.[67]

4. The Supervisory Power: Criminal Law Counterpart

In the context of criminal law litigation, the Supreme Court has been equally fervent in recognizing the inherent limits associated with the application of a judicially-created authority. In *Bank of Nova Scotia v. United States,*[68] the Court considered the extent to which a district court could exercise its supervisory authority, the criminal law equivalent of inherent power, to dismiss an indictment because of prosecutorial misconduct. The Court held that the district court had no authority to dismiss the indictment under its supervisory power in order to circumvent an appellate harmless-error inquiry where the prosecutorial misconduct did not prejudice the defendants.[69] In so holding, the Court acknowledged that certain limitations inhere in the nature of the supervisory pow-

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[64] *Id.* at 755-56. Congress subsequently amended § 1927 to include an award of attorneys' fees. Antitrust Procedural Improvements Act of 1980, Pub. L. No. 96-349, § 3, 94 Stat. 1156 (1980) (codified as amended at 28 U.S.C. § 1927 (1988)).

[65] *Roadway Express*, 477 U.S. at 756.

[66] *Id.* at 764-68.

[67] *Id.*

[68] 487 U.S. 250 (1988).

[69] *Id.* at 254.

er.[70] The majority recognized that in the exercise of its supervisory power, a district court "may, within limits, formulate procedural rules not specifically required by the Constitution or the Congress,"[71] but warned that "[e]ven a sensible and efficient use of the supervisory power . . . is invalid if it conflicts with constitutional or statutory provisions."[72] The Court concluded that to allow otherwise "would confer on the judiciary discretionary power to disregard the considered limitations of the law it is charged with enforcing."[73]

C. *Summary*

These decisions, then, recognized the very limited nature of inherent judicial power as an equitable remedy. They indicated that the inherent power may not be applied in a manner that is functionally inconsistent with the operation of the Constitution, statutes or the Federal Rules. Therefore, only two possibilities existed that allowed for the application of inherent power sanctions. First, a court could use its inherent power if there was a complete absence of a codified provision dealing with the conduct sought to be punished. The *Roadway* decision was consistent with such an application of inherent power. Second, a court could use its inherent power if a rule or statute did not direct a court to act but merely permitted such action. This was especially true in cases such as *Link* where a court's inherent power to act under such circumstances had been recognized in the past. The use of inherent power to sanction in these two types of cases is consistent with its nature as an equitable remedy available when Congress has remained silent.[74]

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[70] *Id.* at 254-55.

[71] *Id.* at 254 (quoting United States v. Hasting, 461 U.S. 499, 505 (1983)).

[72] *Id.* (quoting Thomas v. Arn, 474 U.S. 140, 148 (1985)) (alterations in original).

[73] *Id.* (quoting United States v. Payner, 447 U.S. 727, 737 (1980)).

[74] Roadway Express, Inc. v. Piper, 447 U.S. 752, 765 (1980).

II. *CHAMBERS V. NASCO*

A. *Facts and Procedural History*

On August 9, 1983, G. Russell Chambers, the sole shareholder and only director of Calcasieu Television and Radio, Inc. ("CTR"), entered into a purchase agreement ("Agreement") providing for the sale of the facilities and broadcast license of KPLC-TV in Lake Charles, Louisiana to NASCO, Inc. for a purchase price of eighteen million dollars.[75] Shortly afterwards, during conversations with NASCO officials, Chambers professed his reluctance to proceed with the Agreement and even offered to buy out of it.[76] NASCO, however, stated that it was not interested in terminating the Agreement.[77]

On September 23, 1983, CTR's Federal Communications Commission ("FCC") counsel informed his counterpart at NASCO that CTR's portion of the FCC application for transfer of the broadcasting license would not be filed by the requisite date.[78] Frustrated that Chambers had breached his part of the Agreement, NASCO's counsel notified CTR on Friday, October 14, 1983, that it would file suit in the United States District Court for the Western District of Louisiana the following Monday. NASCO informed CTR that, in order to preserve the status quo, it would seek specific performance of the contract as well as a temporary restraining order ("TRO") to en-

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[75] NASCO v. Calcasieu Television and Radio, Inc., 623 F. Supp. 1372, 1373 (W.D. La. 1985). This Agreement had never been recorded in Calcasieu or Jefferson Davis Parishes where the properties are located. At the time of the signing, and until September 23, 1983, no officials or employees of the television station except for Chambers and his attorneys were aware that the Agreement had been executed. *Id.* at 1374.

[76] *Id.* at 1374. On August 29, 1983, Chambers called Bill Cook, chairman of NASCO, and "tried to talk him out of going through with the Agreement, offered to reimburse all of N[ASCO]'s expenses and pay some additional money." *Id.*

[77] *Id.* Upon hearing Chambers' suggestion to buy out the deal, Bill Cook, NASCO's chairman, informed Chambers that his only interest was in acquiring KPLC-TV.

[78] *Id.* at 1375. Paragraph 6 of the Agreement provided in pertinent part that "consummation of this Agreement shall be in all respects subject to the approval of the Commission" and that "[u]pon execution of the Agreement, *Buyer and Seller shall proceed as expeditiously as practicable to file all requisite applications*" and *"[i]n no event shall the Application be filed later than forty five (45) days from the date of the Agreement."* *Id.* at 1373-74 (court's emphasis). Accordingly, the joint application for transfer was to be filed no later than September 23, 1983. *Id.*

join the alienation or encumbering of the relevant properties until a judicial resolution could be obtained.[79]

Upon notification by CTR, Chambers and his attorneys formulated an elaborate scheme to defraud both the court and NASCO in an effort to deprive NASCO of its ability to seek specific performance of the Agreement.[80] Taking advantage of the two-day lapse between Friday's notice and Monday's scheduled court proceedings, Chambers' attorneys executed a trust. Mable Baker, Chambers' sister, was appointed as its trustee and Chambers' three adult children were designated as beneficiaries.[81] Chambers then directed the President of CTR to execute warranty deeds conveying the two tracts of land that were to be sold to NASCO under the Agreement to the trust for $1.4 million, the entire amount represented by an unexecuted note.[82]

On Monday, October 17, NASCO's counsel appeared before the district court as planned. Although not present at the proceedings, A.J. Gray III, Chambers' Lake Charles counsel, fully participated in a telephone conference with the court during which he agreed to the terms of the TRO under the court's consideration.[83] On the following day, Gray admitted to the court that he had intentionally withheld information about the transfer of ownership, which had taken place over the weekend.[84] The district court reacted by issuing a preliminary injunction against CTR and Chambers, and by contemporaneously entering a second TRO preventing the trustee from conveying the property in any way.[85] The court also warned Gray

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[79] *Id.* at 1375-76. This notice was given to Chambers at CTR under the requirements of Federal Rule of Civil Procedure 65(b) and local Rule 11 (now Rule 10).

[80] *Id.* at 1376.

[81] *Id.*

[82] *Id.*

[83] *Id.* at 1377. Mr. Gray was fully aware that the TRO was signed at or around 1:34 p.m. on October 17, 1983, and made no mention of the scheme that he and Chambers were simultaneously perpetrating.

[84] *Id.* Gray admitted by letter that he had recorded the deeds the morning before and intentionally concealed this fact from the court prior to and during the TRO proceedings.

[85] *Id.* Gray denied representing Baker, who could not be reached. Nevertheless, the court granted the TRO against Baker in the interests of justice. Two days before, however, Baker, under the direction of Chambers and his attorneys, had leased the properties to CTR. There was no evidence that Baker knew what she

that his acts and those of his client were unethical and would not be tolerated in the future.[86]

Chambers' pre-trial and post-trial efforts to avoid performance of his contractual obligations were not limited to proffering meritless defenses to NASCO's claims. For example, Chambers was held in civil contempt for failing to permit inspection of CTR's corporate records, a requirement imposed by the preliminary injunction.[87] Through his attorneys, Chambers also made numerous spurious motions and resorted to other delay tactics, such as two motions for summary judgment filed on behalf of Chambers (CTR), a motion for summary judgment filed by Richard Curry, the trust's attorney, on behalf of the trustee, followed by a Motion to Strike and a supplemental motion and a motion to reconsider (alleging no new grounds).[88]

After the April 1985 trial, but before the district court entered its judgment on November 27, Chambers and his attorneys continued to frustrate NASCO's attempts to seek specific performance of the Agreement.[89] First, Chambers attempted to alter materially the status quo by petitioning the FCC for permission to construct a new transmission tower for the station and to relocate the station's transmission facilities to a site not covered by the Agreement.[90] Second, both

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was signing or that she took place in any of the negotiations. *Id.*

[86] NASCO v. Calcasieu Television and Radio, Inc., 124 F.R.D. 120, 127 (W.D. La. 1989). The court "[f]elt that Gray would abide by that warning." *Id.*

[87] NASCO v. Calcasieu Television and Radio, Inc., 583 F. Supp. 115 (W.D. La. 1984). In this separate ruling, the district court held that the defendant's refusal to allow NASCO access (as required by the court's October 24, 1983, order) to all books, records, accounts, etc. that related to the assets purchased, violated both the letter and spirit of the preliminary injunction and ordered the defendant to reimburse the plaintiff for all damages, costs and attorneys' fees occasioned by the contempt proceedings. *Id.* at 121.

