L I T I G A T I O N

(OR, THE PARADOXICAL NATURE OF "RIGHTS")

This writing comes in response to a written report entitled "Litigation: Or, if the suit fits, wear it." This report was provided for the Long Range Planning Committee of the A.A. General Service Board at the November 1991 meeting. In order to respond in a more understandable manner, a copy of that report has been reproduced with line numbers and is attached.

The "subtitle" of the paper under consideration, in line 2, while indicating an interesting sense of humor, also evidences a blatant disregard that smacks of either smug complacency or outright egoism. In any case, it appears the writer cares little for the threshold over which the reader must traverse in considering the matter at hand. To invite your reader to engage in a debate is an altogether poor approach to a sensitive issue.

In lines 6 - 9 we are treated to a definition of the title word, litigation. It is interesting to note that the definitions quoted are of the most benign nature. In a brief review of four dictionaries, including those noted, the words "contest" or "controversy" appear in all but the one preferred by the author.

Barron's Law Dictionary, Copyright 1991, contains the definition that finds the most widespread use within Alcoholics Anonymous. It defines "litigation" as: *a controversy in court; a judicial contest through which legal rights are sought to be determined and enforced. The term applies to* ***civil actions****. 34 Federal Supplement 274, 280*. When one considers the term in the context of this definition, the resultant perspective is considerably altered from that invited by the report to the committee.

The discourse intended to describe the perception of the average person is adequate to that particular task. Unfortunately, for the writer, it is not the public at large we are interested in. The concern expressed by AA members comes not from a poor understanding of lawsuits. It finds its genesis in the understanding AA members have of controversy.[1] How many times we remember charging off to do battle having thought little about the resultant discord. With amazing consistency

---

[1] "We ceased fighting everyone and everything" - Big Book
" Nobody loves to controvert more than us drunks." - Bill W.

we found ourselves awestruck when the full impact of our willingness to champion a cause left us standing among the ruins.
We drunks probably know more about what drives a person, or institution, to engage in litigation than most people. That self-righteous sense that we must be treated fairly permeates our past, and to some degree present, lives. The attitude of possession is also a hallmark of ours. And so, too, we know how slowly the realization dawns that, even though we had won the victory, we had lost all that really had value. The first paradox being that as we excessively protected that which we felt was ours, we increased its value to those who would take it from us. And so, rather than presenting a defense - we created a desire.

The next two paragraphs, lines 24 through 48, provide us with a rather prejudiced view of world experience which, not surprisingly, results in a code of ethics administered by a reasonable judicial system. One which, it is implied, had it's basis in religion. It is, however, not the intent of this response to address the origination, composition or actions of the U.S. court system. The temptation to pick up the lance and tilt at the windmill of "origins" is certainly there. We will, however, forego it at the moment because it has no bearing on the question before us. In any event, it is a task best left to those within the legal system - should they wish to do so.

Upon reaching line 50, one is pleased to finally be at the real matter; "should Alcoholics Anonymous enter into litigation in defense of its copyrights and trademarks?" The description is of a situation that is common to many who have been involved in service work for some time. When we do not communicate, to our members, the nature of our efforts on their behalf they tend to overreact. For anyone to say that A.A. should never be in court is as ludicrous as the idea that we should always be in court.

The two following paragraphs are in the same vein. The idea is to present this adversarial member with scenarios which can only be answered, reasonably, in a manner that agrees with the point of view of the person posing the question. There are two important points which are alluded to, in this portion of the paper, which ought to be stated clearly. First, there are a significant number of A.A. members who confuse simplicity with simplemindedness. In so doing they respond to far-reaching issues with characteristically shallow thinking. In fewer words; under-thinking plus overreacting equals a simpleminded approach. In this illustration we see it evidenced by the A.A. member in his perspective in lawsuits, It ought not come as any great revelation when we bump into it on the other side

of the fence as well. Just like alcoholism, poor judgement is no respecter of a persons position, responsibility, or even intelligence.

Secondly, Alcoholics Anonymous needs to follow some advice given centuries ago. It was given when the question was also one of how to participate in society without losing ones principles. "Give unto Caesar the things that are Caesars', and unto God the things that are Gods" was the advice of that time, and it still holds true today. The point, then, is well taken that Alcoholics Anonymous will need to make some use of legal process at some times.

The text in lines 85 through 101 is, again, a welcome and refreshing return to the real matter at hand. The final point in this section is also well taken. It would be contrary to spiritual laws to simply lay down the life of a fellowship out of some misplaced sense that this constitutes a noncontroversial approach to life. Somewhere in our literature the point is made: ". . .both God and nature abhor suicide." The quote from Bill, concerning foresight, stands as an important signpost here. We will return to it later in this paper.

We move now to lines 118 - 125. The inference here is that by not entering into litigation on trademark or copyright "violations", the Trustees would be negligent. The sledgehammer used to drive home this particular viewpoint is the specter of a lawsuit against the trustees which would maintain they had not ". . .discharged (their). . .in good faith and with that degree of diligence, care and skill. . ." in failing to enter into litigation.

