MondayMonday

Treat Your Parties Well

September 23, 2013

Some of you know that we have a particular interest in public education. Indeed, for well over 15 years, we have served as a trustee on a local school board and as president of a large bi-county, regional association of school boards. Our complaint this morning, or perhaps "caution" is a better word, is neither local nor regional, however, but nationwide.

In the post-Sputnik world of the 50's, fear drove education into embracing a singular focus on math and science. Today, that same fear, *i.e.*, the other guy's kids are getting smarter, drives education as well. Tests affirming the primacy of students in Ruritania over those in Rochester tell a tale of incipient world-wide dominance by hoards of [insert nation/ethnic/cultural name], relegating Johnny to meaningless work in the McDonalds' of life.

That is not the case, of course, and never could be. In America we produce something that is not capable of being reduced to binary numbers. It is not something contained in the newest post-Sputnik incarnation of the magic pill, called "STEM" (Science Technology Engineering Math). Instead, it resides in literature, writing, art and

music. It's called "vision"; the ability to see what's not there yet, but should be. Without it, STEM is just that: A boring corridor between the roots and the flower. In America, children should learn as much from Huck Finn as they do from Pythagoras. Ignore those who write about life and you doom a generation to repeating mistakes. In fact, Huck said it best: "You done missed the point Tom; you done missed it by a country mile."

We don't usually review lower court decisions in *MondayMonday*. There are far too many of them and just not enough time in the week to permit the sort of review we'd like to make. Moreover, as practitioners, while a lower court decision might match the facts of a specific case for a specific lawyer, they bind no one, other than through their persuasion.

Saying all that, we turn today to a decision of the Court of Claims brought to our attention by a long and avid reader. *Martin v. NYS DOT,* 2013 NY Slip Op 51536(U) (Ct. Claims, 7/30/13), represents much of what is wrong with the practice of law in New York. Coming from the Court of Claims, of limited jurisdiction, the decision nonetheless speaks far more broadly than that.

This was a pro se motion by a claimant whose attorney missed a court conference. Supported by an affirmation from that former counsel, it explainted that counsel couldn't make the appearance because he was scheduled for "several other matters" in another court on the same date. When he discourteously failed to advise the Court and seek an adjournment or have other counsel appear, the Court dismissed the claim. The Court's rules make the failure to appear at the conference tantamount to a calendar default.

While counsel's behavior was wrong, the Court's decision to dismiss the claim was wronger still. There was no finding of prejudice and the question of a meritorious claim was unnecessary in the absence of excuse. The Court, however, was quick to note that the claim wouldn't have been found meritorious anyway. After all, who has ever seen a pothole on the Cross County Parkway anyway?

Courts should protect litigants, not themselves. Punish the attorney perhaps, but not the claimant. That's just rude and unjust. Respect for the law and the lawgiver is earned, not inherent. Claimant deserved better.