[88] Additionally, Gray filed a motion for a protective order and clarification on behalf of Chambers (CTR) as well as baseless charges and counterclaims against NASCO alleging, among other things, fraud, harassment and spreading of misinformation. Chambers also charged NASCO with numerous unnamed breaches of the Agreement, injected pointless new issues including NASCO's ability to pay the purchase price, noticed the unnecessary depositions of the entire NASCO board of directors as well as officials of the bank that was to finance the purchase price. Finally, on January 28, 1985, Gray filed a motion seeking to recuse the trial judge for bias and prejudice. *See generally NASCO*, 124 F.R.D. at 127-28.

[89] *Id.* at 128-29.

[90] *Id.* at 129.

Chambers' and Baker's attorneys moved the court to stay its judgment pending appeals. After the district court refused, both parties petitioned the Fifth Circuit. Those petitions were also denied.[91] Finally, Chambers attempted to foment opposition to the pending FCC application for approval of the transfer of the station's operating license by having two CTR officers file formal oppositions with the FCC.[92]

Chambers' unethical conduct culminated in his unilateral and clandestine removal of transmission equipment covered by the Agreement. Then, at a July 16, 1986, hearing concerning the equipment's removal, Edwin McCabe, Chambers new counsel, introduced into evidence seventeen fraudulent leases in an attempt to prove that CTR did not actually own the equipment.[93] The court ultimately found the leases to be invalid.[94] Nevertheless, Chambers' conduct went on undaunted by the court's warnings.[95]

B. *The District Court Opinions*

The district court held that NASCO was entitled to specific performance under the Agreement and that the conveyances to the trust were void.[96] Chambers and CTR were ordered to file

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[91] *Id.*

[92] *Id.* These bad-faith efforts continued even after Gray, who resigned as counsel for Chambers and CTR on April 2, 1986, was replaced by Chambers' Massachusetts attorney, Edwin McCabe. McCabe attempted to subpoena confidential financial information pertaining to discussions between certain financial institutions involved in the financing of the Agreement. After the court sustained NASCO's motion to quash the subpoena, McCabe continued a veritable onslaught of pre- and post-hearing motions, all of which were denied by the court. *Id.* at 129-30.

[93] *Id.* at 130.

[94] *Id.* The court ultimately found the leases to be "nothing more than instruments of deception."

[95] *Id.* at 130. Chambers' veritable onslaught of sanctionable conduct continued in full force. For example, on August 5, 1986, McCabe caused to be filed two separate appeals and a motion to vacate judgment, and moved the Fifth Circuit to upset and continue the oral argument on the pending appeals, then scheduled for August 6, 1986.

[96] NASCO v. Calcasieu Television and Radio, Inc., 623 F. Supp. 1372, 1382 (W.D. La. 1985). In so holding, the court indicated that paragraph 16(a) of the Agreement contained a clause authorizing NASCO to seek specific performance of the contract should CTR default. Similarly, Louisiana Civil Code § 1986 provides in pertinent part that "[u]pon an obligor's failure to perform an obligation to deliver a thing, or not to do an act, or to execute an instrument, the court *shall grant specific performance plus damages for delay if the obligee so demands.*" *Id.* at 1382

their part of the FCC application within ten days of the entry of judgment as well as to return the properties in question to their status before the transfer to Baker.[97]

The district court made several findings regarding Chambers' role in the attempt to evade specific performance of the Agreement. The court found that Chambers alone had determined that the properties should be transferred to the trust and that he alone had supplied the consideration to be used by the trustee to repay the note, which consisted of rental payments by CTR to Baker.[98] In a larger sense, the court found that Chambers was the mastermind as well as the controlling actor behind the whole scheme to perpetrate this fraud against the court and NASCO.[99]

The Fifth Circuit affirmed the judgment of the district court and remanded so that sanctions for a frivolous appeal might be fixed, and for a determination as to whether further sanctions were appropriate.[100] On remand, the district court found that, despite repeated warnings to both Chambers and his counsel about their blatantly unethical conduct, such conduct had continued in full force.[101] As a result, NASCO had incurred legal fees and expenses totaling $996,644.65.[102] In considering on what basis to sanction Chambers, the district court determined that Rule 11 and section 1927 were insuffi-

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(court's emphasis); *see* LA. CIV. CODE ANN. art. 1986 (West 1987).

[97] *NASCO*, 623 F. Supp. at 1386.

[98] *Id.* at 1378.

[99] *Id.* The court found that the attorneys, CTR officials and the trustee all had acted under Chambers' direction. The court interpreted Baker's lack of knowledge about the transactions she had been a party to as just one indication of the high degree of control that Chambers exercised over the actors in this case. Baker said she "signed simply because her brother would not have directed her to do so if he was not going to arrange a means of payment." *Id.* at 1379.

[100] *See* NASCO v. Calcasieu Television and Radio, Inc., 797 F.2d 975 (5th Cir. 1986); *see also* NASCO v. Calcasieu Television and Radio, Inc., 124 F.R.D. 120, 122 (W.D. La. 1989). The decision to impose appellate sanctions was made under Federal Rule of Appellate Procedure 38, which allows for the award of attorneys' fees and double costs.

[101] *NASCO*, 124 F.R.D. at 130-31. In commenting on the conduct of both Chambers and Gray, the court noted that "the record itself establishes that both are capable of any fraud that is necessary for a given purpose, and that neither is worthy of belief." *Id.* at 131.

[102] *Id.* at 143. This sum, however, did not include sanctions already awarded by the court in the contempt proceedings, nor did it include sanctions awarded by the Fifth Circuit. Therefore, in addition to this large sum, Chambers had to pay $70,977.02 in additional sanctions. *Id.*

cient.[103] It ruled that, although several important instances of sanctionable conduct involved knowingly filing false pleadings, Rule 11 sanctions could not be applied to Chambers' out-of-court conduct.[104] Similarly, the court found section 1927 to be insufficient because it could be applied only against Chambers' attorneys and not against Chambers directly. The court indicated that these sanctioning mechanisms were deficient because they could not be applied to out-of-court acts of oppression, delay and harassment that, according to the court, were designed to "reduce plaintiff to exhausted compliance."[105] Having found the application of codified sanction provisions inadequate, the district court chose to rely exclusively on its inherent power in sanctioning Chambers nearly one million dollars for bad-faith conduct stemming from his breach of the Agreement.[106]

C. *The Fifth Circuit Decision*

In affirming the district court's judgment, the Fifth Circuit concluded that district courts sitting in diversity have inherent power to award attorneys' fees as a sanction for bad-faith conduct even absent a state statute authorizing such awards.[107]

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[103] *Id.* at 139. According to the court, Rule 11 "tests the attorney's conduct only at the time the paper is signed" and, because "the problems of this case have little to do with the certification involved in the signing of a 'pleading, motion, or other paper,'" Rule 11 was insufficient. *Id.* (citation omitted).

[104] *Id.* at 138-39. The district court made an argument regarding the applicability of Rule 11 that appears to be inappropriate. The opinion suggested that Rule 11 sanctions were inappropriate where the sanctionable conduct was not discovered until after the merits of the case were decided. However, Rule 11 sanctions can be applied even after the decision on the merits. *See* Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395 (1990) ("It is well established that a federal court may consider collateral issues [even] after an action is no longer pending."). A court may consider an award even years after the entry of a judgment. *Id.*

[105] *NASCO*, 124 F.R.D. at 138.

[106] *Id.* at 143. This total did not represent the total amount of attorneys' fees, costs and other expenses incurred by NASCO, but it did include $53,459.68 in attorneys' fees and expenses paid in connection with the sanction proceedings. *Id.* at 143, 146.

The court also suspended A.J. Gray from practicing in the Western District of Louisiana for three years, Richard Curry for six months and Edwin McCabe for a period of five years. *Id.* at 144-46.

[107] NASCO v. Calcasieu Television and Radio, Inc., 894 F.2d 696, 698 (5th Cir. 1990).

Although Louisiana law allows for awarding attorneys' fees only when a contract or statute specifically provides for them, and although Louisiana Law fails to recognize an exception for bad-faith breaches of contract, the court concluded that attorneys' fees could be imposed as a sanction under the bad faith exception to the American Rule.[108] While admitting that inherent power is "not a tidy doctrinal package,"[109] the Fifth Circuit emphasized that it is a power "necessary to the exercise of all others"[110]—one "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs."[111]

D. *The Supreme Court Decision*

The Supreme Court affirmed the Fifth Circuit and upheld a district court's authority to sanction litigants under the guise of its inherent power.[112] The Court found that district courts indeed possess the inherent authority to sanction litigants for their bad-faith conduct.[113] Moreover, the Court held that a court's inherent power to sanction for such bad-faith abuses is not displaced by applicable codified sanction provisions.[114]

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[108] *Id.* at 701.

[109] *Id.* at 703.

[110] *Id.* at 702 (emphasis omitted) (citing Roadway Express, Inc. v. Piper, 447 U.S. 752, 764 (1980) (in turn citing United States v. Hudson, 11 U.S. (7 Cranch) 32, 34 (1812))).

