

COURT OF APPEALS · STATE OF NEW YORK

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In the Matter of the Application of
HYMAN RAFFE, GEORGE SASSOWER, Esq., and
SAM POLUR, Esq.,

Petitioners-Appellants,

-against-

Hon. ALVIN F. KLEIN and Hon. DAVID B.
SAXE,

Respondents-Respondents.

Pursuant a Writ of Prohibition and a Bill
In Equity.

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FURTHER JURISDICTIONAL
STATEMENT

1. This statement responds to the Court's inquiry dated October 7, 1985, on which nothing has been received from any of the adversarial counsel.

2. The Court's inquiry does not question "finality", since it obviously exists (Plummer v. Rothwax, 63 N.Y.2d 243, 481 N.Y.S.2d 657; LaRocca v. Lane, 37 N.Y.2d 575, 376 N.Y.S.2d 93, cert. den. 424 U.S. 968).

2. There are a number of substantial constitutional questions, including those of first impression.

a. Annexed hereto (Exhibit "A") is a portion of a Brief by the Attorney General, in a related proceeding, which while it disagrees with Polo Fashions v. Stock Buyers, 760 F.2d 698-6th Cir., concedes its importance and novelty.

b. Crucial and decisive is the refusal of private adversarial counsel to obey the mandate of Brady v. Maryland (373 U.S. 83) and United States v. Agurs (427 U.S. 97).

Indeed adversarial counsel can and has employed

their control of criminal process to incarcerate and intimidate as suits their private interests. Indeed they are themselves committing criminal acts by compounding crimes and alleged crimes.

c. In People v. Acme (37 N.Y.2d 326, 372 N.Y.S.2d 326), this Court recognized the dangers of private interests controlling criminal proceedings. At bar, in a criminal contempt proceedings, private "self-styled" public prosecutors have been given complete control of criminal proceedings.

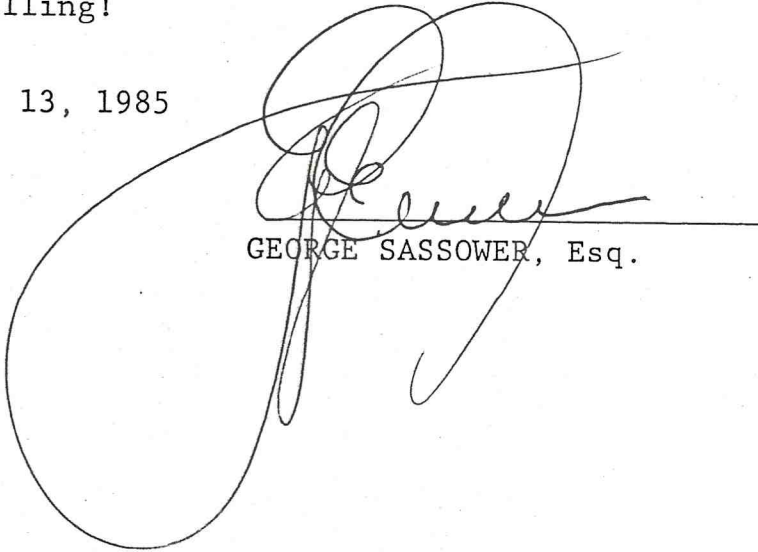
Thus, those who have committed larceny, perjury, and have engaged in corruption are persecuting and prosecuting those who have uncovered same!

d. The underlying prosecutions are invidious and selective and unconstitutional, as disclosed in the Statement of September 27, 1985.

3a. There can be no question as to "double", indeed "quadruple" jeopardy and the lack of equal protection.

b. The issues presented are not only "substantial" they are compelling!

Dated: October 13, 1985



GEORGE SASSOWER, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST JUDICIAL DEPT.

-----X
GEORGE SASSOWER, Esq., and all those :
similarly situated, :

Petitioner, :

-against- :

THE APPELLATE DIVISION OF THE SUPREME COURT :
OF THE STATE OF NEW YORK, FIRST JUDICIAL :
DEPARTMENT, and THE JUSTICES OF THE SUPREME :
COURT OF THE STATE OF NEW YORK, COUNTIES OF :
NEW YORK and THE BRONX, :

Respondents. :
-----X

MEMORANDUM OF LAW
IN SUPPORT OF RESPONDENTS'
MOTION TO DISMISS

ROBERT ABRAMS
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State of New York
Attorney for Respondents
Justices of the Supreme Court
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Counties of New York and
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Senior Attorney
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Exhibit "A"

Thus, under Bloom, the law of this state, not Federal law, sets the standards for due process in "petty" contempt proceedings brought pursuant to Judiciary Law § 750. Section 751(1) of the Judiciary Law requires that, where criminal ... contempt was not committed in the immediate view and presence of the Court, the party charged with contempt must be notified of the accusation and have a reasonable time to make a defense. This is the only process due in such proceedings. See, e.g., Matter of Koota v. Colombo, 17 N.Y.2d 147 (1966). But no court anywhere has held that the practice of prosecution of criminal contempt by private adverse counsel violates due process, nor should this Court so hold.

