



U.S. Department of Justice

United States Attorney

Eastern District of New York

United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

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July 17, 1987

HAND DELIVERY

Honorable I. Leo Glasser
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: In the matter of George Sassower,
Misc. No. 87-0107

Dear Judge Glasser:

The United States Attorney for the Eastern District of New York respectfully submits this letter in opposition to the motion of petitioner, George Sassower, for a writ of mandamus compelling the United States Attorney to present certain information to the grand jury. This letter also responds to Mr. Sassower's Supplemental Affirmation of July 7, 1987, which was received by this office on July 14, 1987, and to Mr. Sassower's letter of July 14, 1987.

It is beyond dispute that the decision to initiate a federal criminal prosecution lies within the complete discretion of the United States Attorney. E.g., United States v. Carrasco, 786 F.2d 1452, 1455 (9th Cir. 1986). Moreover, "[a] citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution." Linda R.S. v. Richard D., 410 U.S. 614, 619-20 (1974). As Mr. Sassower is neither being prosecuted nor is being threatened with prosecution by the United States Attorney for the Eastern District of New York, Mr. Sassower is without standing to compel this office to present certain information to the grand jury.

That conclusion is compelled by the decision of Matter of Appointment of Independent Counsel, Ronald A. Schivone v. United States, 766 F.2d 70, 76 (2d Cir. 1985) in which the Second Circuit Court of Appeals held that private

individuals lacked standing to apply for appointment of independent counsel. The Schivone Court determined plaintiffs to be without standing because their injury was not traceable to the government's failure to prosecute, and a favorable decision upon plaintiffs' application would not redress their injury. Id. Like the plaintiffs in the Schivone case, Mr. Sassower has not shown, and indeed cannot show any reasonable nexus between his alleged injury, the alleged larceny of a company's trust assets and Mr. Sassower's several imprisonments for criminal contempt and eventual disbarment, and the challenged inaction, the alleged failure of the United States Attorney to investigate and present to the grand jury information regarding alleged illegalities set forth in Mr. Sassower's letter to the United States Attorney of February 12, 1987. Successful prosecutions of the numerous individuals Mr. Sassower implies were responsible for the alleged larceny of the trust assets of Puccini Clothes, Ltd. would only result in the imprisonment of those individuals, not financial recompense for Puccini. Nor would the prosecution of those individuals result in Mr. Sassower's reinstatement in the bar. Thus, Mr. Sassower has no standing to compel the United States Attorney to present information to the grand jury consistent with the general rule that "in American jurisprudence, at least, a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another." Linda R.S., 410 U.S. at 619.

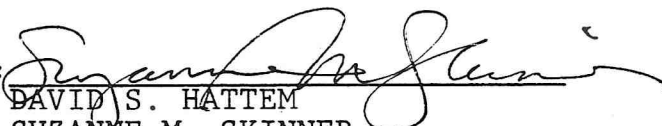
Mr. Sassower, in his papers, does not address the Schivone decision but, instead, relies almost exclusively on an earlier district court decision, In re Grand Jury Application, 617 F.Supp. 199, 206 (S.D.N.Y. 1985). That decision construed, as a matter of first impression, 18 U.S.C. § 3332(a)(1970) which requires the United States Attorney to present information concerning alleged criminal offenses to special grand juries convened pursuant to 18 U.S.C. § 3331 (1970) et seq., pertaining to the control of organized crime. The Court held that "18 U.S.C. § 3332(a) creates a right in every person to have information known by them concerning organized crime to be presented to the grand jury." Id. No such right obviously extends to Mr. Sassower who is not requesting the United States Attorney to present information regarding organized crime to a special grand jury. Therefore, this decision, upon which Mr. Sassower places his full reliance, has no application in the instant case. Moreover, the subsequent Schivone decision undermines the construction of the the In re Grand Jury Application which Mr. Sassower urges upon the Court and limits the district court's decision to special grand juries convened to investigate organized crime.

In sum, Mr. Sassower lacks standing to compel the United States Attorney by writ of mandamus or otherwise to present information to the grand jury. Accordingly, the United States Attorney respectfully requests that Mr. Sassower's petition be denied.

Very truly yours,

ANDREW J. MALONEY
United States Attorney

By:


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