[111] *Id.* at 702 (emphasis omitted) (citing Link v. Wabash R.R., 370 U.S. 626, 630 (1962)). The court sought to dispel the argument that sanctioning mechanisms such as Rule 11 and § 1927 preempted a court's authority to resort to its inherent power to sanction. Rather, the Fifth Circuit emphasized that in the absence of express language indicating the displacement of inherent power to sanction, the relevant rules and statutes should be viewed as supplementing the presently operative inherent power to sanction for bad-faith practices. *See id.* at 702-03.

[112] Chambers v. NASCO, 111 S. Ct. 2123 (1991).

[113] *Id.* at 2133. The court stated that:

> The imposition of sanctions in this instance [when acts are done in bad faith] 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."

Id. (quoting Hutto v. Finney, 437 U.S. 678, 689 n.14 (1978)).

[114] *Chambers*, 111 S. Ct. at 2134. In support of its holding, the Court stated that "[t]hese other mechanisms (statutes and rules), taken alone or together, are

1. The Majority Opinion

Writing for the Court, Justice White concluded that federal courts possess the inherent power to sanction litigants for bad-faith conduct despite the American Rule, which generally prohibits fee-shifting.[115] First, the Court summarized the nature and scope of the inherent power,[116] finding that it comported with the bad faith exception to the American Rule, which allows a court to assess attorneys' fees when a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons."[117]

The majority then concluded that a federal court could invoke its inherent power to sanction to the exclusion of Rule 11 and section 1927, even though such codified sanction provisions applied to the abuses uncovered during the litigation process.[118] The Court did not consider these sanctioning mechanisms to be substitutes for a court's inherent power to sanction. Rather, it viewed them as congruous components of a court's overall power to control abusive practices.[119]

Justice White next dismissed Chambers' claim that, even when a party has acted in bad faith a federal court sitting in diversity should not allow a party to recover punitive damages if state law would prohibit such an award, as does the law of Louisiana.[120] The majority concluded that substantive state

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not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions." *Id.*

[115] *Id.*

[116] *Id.* at 2132-33. The Court admitted, however, that there are limits to inherent powers and stated that, "because of their very potency[,] . . . [they] must be exercised with restraint and discretion." *Id.* at 2132; *see supra* notes 11-29 and accompanying text.

[117] *Id.* at 2133 (citing Alyeska Pipeline Service Co. v. Wilderness Soc'y, 421 U.S. 240, 258-59 (1975)). The Court claimed that "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." *Id.*

[118] *Id.* at 2134-35.

[119] *See id.* In support of this proposition the Court first indicated that, "whereas each of the other mechanisms reaches only certain individuals or conduct, the inherent power extends to a full range of litigation abuses." *Id.* Additionally, the Court noted that whereas the inherent power to sanction is limited to the "bad faith" exception to the American Rule, sanctioning mechanisms such as Rule 11 often impose less stringent objective standards of reasonable inquiry. *Id.*

[120] *Id.* at 2138. Under Louisiana Law, punitive damages for a breach of contract cannot be awarded, even when a party has acted in bad faith. *Id.* at 2137-38. In

policy was not implicated because the award of attorneys' fees served the purpose of vindicating "the District Court's authority over a recalcitrant litigant."[121] Moreover, according to the Court, the twin aims of the *Erie* Rule were not implicated as neither forum-shopping nor the inequitable administration of laws would be encouraged; the sanctions were assessed for "disobedience of the court's orders and the attempt to defraud the court itself' and could be levied on either a winning or losing party.[122]

Finally, the Court concluded that the district court had acted within its discretion in assessing the entire amount of NASCO's attorneys' fees as a sanction for Chambers' bad-faith conduct.[123] The justices agreed with the district court's conclusion that the assessment of all of NASCO's attorneys' fees was called for given the frequent and severe nature of Chambers' abuse of the judicial process.[124]

2. Dissenting Opinions

In a vigorous dissent, Justice Kennedy, joined by Chief Justice Rehnquist and Justice Souter, accepted that the defendant's conduct warranted sanctioning, but argued that

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this case, sanctions were imposed on Chambers "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." *Id.* at 2138. Therefore, according to the majority, there was no need to address Louisiana contract law. *See supra* note 96 and accompanying text.

[121] *Id.* at 2137 (quoting Hutto v. Finney, 437 U.S. 678, 691 (1978)). The Court noted that although the award of attorneys' fees has a compensatory effect, it nevertheless serves the same purpose as a fine imposed for civil contempt, in that the award is punitive. *Id.*

[122] *Id.* at 2137. The Court claimed that forum shopping is not a concern when sanctions are imposed under the bad faith exception because the imposition depends not on which party wins, but on how the parties "conduct themselves during the litigation." *Id.* Additionally, because the imposition depends on the way in which the parties conduct themselves during litigation, it would not be inequitable to apply the exception to non-citizens. *Id.*

[123] *Id.* at 2138. Chambers argued that there were five criteria for imposing attorneys' fees as a sanction under the court's inherent power and that the district court failed to act properly with respect to all five. The Court addressed each one of the claims and found that the district court had not abused its discretion in any way. *Id.* at 2138-40.

[124] *Id.* at 2139. According to the Court, it was within its discretion to "vindicate itself and compensate NASCO by ordering the payment of all of NASCO's attorneys' fees." *Id.*

the Court's decision effected "a vast expansion of the power of federal courts, unauthorized by rule or statute."[125] In asserting that inherent powers are the exception rather than the rule, the dissent maintained that a federal court is not free to ignore applicable federal rules and statutes under the guise of its inherent powers when imposing sanctions on a litigant.[126] Justice Kennedy argued that "the American Rule recognizes that the legislature, not the judiciary, possesses constitutional responsibility for defining sanctions and fees,"[127] and that "the bad faith exception to the Rule allows courts to assess fees not provided for by Congress 'in narrowly defined circumstances.'"[128] Justice Kennedy indicated that Congress had provided district courts with a "comprehensive arsenal of Federal Rules and statutes," some of which mandate sanctions and may be utilized in punishing abusive litigation tactics.[129] Having

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[125] *Id.* at 2141 (Kennedy, J., dissenting). Justice Kennedy's dissent conceded that Chambers' conduct warranted "severe corrective measures," but he claimed that the Court's "outrage at Chambers' conduct should not obscure the boundaries of settled legal categories." *Id.*

[126] *Id.* at 2143. Justice Kennedy's dissent argued that the majority misread its precedents and failed to recognize that rules and statutes place limitations on the Court's exercise of inherent power. *Id.*

[127] *Id.* at 2142.

[128] *Id.* at 2142-43 (quoting Roadway Express, Inc. v. Piper, 447 U.S. 752, 765 (1980)). Justice Kennedy argued that because "[i]nherent powers are the exception, not the rule, . . . their assertion requires special justification in each case." *Id.* at 2143.

[129] *Id.* at 2142. The dissent listed a veritable plethora of statutes and rules which the district court may have relied upon to sanction Chambers and his attorneys, including: 18 U.S.C. § 401 to impose fines or imprisonment for contempt of its authority; 28 U.S.C. § 1927 to award costs, expenses and attorneys' fees against Chambers' attorneys for vexatiously multiplying proceedings; Rule 11 to sanction Chambers or his attorneys for filing groundless pleadings, motions, or other papers; Rule 16(f) to sanction Chambers or his attorneys for failing to comply with a pretrial order; Rule 26(g) to sanction Chambers or his attorneys for making baseless discovery requests or objections; Rule 30(g) to award expenses caused by the failure to attend a deposition or to serve a subpoena on a party to be deposed; Rules 37(d) & (g) to award expenses when a party fails to respond to discovery requests or fails to participate in the forming of a discovery plan; Rule 41(b) to dismiss an action or claim of a party that fails to prosecute, to comply with the Federal Rules, or to obey a court order; Rule 45(f) to punish any person who fails to obey a subpoena; Rule 56(g) to 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; Rule 81 to make rules governing local practice that are not inconsistent with the Federal Rules; 28 U.S.C. § 1912 to award just damages and costs on affirmance; and Federal Rule of Appellate Procedure 38 to award damages and costs for a frivolous appeal. *Id.*

found that Congress had provided an adequate means through which to impose sanctions in the present case, the dissent concluded that the district court was not entitled to invoke its inherent power because it was not necessary under the circumstances.[130] Justice Kennedy was careful to note, however, that limitations on a court's inherent power did not mean its abrogation. Rather, a court can act to preserve its authority through its inherent power in the *absence* of an applicable statute or rule.[131]

Finally, the dissent reasoned that the district court had overstepped its authority in penalizing Chambers for his prelitigation breach of contract.[132] Justice Kennedy found that the district court's opinion indicated that Chambers was partially sanctioned for his initial breach of contract.[133] According to the dissent, such an imposition of fines, not permitted by Louisiana substantive law,[134] constituted a violation of a ba-

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Although the dissent did not expressly indicate that the conduct of Chambers and his attorneys fell within each of the above rules, it asserted that the majority's argument that inherent power can be used when an applicable rule or statute exists to punish the conduct is groundless in light of the broad range of provisions provided by Congress. *Id.*

[130] *Id.* at 2143. The dissent noted that "necessity" placed an important limitation on a court's use of its inherent powers. *Id.* Specifically, Justice Kennedy asserted that "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." *Id.*; *see also Roadway Express*, 447 U.S. at 764. According to the dissent, a necessity does not exist if a rule or statute already punishes the conduct. *Chambers*, 111 S. Ct. 2143.

