86-2458

To be argued by:
GEORGE SASSOWER, Esq.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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GEORGE SASSOWER,

Petitioner-Appellee,

-against-

THE SHERIFF OF WESTCHESTER COUNTY,

Respondent,

-and-

LEE FELTMAN, Esq., as Receiver for
Puccini Clothes, Ltd. and ROBERT ABRAMS,
Attorney General of the State of New York,
Intervenors-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

---x

BRIEF OF PETITIONER-APPELLEE

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BRIEF OF PETITIONER-APPELLEE

STATEMENT

THE JUDICIAL INFERNO

1a. In a period of less than two (2) months, there were six (6) convictions for non-summary criminal contempt, state and federal, and two (2) Reports by Referee DONALD DIAMOND ["Diamond"] recommending convictions, incarcerations, and fines, or a total of eight (8), against HYMAN RAFFE ["Raffe"], SAM POLUR, Esq. ["Polur"], and appellee , all of which were without trials.

b. Both before and after such two (2) month period there were numerous resounding vindications, or terminations other than a finding of guilt, based upon the same contentions, assertions, and evidence, unquestionably resulting in constitutional "double jeopardy" prohibitions.

c. The pattern of events irresistibly compelling the conclusion that there is a close, active, program of corrupt cooperation between the "Murphy-Mollen citadels" and the federal courts in the Second Circuit, aimed, inter alia, in depriving appellee, Raffe, and Polur of their basic federal constitutional rights for criminal and base ends!

d. These criminal convictions, without trials, and other in terrorem events, are for the purpose of criminal extortion and blackmail, in an attempt to conceal the massive larceny of judicial trust assets, perjury, and judicial and official corruption.

2a. The "self-styled, self-appointed, criminal architects and prosecutors" of this "reign of terror", are KREINDLER & RELKIN, P.C., and its clients, JEROME H. BARR, Esq. ["Barr"] and CITIBANK, N.A. ["Citibank"], who appellee has exposed as being the engineers of the massive larceny of the judicial trust assets of PUCCINI CLOTHES, LTD. ["Puccini"], which was involuntarily dissolved on June 4, 1980 -- almost seven (7) years ago.

b. Their principal co-conspirators are the appellants, LEE FELTMAN, Esq. ["Feltman"], his law firm FELTMAN, KARESH, MAJOR & FARBMAN, Esqs. ["FKM&F"], and the Attorney General of the State of New York, ROBERT ABRAMS, Esq. ["AG"], and members of his staff.

3a. While Feltman and FKM&F appear, here and elsewhere, as representatives of Puccini, they, at all times, openly take positions contrary to their trust obligations, with the overt or sub silentio consent of the judiciary, state and federal.

b. Because of such massive larceny of judicial trust assets, the appellant, Feltman, the receiver, has not accounted, statutory and rule mandates notwithstanding, since any true accounting would further expose the criminal conduct of his co-conspirators, as well as his own.

c(1) Business Corporation Law §1216[a] contemplates a final accounting and distribution within one (1) year, with the AG, mandated as a ministerial "duty" to compel such accounting, if not rendered within eighteen (18) months -- almost seven (7) years have now expired without any accounting being rendered or demanded by the AG.

(2) 22 NYCRR §202.52[e], §202.53 mandates an accounting "at least once a year", to be initially filed with the County Clerk -- none have been filed.

(3) Business Corporation Law §1207(C)(3), requires that the receiver serve and file an annual financial statement showing, inter alia "assets received" by him, in addition to serving the AG with a copy. The assets have never been included in such annual verified filed statements because it would have to include assets unlawfully taken by his co-conspirators from the judicial trust or disbursed by them as "pay-offs".

Such annual statement has not been filed by the appellant-receiver for 1986 [due no later than Feb. 1, 1987], because in that year the receiver had a short and temporary falling out with his co-conspirators at K&R, and executed an affidavit which accused K&R and its clients of the larceny of Puccini's trust assets, and in not having made restitution. A corrupt N.Y. State AG has done nothing about such failure.

d. The AG, while the statutory trustee of Puccini, has consistently and openly taken positions contrary to his statutory ward, a "constitutional person" under the XIV Amendment of the U.S. Constitution, which the knowledqe and consent of the judiciary, state and federal, and refuses to move to compel an accounting, notwithstanding his statutory ministerial "duty", and indeed he opposes same, when such application is made by others.

e. The courts, and judges thereof, state and federal, including this Court, undeniably have an administrative obligation to assure themselves that all "helpless constitutional persons", including Puccini -- "the judicial fortune cookie" -- have effective aid of counsel, but they have totally jettisoned their obligations in favor of "judicial thieves" in this charade on justice.

f. These judicial criminals, thieves, and terrorists with law degrees, their affluent clients, and stable of corrupt judges, can only hope that appellee will eventually be made to succumb!

g. That time and hope has passed, as appellee's material on judicial and official corruption will now be extensively sent to members of congress, the criminal prosecuting authorities, the media, the bar associations, public interest groups, and others.

Never again will the "machinery of justice" be hijacked and manipulated by private criminal elements (see Briscoe v. LaHue 460 U.S. 325; Monroe v. Pape, 365 U.S. 167).