By this point in the report, it is painfully clear that there is only one point of view which is acceptable to the author. Therefore, in the section previously noted we find absolutely no reference whatsoever to an exchange of perspective between the board and the conference. This should come as no surprise since the willingness to engage in litigation, without consulting widely as to the implications within the fellowship, has been clearly seen.

As a matter of fact, for the trustees to engage in legal action which might bring the organization they represent into conflict with its own principles might well form a basis upon which legal action could be considered. The failure to consult, or invite comment, could be seen as "lack of diligence" in some circles. I want to be very clear, here, that the preceding statement is not intended as a threat. As is pointed out in the example noted in lines 135 - 138, one need not exercise a possible action simply "because it's available." By that, I mean the trustees do not need to agree

to enter into litigation simply because they have it available to them as trustees of a legally incorporated entity.

From line 126 to line 141 the report sets the tone, and makes a case for, the idea that the board is somehow on a different plane of existence than the members of the conference or the average A.A. member. The "triple threat" to any society comes when a significant segment of that society begins to cry, "We are different," "You don't understand," and "It's our right." History is replete with societies whose decline began with just such cries from those who would lead them.

One can't help but wonder, by this point in the report, whether the author has forgotten who constitutes the makeup of this Fellowship. There is perhaps no group of people who have used those exact phrases to any greater extent. Time and time again we uttered those words to anyone who would listen. We were engaged in an all out attempt to be able to drink with impunity. So, too, there seems to be a desire here to be able to "sue with impunity."

The narration begun on line 143 and ending on line 152 is, again, of a particularly myopic viewpoint. It certainly encompasses the "issues" perspective of entering into controversy. It does not, however, mention an example which speaks more directly to the matter at hand, i.e. copyrights and trademarks. As a part of the discussion on controversy in A.A. Comes of Age[2], Bill notes the following:

> *"Considering how most of us have really loved controversy, this denial of the privilege of attacking something or somebody in public is no small achievement for the naturally aggressive people that we are. To make our survival as a fellowship sure, we have often gone far in the opposite direction. Years ago, for example, we stood in great fear of the misuse of the A.A. name by A.A.'s and outside groups who wanted to use it for their own money-raising, controversial, or publicity purposes. And we reflected that the bigger A.A. grew, the greater the temptation would surely be. Therefore we felt we had to find a way legally to protect the precious name of our society.*

Certainly this is the context in which we currently find ourselves. The prospect which gives birth to the idea of litigation, as an effective deterrent, addresses itself directly to the development of a way to protect our name (i.e. integrity and relevancy). A most worthy and responsible exercise of ones duty.

---

[2] A.A. Comes of Age, page 125, ¶ 3

The review of incorporation and its legal ramifications contained in lines 154 - 169 indicates, to this writer, a lack of understanding of both legal matters and A.A. principle. The supposed "confusion" about the intent of Bill in Warranty Five is nothing more than a smoke screen setting the stage for later comments.

As a matter of fact, the quote noted on lines 155 - 157 is provided as an "A.A. saying" in the A.A. Service Manual. That portion of Warranty Five is explicit in describing how we might relate ourselves to this concern[3]:

> *"We have a saying that "A.A. is prepared to give away all the knowledge and all the experience it has -- all excepting the A.A. name itself." We mean by this that our principles can be used in any application whatever. We do not wish to make them a monopoly of our own. We simply request that the public use of the A.A. name be avoided by those other agencies who wish to avail themselves of A.A. techniques and ideas. In case the A.A. name should be misapplied in such a connection it would of course be the duty of our General Service Conference to press for the discontinuance of such a practice -- always short, however, of public quarreling about the matter. (underlining mine)*

I find it difficult to miss the real meaning of this piece of writing. We ought not *give* away our name, but we do realize there are those who might attempt to *use* our name for their own purposes. Anyone who professes to know a bit about law and legal process ought to be cognizant of the fact that one party using, or possessing, something does not necessarily mean they came by it through the act of giving.

Moving on to the supposed confusion about "Congressional incorporation"(lines 158 - 164) provides yet another example of myopia. Incorporation, for those who have studied law history, as is alluded to earlier in the report, was initially done as a matter of legislation. In that sense it was, in effect, both narrow and conservative. The incorporation we enjoy today is of a much broader and more "liberal" manner.

First of all, the correct nomenclature here is a "Congressional Charter[4]. The reference, then, was to a legislative action which would establish Alcoholics Anonymous as a "nation within a nation." In that sense, each group of Alcoholics Anonymous would have legal powers and be a subsection, or substate, of the Society. This, of course, is where the reference to lawsuits has its greatest implication in this illustration. Imagine, if your heart will stand it, all our groups

---

[3] A.A. Service Manual, page 72, ¶ 5

[4] A.A. Comes of Age, page 126, ¶ 3

having the power to sue. To say that chaos would result is not unlike describing the sky as "blue." It does state the case, but it certainly doesn't come near indicating the breadth of the experience. This is all alluded to in Bills description in A.A. Comes of Age.