[131] *Chambers*, 111 S. Ct. at 2146. The dissent conceded that cases can arise for which sanctions are not provided in the rules and, thus, a court may resort to its inherent power. The dissent argued, however, that "as the number and scope of rules and statutes governing litigation misconduct increases, the necessity to resort to inherent authority—a predicate to its proper application—lessens." *Id.*

[132] *Id.* at 2147. The dissent claimed that the majority avoided addressing this issue by claiming that the district court was not punishing Chambers for breach of contract. *Id.*

[133] *Id.* at 2147-48. The dissent argued that the district court plainly stated that sanctions were being imposed for Chambers' breach of contract. For example, the District Court wrote: "Chambers arbitrarily and without legal cause refused to perform, forcing NASCO to bring its suit for specific performance." *Id.* at 2147 (citing NASCO v. Calcasieu Television and Radio, Inc., 124 F.R.D. 120, 143 (W.D. La. 1989)).

[134] *Id.* at 2149 (citing International Harvester Credit Corp. v. Seale, 518 So. 2d 1039, 1041 (La. 1988)). Louisiana law prohibits assessing punitive damages for breach of contract unless expressly agreed to in the contract or required by statute. Louisiana also does not recognize a bad faith exception for breach of contract.

sic tenet of the *Erie* Doctrine 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."[135]

In a separate dissent, Justice Scalia agreed with the majority's conclusion that federal courts have the inherent power to impose penalties upon litigants for bad-faith conduct.[136] He asserted that where the Federal Rules and statutes leave a district court with no remedy or an inadequate one for sanction-worthy conduct, a court could resort to "an overall sanction resting at least in substantial portion upon the court's inherent power [which] need not be broken down into its component parts, with the actions sustainable under the Rules separately computed."[137] Yet Justice Scalia found it necessary to dissent separately for what he considered to be the Court's unjustified extension of the scope of a court's inherent power to include the sanctioning of Chambers' initial breach of contract.[138]

III. ANALYSIS

The *Chambers* Court was correct in concluding that Chambers' conduct warranted the imposition of sanctions. One would be hard pressed to find an acceptable explanation for the reprehensible manner in which Chambers and his attorneys conducted themselves. It is not the result reached by the *Chambers* Court that is troubling, but the means used to achieve it. Accordingly, the Court's approach to sanctions may best be viewed as an effort to counteract Chambers' extreme

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[135] *Id.* at 2148 (quoting Erie R.R. v. Tompkins, 304 U.S. 64, 78 (1938)). The dissent stated that "[t]he 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." *Id.*

[136] *Id.* at 2140 (Scalia, J., dissenting). Justice Scalia, however, noted that all sanctions imposed under the court's inherent powers do not require a showing of bad faith.

[137] *Id.* at 2141.

[138] *Id.* Justice Scalia "emphatically agreed" with Justice Kennedy's dissent that "the District Court here had no power to impose any sanctions for petitioner's flagrant, bad-faith breach of contract." *Id.* He also agreed that "it appeared" that the district court had in fact imposed sanctions for Chambers' breach of contract under its inherent authority. *Id.*

conduct by adopting an extremist approach of its own.

In holding that district courts were not obligated to apply codified sanction provisions when confronted with abusive conduct, the Court disregarded not only its own precedents recognizing the limited nature of a court's inherent powers, but also longstanding rules of statutory interpretation, which, at a minimum, would have required the application of Rule 11 sanctions. Moreover, the majority largely ignored Chambers' contention that he was sanctioned in part for his initial breach of contract. This is particularly disturbing given that Louisiana substantive law permitted him to behave in such a manner without the fear of being sanctioned.

A. *The Inherent Power and Rules of Statutory Interpretation*

The majority's effort to reconcile the district court's reliance on its inherent power to sanction rather than directly applicable codified provisions disregards the limited nature of this equitable remedy. The *Chambers* Court ignored rules of statutory interpretation which would have required the application of codified provisions to specific instances of sanction-worthy conduct. The mere fact that the authority to act under such equitable powers has been recognized as distinct from statutory powers does not justify such an approach. As a result, the Court's ruling endows courts with the equitable authority to disregard sound principles of statutory interpretation.

In the central part of the Court's analysis, the majority turned its efforts towards negating Chambers' contention that codified sanction provisions such as Rule 11 and section 1927 displaced a court's ability to sanction under the guise of its inherent powers.[139] To reach this result, Justice White looked directly to these provisions.[140] Finding that nothing in the language of Rule 11 or section 1927 expressly prohibited a court from sanctioning under its inherent powers, the majority concluded that this power was not displaced by such codified provisions.[141] The Court then concluded that to require a

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[139] *Id.* at 2134.

[140] *Id.*; *see supra* notes 1 & 2.

[141] *Chambers*, 111 S. Ct. at 2134. According to the Court, provisions such as

court to use applicable codified sanction provisions before invoking its inherent power to address those instances of sanctionable conduct outside the scope of the codified provisions would produce satellite litigation, something contrary to the purpose of the Federal Rules.[142] However, the Court was disingenuous in that it failed to acknowledge that satellite litigation can result from the exclusive application of a codified sanction, an inherent power sanction or from a combined use of inherent power and codified sanctions.[143] Moreover, the Court failed to apply longstanding rules of statutory interpretation that would have required imposing Rule 11 sanctions under the circumstances.[144] To counter this argument, the majority determined, much as the district court did, that rules and statutes were not "up to the task" in the present case to sanc-

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Rule 11 and § 1927 reach certain individuals or conduct, whereas inherent power covers a "full range of litigation abuses," which allows a court to "police itself." Thus, the codified provisions are not substitutes for inherent power. *Id.* at 2133-34.

[142] *Id.* at 2136. Rule 11 imposes five obligations on a certifying attorney. The signature on any paper represents that an attorney or party

> [1] has read the [document]; [2] to the best of the signor's knowledge, information and belief formed after reasonable inquiry; [3] it is well grounded in fact; [4] it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and [5] it is not interposed for any improper purpose such as to harass to cause unnecessary delay or needless increase in the cost of litigation.

GEORGENE M. VAIRO, RULE 11 SANCTIONS: CASE LAW PERSPECTIVES AND PREVENTATIVE MEASURES § 1.04[b] (2d ed. 1993).

Critics feared that the Advisory Committee's invitation to use Rule 11 to attack pleadings and motions would trigger an avalanche of satellite litigation. As part of their routine litigation strategy, parties could use motions under the Rule to challenge all five obligations. This could generate litigation over the sufficiency of factual or legal support available to an attorney at the time the papers were signed rather than on the actual merits of the case. *Id.* § 1.07[b]. Rule 11 is also susceptible to use as an abusive discovery device as litigants seek to discover the factual basis for their opponents' claims in order to make a Rule 11 motion. Moreover, a mini-satellite trial on the Rule 11 issues could lead to a decision of the case on the merits at a premature and inappropriate time. *Id.*

[143] *See* Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990). In *Cooter & Gell*, the Supreme Court held that, although a voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a) did not deprive a district court of jurisdiction to impose Rule 11 sanctions after dismissal. The Court explained that "although the Rule must be read in light of concerns that it will spawn satellite litigation and chill vigorous advocacy, any interpretation must give effect to the Rule's central goal of deterrence." *Id.* at 393.

[144] *See infra* notes 150-71 and accompanying text.

tion adequately the bad-faith conduct.[145] However, consideration of the district court's findings of fact as well as the sanction-worthy conduct it identified reveals that codified sanction provisions should have been applied in the present case.[146]

Codified sanction mechanisms punish conduct under certain well-defined circumstances. As a result, a broad body of law that explains the scope of and imposes limitations on these provisions has developed.[147] The majority, however, attempted to read into the Federal Rules of Civil Procedure an intent to permit the inherent power to reign supreme over those rules that contain sanction provisions.[148] Yet, carrying this argument to its logical extreme results in an absurd conclusion; rules that do not contain provisions explicitly displacing the inherent power are subordinate to the inherent power. Moreover, implementation of those rules is subject to the discretion of the court, even though they appear mandatory on their face. Such reasoning warrants much criticism. Federal courts should not be free to disregard the plain meaning of directly controlling authority in an effort to simplify the task of punishing recalcitrant litigants.[149]

1. Codified Legislative Mandates

Rules of statutory interpretation are equally applicable to the Federal Rules of Civil Procedure.[150] The starting point in any case involving the interpretation of a rule is the text of the

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[145] *Chambers*, 111 S. Ct. at 2136.

[146] *See infra* discussion at Part III.A.2.