Petitioner relies greatly (Petition, ¶ 3) on Polo Fashions Inc. v. Stock Buyers International Inc., 760 F.2d 698 (6th Cir., 1985). In that case, the Court was very critical of the practice, and although it prohibited it, it did so as an exercise of its supervisory powers over the courts of that Circuit. The Court expressly declined to reach the question of whether the practice was a denial of due process. 760 F.2d at 704.

This Court should adopt the rationale of the United States Court of Appeals for the Second Circuit in Musidor B.V. v. Great American Screen, 658 F.2d 60 (2d Cir. 1981), cert. den. 455 U.S. 944 (1982). In that case, the District Court appointed, pursuant F.R. Crim. Proc. Rule 42,* private adverse counsel to prosecute criminal contempt and defendants were held in criminal contempt. On appeal they asserted that their prosecution by private counsel representing a party adverse to them in underlying civil litigation violated their due process rights. The Second Circuit emphatically rejected that

* Rule 42 permits the District Court to appoint private adverse counsel to give notice of the prosecution for criminal contempt. Literal reading of the Rule has been broadened by the Second Circuit to permit actual prosecution by such counsel. Universal City Studios, Inc. v. N.Y. Broadway International Corp., 705 F.2d 94, 97 (2d Cir. 1983). There is no analogy in New York practice.

contention, and went on to endorse the desirability of the practice:

"Neither Rule 42 nor the Due Process clause requires the court to select counsel from the staff of the United States Attorney to prosecute a criminal contempt. The practicalities of the situation-when the criminal contempt occurs outside the presence of the court but in civil litigation - require that the court be permitted to appoint counsel for the opposing party to prosecute the contempt.... In short, we follow the ... statement by Judge Hand in McCann v. New York Stock Exchange, 80 F.2d 211, 214 (2d Cir. 1935), cert. denied sub nom, McCann v. Leibell, 299 U.S. 603 (1936); 'the judge may prefer to use the attorney of a party, who will indeed ordinarily be his only means of information There is no reason why he should not do so, and every reason why he should' See also, Frank v. United States, 384 F.2d 276, 278 (10th Cir. 1967) (SEC attorney appointed in SEC case) aff'd on other grounds, 395 U.S. 147, (1969); United States ex rel. Brown v. Lederer, 140 F.2d 136, 138 (7th Cir.), cert. denied, 322 U.S. 734 (1944). See generally, Dobbs, Contempt of Court: A Survey, 56 Cornell L.Rev. 183 (1971). [Emphasis added.]

In sum, the practice of permitting private adverse counsel to initiate, prosecute and control the prosecution of criminal contempt proceedings under Section 750 of the Judiciary Law does not violate due process.

STATE OF NEW YORK, COUNTY OF

ss.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

☐ Certification By Attorney
☐ Attorney's Affirmation

certify that the within has been compared by me with the original and found to be a true and complete copy.
state that I am

the attorney(s) of record for
in the within action; I have read the foregoing
and know the contents thereof; the same is

true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

I, being sworn, say: I am

☐ Individual Verification
☐ Corporate Verification

in the within action; I have read the foregoing
and know the contents thereof; the same is true to my own knowledge, except as to
the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.
the
of
a
corporation and a party in the within action; I have read the foregoing
and know the contents thereof; and the same is true to my own knowledge,
except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe
it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

19

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF Kings

ss.:

(If both boxes are checked — indicate after names, type of service used.)

I, Pat Gomez, being sworn, say; I am not a party to the action, am over 18 years
of age and reside at Brooklyn, New York
On October 13, 19 85 I served the within Further Jurisdictional Statement

☐ Service By Mail
☐ Personal Service on Individual

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care
and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last
known address set forth after each name:
by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person
served to be the person mentioned and described in said papers as a party therein:

Kreindler & Relkin, P.C.; Feltman, Karesh & Major, Esqs.;
Arutt, Nachamie, Benjamin, Lipkin & Kirschner, PC. and Hon. Robert
Abrams.

Sworn to before me on

October 13, 19 85

The name signed must be printed beneath
PAT GOMEZ