In lines 165 to 169 we are told that the board(s) indeed has the power to sue. As noted earlier, having the power to take an action does not require that action be taken. That is unless one wishes to conform to a "cranky-minded" mentality, as described by William James[5]; "What shall I think of it?" a common person says to himself about a vexed question; but in a 'cranky' mind "What must I do about it?" is the form the question tends to take." It would appear that the writer of the report wishes us to remain as collectively 'cranky-minded' as we were before our entry into Alcoholics Anonymous.

To paraphrase an old A.A. saying "there is a solution." Bill provides us with the following experienced-based suggestion[6]:

> *"The Conference thought we ought to forget about the questionable advantages of legality and controversy and rely upon group and public opinion for our ultimate protection. After long debate, we at the Headquarters saw that the conscience of Alcoholics Anonymous, acting through the delegates, was wiser than we were. So the Congress of the United States was never asked to incorporate A.A."*

It is interesting that the committee recommendation that contained the conferences feeling on this matter, also contained the following quote[7]: ". . . keeping in mind the high purpose of the General Service Conference as expressed by the Chairman last year when he said, "We seek not compromise but certainty," your Committee unanimously recommends that Alcoholics Anonymous does not incorporate."
The Conference, it would appear, felt that this solution was something rather concrete and not something nefariously arrived at. A case might also be made that there was evidence of more trust in a Power Greater than ourselves which did not have to pass anyones Bar Exam.

Again, the idea that one takes responsible action only in order to position oneself on more advantageous legal ground surfaces in lines 175 - 178. There appears to be absolutely no recognition of the spiritual advantage of carrying out those

---

5 Varieties of Religious Experience, Lecture I

6 A.A. Comes of Age, page 126 - 127

7 A.A.Comes of Age, page 127, last paragraph

responsibilities *to oneself or ones own fellowship* the indicate a positive sense of self. Certainly we registered trademarks and copyrights while Bill was with us. Let us not forget that we also **forgot** to reapply for the copyright to the original Big Book. Using the inference made by the author in this context, we would then 'forget' to reapply for those same rights as they came due.

As a matter of act, when it comes to the lost copyright to the First Edition, we have an excellent example of how much we have to fear. The very suggestion provided by the conference in its deliberation previously noted was used to good effect. To be sure, some books were sold by those who had reproduced the First Edition. The potential impact of this has been virtually nonexistent.

The real import of that experience was really in the realm of financial support. While the 'party line' was a concern for the misuse of our basic text, a very strong case could be made that it was simply a matter of lost publishing income.

The previously described simplemindedness surfaces in lines 189 - 191. To suggest that because the U.S. court system is overburdened with cases at the moment, we have little to fear from public controversy surfacing around AA initiated litigation stands as a prime example of under-thinking. To say that this would be an exercise in "casting ourselves and our future on some fatuous idea of Providence" is an understatement of the highest order.

I would also agree that the use of the judicial process does not necessarily imply that the business at hand is sleazy, unsavory, or unspiritual. However, when the legal process is used contrary to the wishes of those concerned, or the public at large (which in this case would be the A.A. Fellowship), and that use is not widely communicated, then I think it reasonable for those involved to be described as having an attitude which incorporates those uninviting traits.

The cry, "We have the right!" is presented again in lines 204 - 212. Certainly the board has the right to decide and execute. I don't think that anyone has seriously challenged that aspect of the current situation. The members of the Fellowship who have commented, to the best of my knowledge, have done so in the vein of correcting an action or decision already made.

It is here, however, that we find the paradox of 'rights'. Just as the author of the report being responded to demands that the board have the 'right' to decide whether to sue or not, so too, those who are of a different opinion demand their 'right' to appeal the decision.

Now we can see, in stark relief, why the ability, or desire, to sue is so intrinsically tied to controversy. Another way to state the case would be to say, "whenever someone draws a line of responsibility, authority or property they provide the opportunity for polarization." To restate an earlier point: "in presenting a defense against loss of our logo, we create a desire to take it from us.

The final paragraph, lines 214 - 223, is simply 'more of the same'. The entire report has been one rife with myopic and unimaginative views. It is absolutely amazing to think that someone would associate an A.A. boards unwillingness to enter into litigation as contrary to the spiritual principles described in the Twelve Concepts. And yet, that is the suggestion of the author of the report. (lines 222 - 223)

This has been a lengthy reading and my hat goes off to those who have been able to wade through it. Certainly there has been a strongly presented opposition to the viewpoint presented in the report reviewed. It is hoped that this will serve to broaden the range of perspectives considered. And, most importantly of all, invite further comment on the question of litigation to protect our copyrights and trademarks.

I would suggest one more consideration. We may do well to peruse the experience our friends in religion have had with symbols and symbolism. For centuries they have valiantly fought the battle to retain the validity of their 'marks'. Often going to lengths much greater than courts of law. To what degree of success? Have their 'logos' retained the integrity they fought for, or have they lost sight of the reason for the symbol - only to get caught up in the battle to preserve it?

Perhaps the lesson is that when we fight to preserve that which we think will bring people toward us, we unknowingly provide a barrier against our hearing their plea for help. All the while robbing ourselves of the time to extend an invitation to come join us.