[147] A multitude of rules and statutes contain sanction provisions that seek to punish certain objectionable conduct. For a list of these provisions, see *supra* note 129. Similarly, Justice Kennedy's dissent in *Chambers* indicates that the district court possessed sufficient leeway under the rules and statute to award NASCO compensation for expenses resulting from Chambers' meritless efforts to prolong the litigation. *Chambers*, 111 S. Ct. at 2142; *see supra* note 129 (listing various provisions the court could have relied upon to sanction Chambers). In one fell swoop the Supreme Court has effectively concluded that these provisions as well as the body of law that has developed around them no longer need be considered when it would be easier to apply exclusively an inherent power sanction.

[148] *Chambers*, 111 S. Ct. at 2134.

[149] *See supra* Part II (discussing Supreme Court precedents recognizing the limited nature of a court's inherent powers).

[150] Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. 120, 123 (1989) (the same standards used to interpret a statute are utilized to interpret the Federal Rules of Civil Procedure).

rule itself.[151] Only where a rule or a statute is ambiguous and capable of more than one interpretation should the court look beyond the text and consider the promulgating body's intent.[152] But where the language of a rule or statute is clear and unambiguous, a court need not look to external sources of interpretation such as the Advisory Committee's Notes.[153] To permit a court to reconstruct a rule that, on its face, is unambiguous by resort to Advisory Committee Notes in effect endows it with a legislative authority to rewrite the rule. The provision's unambiguous language should not be expanded or contracted by broad statements made during the course of the enactment process.[154] Thus, the sole function of the court should be to enforce the provision according to its terms when the terms are clear and unambiguous.[155]

When faced with sanction-worthy conduct, a district court first should adhere to the provisions of an applicable codified

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[151] *See* Cayuga Indian Nation of New York v. Cuomo, 565 F. Supp. 1297, 1313 (N.D.N.Y. 1983); United States v. Hepp, 497 F. Supp. 348, 349 (N.D. Iowa 1980), *aff'd*, 656 F.2d 350 (8th Cir. 1981).

[152] *In re* Arizona Appetito's Stores, Inc., 893 F.2d 216 (9th Cir. 1990) (citing NLRB v. Lion Oil Co., 352 U.S. 282, 297 (1957)). Courts interpret a federal statute by determining Congressional intent. To do this a court first looks to the language of the statute. If, however, the statutory language gives rise to several different interpretations, then a court must adopt the interpretation that "can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested." *Id.* at 219 (citations omitted).

[153] Business Guides, Inc. v. Chromatic Communications Enters., Inc., 498 U.S. 533, 540-41 (1991) (stating that "[a]s with a statute, the inquiry is complete if a court finds the text of the Rule to be clear and unambiguous"); Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980); *see* West Virginia Univ. Hosps., Inc. v. Casey, 111 S. Ct. 1138, 1146-47 (1991) (noting that the since the statutory language clearly demonstrates that Congress chose to enact more restrictive language than in other statutes, the courts are bound by the restriction); Miller v. Carlson, 768 F. Supp. 1331, 1335 (N.D. Cal. 1991).

[154] A court, however, may deviate from the plain meaning of a rule or statute where a literal application would produce a result "demonstrably at odds with the intention of its drafters." United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242 (1989). In such cases a clear expression of legislative intent controls judicial application of the rule's provisions. *Id.* However, the *Chambers* Court did not contend that applying the plain meaning of either provision would provide a result at odds with their respective purposes.

[155] *Cf.* US v. Koyomejian, 946 F.2d 1450, 1453 (9th Cir. 1991). In *Koyomejian* the language of the statute was not clear and unambiguous. Accordingly, the court explained that "[w]hen Congress has not directly addressed and answered a question, courts . . . in answering, by necessity, should be guided by the aims, principles and policies that manifestly underlie enacted statutes." *Id.*

sanction provision, such as those found in Rule 11. It should not act in a manner that is inconsistent with that Rule, especially when applying inherent power sanctions. Thus, after a district court has determined that a Rule 11 violation exists, it "may not ignore the command of the [rule]: 'sanctions *shall* be imposed.'"[156] Nonetheless, the court retains wide discretion in determining the extent and form of the sanctions to be assessed.[157]

Throughout the course of the proceedings to determine the imposition of sanctions in *Chambers*, the district court, the Fifth Circuit and the Supreme Court all maintained that Chambers' conduct with respect to pleadings, motions and other papers was clearly sanctionable under Rule 11.[158] Having made such a determination, these courts were obligated to impose or to mandate the imposition of sanctions under Rule 11. Only when the court's codified authority to sanction had been expended should it have resorted to its equitable authority. But the district court in *Chambers* imposed inherent power sanctions despite its acknowledgment that aspects of the litigant's conduct fell within the purview of Rule 11.[159]

Moreover, Rule 11 sanctions could have been imposed directly on Chambers as well as his counsel. Courts and commentators alike have recognized that a plain reading of the Rule supports the conclusion that a non-signing represented party also may be sanctioned.[160] The Rule provides that upon

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[156] O'Malley v. New York City Transit Auth., 896 F.2d 704, 709 (2d Cir. 1990) (citing Eastway Constr. Corp. v. City of New York, 762 F.2d 243, 254 (2d Cir. 1985), *cert. denied*, 484 U.S. 918 (1987)); *see also* Invst Fin. Group, Inc. v. Chem-Nuclear Sys., Inc., 815 F.2d 391, 401 (6th Cir. 1987); NCNB Nat'l Bank of N.C. v. Tiller, 814 F.2d 931, 941 (4th Cir. 1987).

[157] Saunders v. Lucy Webb Haynes-Nat'l Training Sch., 124 F.R.D. 3, 7 (D.D.C. 1989) (citing Westmoreland v. C.B.S., Inc., 770 F.2d 1168, 1174-75 (D.C. Cir. 1985)); *Invst Fin. Group*, 815 F.2d at 401; *see* Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 401-05 (1990).

[158] Chambers v. NASCO, 111 S. Ct. 2123, 2136, 2140 (1991) (stating that all of Chambers's conduct was "deemed santionable" because of "relentless, repeated, fraudulent and brazenly unethical efforts"). Moreover, as the dissent indicated, there were a multitude of other applicable sanction provisions. *Id.* at 2142; *see supra* note 129 (listing other provisions that may have applied under the circumstances).

[159] *Chambers*, 111 S. Ct. at 2136, 2140.

[160] *See* FED. R. CIV. P. 11 (Advisory Committee's Notes to 1983 amendments); Danvers v. Danvers, 959 F.2d 601, 605 (6th Cir. 1992); *O'Malley*, 896 F.2d at 710 (*citing* Oliveri v. Thompson, 803 F.2d 1265, 1274 (2d Cir. 1986)); Browning Deben-

the finding of a Rule 11 violation, "the court . . . shall impose upon the person who signed it, a represented party, or both, an appropriate sanction."[161] Although the appropriateness of sanctioning a non-signing represented party would depend on the party's conduct,[162] given the central role Chambers played in attempting to perpetrate a fraud on the court and his evident knowledge of the law,[163] the district court could have sanctioned Chambers directly under Rule 11.[164]

To read into Rule 11 an intent to preempt its application under circumstances where it is most applicable would be contrary to its true purpose. In effect, the majority has attempted to infer an intent on the part of the Rule's drafters regarding the role that Rule 11 is to play when a district court

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ture Holders' Comm. v. DASA Corp., 560 F.2d 1078, 1088-89 (2d Cir. 1977); *see also* JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 11.02 (2d ed. 1985).

[161] FED. R. CIV. P. 11.

[162] *Id.* (Advisory Committee's Notes to 1983 amendments):

> Even though it is the attorney whose signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client . . . . This modification [of the previous version of Rule 11] brings Rule 11 in line with practice under Rule 37, which allows sanctions for abuses during discovery to be imposed upon the party, the attorney, or both.

Id. (citations omitted).

In most cases, a court will find it inappropriate to sanction the client alone. However, where the client misleads his attorney as to the facts or the purpose behind a proceeding, courts will tend to sanction only the client. *See, e.g., Danvers*, 959 F.2d at 604-05 (holding that the trial court did not abuse its discretion in imposing Rule 11 sanctions against a represented party where he had brought the action for the purpose of harassment); *O'Malley*, 896 F.2d at 710 (finding the imposition of Rule 11 sanctions on a represented party appropriate where the party was a practicing attorney); Friesing v. Vandergrift, 126 F.R.D. 527, 529 (S.D. Tex. 1989) (requiring that the party must be personally aware of or otherwise responsible for the sanctionable conduct); Continental Air Lines, Inc. v. Group Sys. Int'l Far East, Ltd., 109 F.R.D. 594, 600 (C.D. Cal. 1986) (imposing sanctions on a corporate client where it had knowledge of relevant facts which where determinative of motion to dismiss). *But see* Slane v. Rio Grande Water Conservation Dist., 115 F.R.D. 61, 62-63 (D. Colo. 1987) (refusing to impose sanctions under Rule 11 against parties for failure of counsel to advise them that their claims were without merit). *See generally* VAIRO, *supra* note 142, § 10.5[b].

[163] *See* NASCO v. Calcasieu Television and Radio, Inc., 124 F.R.D. 120, 132 (W.D. La. 1989). The Court listed several factors relating to Chambers' conduct which it found refuted his argument that he was an innocent party, without knowledge of the law, who had "been led astray by improper advice of his counsel." *Id.* at 132. For example, Mr. Chambers had frequently assisted in preparing defenses in lawsuits as well as often testified as an expert witness. In fact, in the first two months of 1985 he was scheduled to testify in five trials. *Id.*

[164] *See generally supra* note 162.

decides to apply inherent power sanctions to conduct falling within the scope of the Rule. Specifically, the *Chambers* majority relied upon the Advisory Committee's statement that the Rule builds upon a court's inherent powers to justify the district court's failure to apply Rule 11 in this case.[165] Rule 11, however, was amended in 1983 to facilitate its application because in its prior form, the Rule had not been an effective deterrent to abusive litigation practices.[166] Although the Advisory Committee noted that the amended Rule builds upon and expands the "equitable doctrine permitting the court to award expenses, including attorney[s'] fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation," its "new language is intended to reduce the reluctance of courts to impose [Rule 11] sanctions."[167] While Rule 11 builds upon the judiciary's equitable powers, it should not be subordinated to the inherent power given its codified status.

Rule 11 was amended in 1983 to encourage courts to resort to it when imposing sanctions on persons who abused judicial processes through acts prohibited by the Rule.[168] The majority's argument that the mandatory nature of Rule 11 extends only to whether a court must impose sanctions and not to what type of sanctions to impose is counterintuitive given that a Rule 11 violation mandates application of Rule 11, and *not* inherent power sanctions.[169] Although a court has substantial discretion to tailor an appropriate sanction,[170] that

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[165] Chambers v. NASCO, 111 S. Ct. 2123, 2134-35 (1991).

[166] FED. R. CIV. P. 11 (Advisory Committee's Notes to 1983 amendments).

> Experience shows that in practice Rule 11 has not been effective in deterring abuses. There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action, (2) the standard of conduct expected of attorneys who sign pleadings and motions, and (3) the range of available and appropriate sanctions. The new language is intended to reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of the attorney and reenforcing those obligations imposed by the imposition of sanctions.

Id. (citations omitted); *see also* VAIRO, *supra* note 142, § 1.04[b].

[167] FED. R. CIV. P. 11 (Advisory Committee's Notes to 1983 amendments).

[168] *See supra* notes 140-41.

[169] *See Chambers*, 111 S. Ct. at 2136 (stating that a federal court is not forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the rules); *see also supra* note 2.

[170] Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 400 (1990) ("in directing the district court to impose an 'appropriate' sanction, Rule 11 itself indicates that the

sanction must be a Rule 11 sanction. In the present case, applying Rule 11 consistently with its plain meaning would have resulted in the imposition of significant sanctions against Chambers for his violations of the certification process during the course of the litigation.

The Advisory Committee's Notes were intended to explain and facilitate the process of implementing sanctions under the amended Rule. They were not intended to provide an excuse to ignore a rule that clearly mandates the imposition of sanctions under circumstances such as those present in *Chambers*. Under rules of statutory construction, if the intent of the promulgating authority is clear from the language of the rule itself, the court must give effect to the rule as written.[171] Accordingly, *Chambers* should have been decided by placing a greater emphasis on Rule 11 where it was applicable.

2. Chambers' Sanction-Worthy Conduct

The Supreme Court's focus on the inherent power appears to be a misguided effort to take advantage of the district court's indiscriminate imposition of inherent power sanctions. This conclusion is made evident by the majority's failure to undertake any semblance of an independent analysis into the appropriateness of imposing sanctions under Rule 11 and section 1927. Rather, the court largely mimicked the explanation proffered by the district court that codified sanction provisions were not "up to the task" in this case because much of Chambers' sanction-worthy conduct could not be covered by these provisions.[172] To justify this conclusion, the Court merely claimed that it relied on the lower court's "informed discretion" to determine that these provisions were not appropriate.[173]

A careful consideration of the sanctionable conduct that

district court is empowered to exercise its discretion").

[171] Board of Governors of Fed. Reserve Sys. v. Dimension Fin. Corp., 474 U.S. 361, 373 (1986); Chevron USA, Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984); *see* Difford v. Secretary of Health & Human Servs., 910 F.2d 1316, 1318 (6th Cir. 1990); *see also* 7 MOORE ET AL., *supra* note 160, ¶ 69.04.

[172] *Chambers*, 111 S. Ct. at 2131.

[173] *Id.* at 2136.

took place during the course of the *Chambers* case, however, reveals that this meritless litigation was prolonged by the bad-faith proliferation of pleadings, motions and other papers. The district court indicated that Chambers' sanctionable conduct fell into three general categories: (1) out of court acts undertaken in bad faith; (2) filing false and frivolous pleadings, motions and other papers; and (3) other delay tactics.[174] In determining that Rule 11 sanctions were not appropriate, the district court proclaimed that "[t]he problems of this case have little to do with the certification involved in the signing of a pleading, motion, or other paper" and that Chambers' out-of-court conduct would be the main focus of the sanctions.[175] The Court's conclusions, however, are at best unsatisfactory.

A comparison of Chambers' frivolous motions with his sanction-worthy, out-of-court conduct reveals that the motions played a principal role in prolonging the litigation, whereas the out-of-court conduct was extreme only to the extent that it displayed his utter disregard for the court's authority. The district court expended considerable energy not only in considering the multitude of Chambers' motions as they were presented, but also in discussing what caused them to be frivolous.[176] The court determined that his pretrial sanction-worthy conduct included the filing of: two motions for summary judgment filed on behalf of CTR; a motion for summary judgment followed by a motion to strike and a motion to reconsider filed on behalf of the trustee; a motion for protective order and clarification filed on behalf of Chambers; baseless charges and counterclaims filed on behalf of Chambers; notice of needless depositions; and numerous requests for continuations and extensions filed by Chambers.[177] Chambers' counsel also filed numerous meritless motions and appeals after the trial had been conducted but before entry of judgment, including: a motion to the court to stay its judgment pending contemplated appeals; a motion *in limine*; several appeals from the district court's orders, including one granting relief from the timing and termination provisions of the Agreement; and a motion to

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[174] *See supra* notes 80-111 and accompanying text.

[175] NASCO v. Calcasieu Television and Radio, Inc., 124 F.R.D. 120, 138 (W.D. La. 1989).

[176] *See id.* at 120.

[177] *Id.* at 127-28.

vacate a prior judgment on the merits.[178] By comparison, Chambers' out-of-court acts fell largely into two categories: those involving his initial breach of contract[179] and those concerning matters pending before the court that could have been punished through the application of codified provisions.[180] Clearly, Chambers' sanction-worthy conduct cannot be characterized as unrelated to or unassociated with the filing of papers with the court. Thus, Rule 11 and other codified provisions should have been the proper avenue to pursue in formulating an approach to sanctions.[181]

That the Court had some misgivings about affirming the use of inherent power under the circumstances is evident from the way the majority's decision wavered from staunchly advocating the district court's use of its inherent power to sanction to uncomfortably acknowledging its limitations.[182] In discussing the differences between inherent power and codified sanction remedies, Justice White quickly conceded that given the existence of codified sanction provisions, "[a]t the very least, the inherent power must continue to exist to fill in the interstices."[183] This concession to the primacy of the codified sanction provisions strongly suggests that there exists a better way of approaching this potential conflict of authorities.

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[178] *Id.* at 129-30.

[179] *Id.* at 126-30. Chambers breached the Agreement when he transferred the CTR property to the trust and lodged formal complaints with the FCC to frustrate NASCO's efforts to obtain the necessary licenses.

[180] See *id.* at 127-30. For instance, Chambers refused to allow inspection of corporate records in direct defiance of a standing preliminary injunction; petitioned the FCC to construct a new transmission tower in violation of the status quo; and removed from service transmission equipment the ownership of which was at issue in a pending hearing. *Id.*

[181] *See supra* note 129 (listing potentially applicable sanction provisions).

[182] *See* Chambers v. NASCO, 111 S. Ct. 2123, 2134 (1993). The court began its discussion by stating that "[it] discern[ed] 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." *Id.* The Court proceeded to concede, however, that "the exercise of the inherent power of lower federal courts can be limited by statute and rule." *Id.*

[183] *Id.* It is inconsistent for the majority to begin by arguing that codified sanction mechanisms in no way displace inherent judicial power while concurrently conceding that inherent power may very well be effectively limited under the circumstances.

B. *Inherent Power and the* Erie *Doctrine*

The *Chambers* decision is inconsistent with *Erie* Doctrine principles to the extent that Chambers may have been sanctioned for his initial bad-faith breach of contract.[184] Distracted by its efforts to broaden the scope of its inherent authority to sanction, the majority failed to appreciate that Chambers, to some extent, was sanctioned for his initial bad-faith breach of contract, a remedy not permitted by Louisiana substantive law.

When a district court exercises its diversity jurisdiction, it must apply state substantive law, with choice of law principles governing which state's substantive law will control.[185] Although application of the Federal Rules of Civil Procedure at times may directly affect the outcome of a case, they are considered procedural for *Erie* purposes.[186] Unlike the Federal Rules, however, the inherent power to sanction should not automatically enjoy such a presumption. Although a district court has the inherent authority to sanction litigants for abusive litigation practices, it must exercise due care not to violate any substantive state policies.[187] When a court punishes conduct that affects a procedural aspect of the litigation, the principles that apply to the Federal Rules should govern.[188] Such a standard, however, cannot justify the use of inherent power in a manner that is inconsistent with state substantive law.

In *Chambers*, the petitioner argued that, through an indiscriminately broad use of its inherent powers, the district court sanctioned him in part for his initial bad-faith refusal to abide by the Agreement's terms.[189] According to Chambers, the im-

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[184] For a discussion of the Supreme Court decision as consistent with *Erie*, see Goodloe Partee, Comment, *Procedure—Sanctions—Federal Procedural Rules do not Displace Inherent Powers of Court to Award Attorney's Fees for Bad Faith Conduct*: Chambers v. NASCO, Inc., 14 U. ARK. LITTLE ROCK L.J. 107 (1991).

[185] Erie R.R. v. Tompkins, 304 U.S. 64, 78 (1938) ("Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State.").

[186] Hanna v. Plumer, 380 U.S. 460, 468, 472-74 (1965) (indicating that the "outcome determinative" test cannot be read without considering the twin aims of *Erie*: discouraging of forum shopping and avoiding the inequitable administration of laws).

[187] *See Chambers*, 111 S. Ct. at 2148-40 (Kennedy, J., dissenting).

[188] *See Hanna*, 380 U.S. at 465 (noting that "federal courts are to apply state substantive law and federal procedural law").

[189] *See* Brief for the Petitioner on the Merits at 26, Chambers v. NASCO, 111

position of sanctions for such a purpose violated *Erie* principles because Louisiana law did not permit the awarding of punitive damages for even a bad-faith breach of contract, unless the contract so stipulated.[190] Chambers placed much weight on the Supreme Court's reasoning in *Alyeska* where it noted the potential limitations of a court applying its inherent powers when jurisdiction was premised on diversity of citizenship:

> A very different situation 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.*"[191]

Chambers argued that in his case, this same reasoning would require a holding in his favor on this point given Louisiana's legislative mandate prohibiting the imposition of sanctions for bad-faith breaches of contract, a view he interpreted to be widely accepted in many jurisdictions.[192] The *Chambers*

S. Ct. 2123 (1991) (No. 90-256) [hereinafter Petitioner's Brief].

[190] *Id.* at 27-28. For a discussion of Louisiana's prohibition on the imposition of sanctions for even a bad-faith breach of contract, see generally International Harvester Credit Corp. v. Seale, 518 So. 2d 1039, 1041 (La. 1988) (punitive damages are not allowed under Louisiana law) (citing Ricard v. State, 390 So. 2d 882 (La. 1980)); Killebrew v. Abbott Labs., 359 So. 2d 1275, 1278 (La. 1978) (holding that defendant was not liable for attorneys' fees for its alleged arbitrary and capricious failure to pay benefits under disability plan); Lancaster v. Petroleum Corp. of Del., 491 So. 2d 768, 779 (La. Ct. App. 1986) (refusing to award attorneys' fees for bad-faith breach of contract).

[191] Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 258 n.31 (1975) (quoting 6 JAMES MOORE ET AL., FEDERAL PRACTICE ¶ 54.77[2], at 1712-13 (2d ed. 1974)) (emphasis added).

[192] *See* Petitioner's Brief, *supra* note 189, at 11-15; *see also* Chambers v. NASCO, 111 S. Ct. 2123, 2137-38 (1991).

Chambers cited a veritable plethora of case law that appeared to support his position. *See* Petitioner's Brief, *supra* note 189, at 12-15; *see, e.g.,* First State Underwriters Agency of New England Reinsurance Corp. v. Travelers Insur., 803 F.2d 1308, 1317 (3d Cir. 1986) (finding that Pennsylvania's "bad faith" exception governed the award of attorneys' fees in a diversity contract action); Nepera Chem., Inc. v. Sea-Land Serv., Inc., 794 F.2d 688, 694-95 (D.C. Cir. 1986) (applying District of Columbia law in a diversity action to determine whether attorneys' fees could be awarded as punishment for bad faith, vexatious, wanton or oppressive behavior); Amey, Inc. v. Gulf Abstract & Title, Inc., 758 F.2d 1486, 1508 (11th Cir. 1985) (rejecting a claim for attorneys' fees predicated upon the "bad faith" of the plaintiff in the way it "initiated and conducted" the litigation because the "bad faith exception . . . is not recognized in the Florida jurisprudence"); Lewis v. S. L. & E., Inc., 629 F.2d 764, 773 (2d Cir. 1980) (reversing an award of attorneys' fees

Court, however, disagreed. The Court concluded that Chambers had misinterpreted the limitations imposed by footnote thirty-one of the *Alyeska* opinion which, it concluded, "applie[d] only to fee-shifting rules that embody a substantive policy, such as a statute which permit[ed] a prevailing party in certain classes of litigation to recover fees."[193] But the Court failed to recognize that if Chambers was in fact partially sanctioned for his initial and permissible breach of contract, then the district court used its inherent powers to fashion a federal substantive remedy that directly conflicted with substantive *state* law.

The district court's evident indignation surrounding the complete span of Chambers' conduct strongly suggests that he was at least partially sanctioned for his initial breach of contract. The district court emphasized the initial breach of contract when discussing its decision to impose sanctions representing *all* of NASCO's attorneys' fees.[194] The court noted that "[i]t would be impossible within the limits of this opinion to develop an accurate picture of 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."[195] Again mentioning the underlying contract that gave rise to the litigation, the court noted that Chambers had refused to file his portion of the FCC application in knowing violation of the Agreement.[196] Importantly, Justices Kennedy and Scalia, dissenting, both voiced their concern that the district court partially sanctioned Chambers for his initial breach of contract.[197] Viewed in their totality, the opinions strongly suggest that the district court took into account Chambers' initial culpability regarding his breach of

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made on the basis of the bad faith exception because New York law did not authorize the award). In deciding *Chambers* as it did, the Supreme Court has rejected the reasoning of these many cases, all of which relied on prior Supreme Court precedent. These circuit cases advance the appropriate position.

[193] *Chambers*, 111 S. Ct. at 2136.

[194] NASCO v. Calcasieu Television and Radio Inc., 124 F.R.D. 120, 125-27, 143 (W.D. La. 1989).

[195] *Id.* 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.").

[196] *Id.* at 125.

[197] Chambers v. NASCO, 111 S. Ct 2123, 2147 (1991) (Kennedy, J., dissenting); *id.* at 2141 (Scalia, J., dissenting).

contract when assessing sanctions in the form of attorneys' fees.

The district court's failure to reduce the assessment of sanctions against Chambers by an amount representing NASCO's initial expenses for bringing this suit for the breach of contract also suggests that the court may have abused its discretion. In assessing inherent power sanctions against Chambers, the district court awarded NASCO an amount representing all of its legal fees, costs and expenses incurred in connection with all matters relating to this litigation.[198] But in reaching this figure, the court failed to indicate that it was taking into account Louisiana's prohibition against imposing punitive damages for bad-faith breach of contract.[199] When viewed in conjunction with the court's expressed indignation surrounding the circumstances of the litigation, the extent of sanctions imposed strongly suggests that Chambers was punished partly for his initial refusal to abide by the terms of the Agreement.

Application of the inherent power to sanction raises troubling concerns regarding the availability and use of such a broad and relatively undefined equitable remedy, especially when a Louisiana state court could not have sanctioned such conduct. Where a court chooses to punish a litigant under the guise of its inherent powers, it must not violate state substantive law. To permit a district court to use its inherent powers to produce a result proscribed by the law it is applying would be to confer on it the power "to disregard the considered limitations of the law it is charged with enforcing."[200] Just as the Federal Rules of Civil Procedure may not be used in a manner that "abridge[s], enlarge[s], or modifie[s] any substantive right," a court may not impose an *ad hoc* procedural sanction that violates *Erie*.[201] In *Chambers* the sanctions levied against Chambers for his initial breach of contract were not procedural, but rather resulted in the imposition of a substantive remedy that was clearly inconsistent with Louisiana con-

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[198] *See NASCO*, 124 F.R.D. at 133-43.

[199] *See supra* note 190 and accompanying text.

[200] *See* Bank of Nova Scotia v. United States, 487 U.S. 250, 254 (1988) (a federal court may not invoke the supervisory power to circumvent the mandate under Federal Rule of Criminal Procedure 52).

[201] *See* 28 U.S.C. § 2072 (1988).

tract law.

IV. A SUGGESTED APPROACH

The inherent power, founded in the equity and common law powers of courts, ordinarily should not prevail over statutory provisions.[202] Courts are vested with inherent powers, authority created out of necessity, so that they may carry out those functions appropriately associated with the judicial domain.[203] This power to act, however, exists only where necessity dictates—that is, where statutes and rules are silent.[204] Thus, where codified sanction provisions provide an adequate means by which to regulate conduct, authority to act under the guise of inherent power is not only unnecessary, but improper. Given that inherent power, like its criminal law supervisory power counterpart, "is just another name for the power of courts to make common law when statutes and rules do not address a particular topic,"[205] resort to principles of equitable authority should not be a substitute for sound legal reasoning.

Courts may exercise their inherent power to sanction conduct not regulated by codified sanction provisions, but not in a manner inconsistent with applicable rules or statutes.[206] Exemplary of the proper approach that a court should take is *Strandell v. Jackson County*.[207] In that case the Seventh Circuit was faced with the issue of whether a district court could require litigants to participate in a nonbinding summary jury trial under Rule 16(c) of the Federal Rules of Civil Procedure. The district court sought to compel both parties to participate

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[202] *Cf. In re* Dakota Indus., 131 B.R. 437 (Bankr. S.D. 1991) ("[s]pecific statutes control over general statutes, and both over case law").

[203] *See supra* notes 11-42 and accompanying text.

[204] *See id.*; Link v. Wabash R.R., 370 U.S. 626, 630-31 (1962) (noting that "inherent power" is not governed "by rule or statute but by the control necessarily vested in courts to . . . achieve the orderly and expeditious disposition of cases").

[205] Soo Line R.R. v. Escanaba & Lake Superior R.R., 840 F.2d 546, 551 (7th Cir. 1988); *cf.* United States v. Widgery, 778 F.2d 325, 328-29 (7th Cir. 1985) (noting that supervisory power means that courts have the power to "announce new rules that promote the administration of justice, even though neither Constitution nor statute requires such rules").

[206] *See* Landau & Clearly, Ltd. v. Hribar Trucking, Inc., 867 F.2d 996, 1002 (7th Cir. 1989) (courts may not exercise inherent authority inconsistent with the Federal Rules of Civil Procedure).

[207] 838 F.2d 884 (7th Cir. 1987).

in such a proceeding and entered a criminal contempt judgment against plaintiff's counsel when he refused to do so.[208] On appeal, the Seventh Circuit held that the district court was without the authority to compel such action.[209] While recognizing that "district court[s] no doubt ha[ve] substantial inherent power to control and to manage [their] docket[s]," the Seventh Circuit warned that such "power, must, of course, be exercised in a manner that is in harmony with the Federal Rules of Civil Procedure."[210] The court went on to note that

> th[e]se rules are the product of a careful process of study and reflection designed to take "due cognizance both of the need for expedition of cases and the protection of individual rights." That process, set forth in the Rules Enabling Act, also reflects the joint responsibility of the legislative and judicial branches of government in striking the delicate balance between these competing concerns. Therefore, in those areas of trial practice where the Supreme Court and the Congress, acting together, have addressed the appropriate balance between the needs for judicial efficiency and the rights of the individual litigant, innovation by the individual judicial officer must conform to that balance.[211]

The *Strandell* court's approach to this issue achieves a delicate balance between a court's desire to regulate the conduct of litigants and its obligation to abide by the language of codified sanction provisions. Thus, where a provision such as Rule 11 requires a court to impose sanctions, a court should not be free to ignore its mandate by resorting to its inherent powers.

Of course, a slightly different approach may be required when a codified provision does not mandate its use, but rather allows the court to exercise some degree of discretion.[212] In such cases, absent a contrary legislative intent or a result that would be demonstrably at odds with such legislative intent, the court should exercise its discretion in choosing between applying an inherent power or a codified provision sanction.[213] In

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[208] *Id.* at 885.

[209] *Id.* at 887.

[210] *Id.* at 886.

[211] *Id.* (quoting S. REP. NO. 1744, 85th Cong., 2d Sess. (1958), *reprinted in* 1958 U.S.C.C.A.N. 3023, 3026).

[212] *See, e.g.*, 28 U.S.C. § 1927 (1988) (courts have discretion to impose sanctions on any attorney or person who multiplies court proceedings "unreasonably and vexatiously").

[213] On April 22, 1993, the Supreme Court submitted to Congress amendments

all other cases, however, the court should resort to an applicable codified provision.

In *Chambers*, inherent power sanctions were imposed to cover the complete range of the defendant's conduct because it was more convenient to do so, but not because it was necessary under the circumstances. Both the district court and the Supreme Court agreed that some of Chambers' conduct—although some might argue most—was sanctionable under Rule 11 and section 1927. In addition, the Federal Rules as well as a multitude of other statutes provide a rather comprehensive arsenal through which the district court could have sanctioned Chambers.[214] If the district court had first turned to these codified sanction provisions, as Justice Kennedy's dissent recommended, Chambers would not have escaped punishment.[215] Rather, he would have received such punishment as would have been appropriate under those provisions. Any conduct that the district considered to be sanctionable, but which could not be punished through the use of a codified provision could then be sanctioned under its inherent power if it made the requisite

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to the Federal Rules of Civil Procedure, including Rule 11, which became effective on December 1, 1993. *See* Transmittal Letter from Chief Justice William H. Rehnquist to Thomas S. Foley, Speaker of the House of Representatives (Apr. 22, 1993), *reprinted in* 113 S. Ct. (Preface) 477 (1993). In its present form, Rule 11 now *permits* and no longer *requires* a court to impose sanctions when it finds a violation. Rule 11 now provides in pertinent part:

> (c) *Sanctions.* If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court *may*, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

FED. R. CIV. P. 11 (effective Dec. 1, 1993) (second emphasis added).

For the purposes of this Comment and consistent with the approach suggested, the practical effect of this most recent amendment to Rule 11 should be to give district courts greater discretion only in determining *whether* to impose sanctions. In making its determination whether to sanction conduct that violates Rule 11, a court should not rely on its inherent power to the exclusion of the Rule. A court's reliance on its inherent power in such circumstances would still be inappropriate unless relying on Rule 11 could cause a result that was directly at odds with the Rule's purpose. Because such unique circumstances will likely surface only in rare cases, the proper focus should be on applying the Rule as amended and determining whether sanctions are warranted under the circumstances.

[214] *See supra* note 129. *See generally* JOSEPH, *supra* note 4, § 1, at 2-5 (discussing several sanctioning mechanisms, including Rules 11, 26, 37 as well as 28 U.S.C. §§ 1912 & 1927 (1992)).

[215] *See supra* notes 129-31 and accompanying text.

finding of bad faith. Such an approach would require a district court to resort to inherent power sanctions only in those instances where such reliance is necessary, and not just convenient. Moreover, the court would be required to analyze and explain fully the means by which it imposes sanctions, something to which the parties as well as reviewing courts and courts later relying on the decision are entitled.

Inherent powers are the exception rather than the rule and their application should require a special justification in each case. Thus, district courts should recognize and apply the following three-part approach when considering whether to act under their inherent powers to sanction for bad-faith conduct. First, a district court's equitable authority to sanction for bad faith is most legitimate when faced with an absence of any statutory or rule-based authority that applies to the specific sanction-worthy conduct at hand.

Second, when a court is faced with conduct that may be sanctioned through a discretionary codified provision, a determination first should be made as to whether the application of this provision is appropriate under the circumstances. For example, applying section 1927 sanctions in *Chambers* would have resulted in the levying of fines against Chambers' attorneys, something that the district court determined would be inappropriate given the high degree of control Chambers evidently exercised over his counsel.[216] However, if Chambers' attorneys were directly responsible for concocting and implementing the scheme to defraud the district court, it may very well have been an abuse of the court's discretion to levy inherent power sanctions against counsel to the exclusion of highly applicable codified provisions such as Rule 11 or section 1927. Similarly, if section 1927 did not permit the imposition of attorneys' fees as a component of those assessed costs, then the use of inherent power may have been appropriate, perhaps even absent a finding of bad faith.

Finally, the inherent power to sanction is at its lowest legitimacy, and arguably is non-existent, when a court is faced with sanctionable conduct that directly falls within the ambit of a codified provision. In such a case, the district court should

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[216] NASCO v. Calcasieu Television and Radio, Inc., 124 F.R.D. 1120, 139 (W.D. La. 1989).

apply the rule or statute, unless the provision explicitly allows for the application of inherent power sanctions.

CONCLUSION

Chambers exemplifies the risks that a federal court takes when it resorts to its inherent powers to sanction conduct that is clearly covered under codified sanction provisions. It not only risks disregarding the very nature of inherent power as well as violating longstanding principles of statutory interpretation, but its misapplication of such a broad power may produce a result that directly conflicts with state law. The inherent powers of federal courts exist so that the judiciary may continue to regulate the conduct of litigants when faced with the absence of statutory authority. Because inherent power is based on such a necessity, however, where Congress or the Supreme Court in their rulemaking capacities have provided courts with codified provisions through which to sanction the conduct of litigants, resort to inherent power is unnecessary. Indeed, in such a circumstance, the equitable authority to act arguably no longer exists. More importantly, though, courts should be careful not to thwart the purpose of rules and statutes that were promulgated to regulate the very type of conduct at issue. Ultimately, courts should strive to limit the use of their inherent power to punishing only that conduct which falls within the interstices where rules and statutes are silent.

John Papachristos