4a. These patently unconstitutional and jurisdictional infirm criminal convictions, all without benefit of trial, and other in terrorem tactics, are not for the purpose of vindicating societal interests, or to punish those who have transgressed, but to compel submission to a "code of silence and extortion", as will be shown.

b. Appellee, in addition to being criminally convicted of non-summary criminal contempt five (5) times, in a two (2) year period, all without benefit of trial, has been incarcerated three (3) times, pursuant to such trialess convictions; has had his bank assets seized pursuant to a [phantom] judgment; repeated orders have been issued to the Sheriff of Westchester County by Referee DIAMOND directing that he "break into" appellee's residence, "seize all word processing equipment and soft-ware", and "inventory and report" his possessions; all appellee's cases, related and unrelated, have been stayed or "fixed", preventing him from earning a livelihood, and prejudicing his clients, in addition thereto.

c. Herculian fines and attorneys' fees, which have no legal or moral basis, have been hurled upon him, his clients, and associates.

d. Even appellee's right to jest has been confiscated, for when, because of the seizure of his bank assets under a phantom judgment, he stated that he must keep his monies in a "non-interest bearing mattress", he was met with an application to have the Sheriff of Westchester County "break-into" his residence and "tear apart" such "non-interest bearing mattress".

5. It was the automatic stay provisions in the Bankrupcy Code, to which appellee was driven, that initially provided appellee with some relief (86 Bkcy 20500 [HS]).

6a. Upon the recommendation of U.S. Magistrate NINA GERSHON, Judge DAVID N. EDELSTEIN sustained appellee's 28 U.S.C. §2254 writ, on the ground that appellee had been totally denied his confrontation rights (Pointer v. Texas, 380 U.S. 400), with passing remarks in such opinions of some of appellee's other claimed constitutional deprivations (Sassower v. Sheriff, 651 F. Supp. 128).

b. Appellee asserts that the one major omission in the aforementioned opinions of U.S. Magistrate NINA GERSHON and Hon. DAVID N. EDELSTEIN, which simply destroys appellants contrived claims in this Court, is that there can not be a valid conviction without a trial.

Even when there is a constitutional waiver of the accused's right to confront (Amendment VI, XIV), there must be a trial nevertheless.

In Angle-American law, as well as in the criminal procedures of all civilized countries, there is no such thing as a "criminal judgment by default", a "criminal judgment to be entered upon inquest before the clerk", or a "criminal judgment based upon the submission of affidavits to the jurist"!

c. There simply _must_ be a trial, and in none of the convictions against appellee, Raffe, or Polur, was there any trial!

The factual underpinnings are such even that had the accused constitutionally waived their rights to be present, K&R and FKM&F simply could not prove a prima facie case before an honest and inquiring judge!

7. Considering the substantial nature of appellee's multiple constitutional deprivations, given the track record of appellants and their co-conspirators, in this and other courts, the irresistibly compelling conclusion is that they have and/or reasonably expect a "fix" in this Court.

8a. Appellants' claims in this Court are that (1) appellee is so obviously "guilty", a "lynching without a trial", a practice which even the Ku Klux Klan eschewed (Briscoe v. LaHue supra, at 340) is justified; and (2) since this Court was previously corrupted to convict without any jurisdictional predicates (Raffe v. Citibank [#85-7471]), such truant disposition deserves repetition.

b. The difference and distinction between Raffe v. Citibank (supra) and the proceedings at bar, is that appellee is ready and prepared to expose to public view the nature of the judicial process in the Second Circuit, nisi prius and appellate, as as being nothing less than a "corrupt judicial cesspool" in this litigation.

c. In short, "comity" and "abstention" where judicial corruption is concerned, in the Second Circuit has been transmogrified into "active affirmative co-operation", in a criminal adventure, without regard to constitutional limitations!

JURISDICTIONAL POINT I

IN THE JUDICIAL INFERNOS, STATE AND FEDERAL, THE APPELLANTS HAVE ALREADY WON, BY THE FAILURE TO GIVE THRESHOLD RECOGNITION TO "DOUBLE JEOPARDY" VALUES.

1a. The underlying criminal contempt proceeding, was commenced a mere twenty-six (26) days after the entry of an Order of Mr. Justice MARTIN EVANS which vindicated both appellee and Raffe of criminal contempt, after more than a two (2) year continuous and voluminious submission by appellant, Feltman, his law firm, and their co-conspirators.

b. This proceeding, clearly barred by "double jeopardy" prohibitions, was nevertheless commenced on or about January 30, 1985, and prosecuted through the state judicial system, and the federal system, although Feltman had appealed the determination of Mr. Justice MARTIN EVANS.

c. Feltman and his law firm successfully resisted appellee's motion to dismiss their appeal in the Appellate Division, appellee contending that "double jeopardy" prohibitions prevented an appeal by this "self-styled public prosecutor.

d. After about one (1) year, Feltman having successfully resisted appellee's various motions to dismiss on "double jeopardy" and failure to prosecute grounds, abandoned such appeal.

e. Unquestionably, such vindication by Hon. MARTIN EVANS triggered "double jeopardy" prohibitions (Smalis v. Pennsylvania, U.S. , 106 S.Ct. 1745; Burks v. U.S., 437 U.S. 1), but in the state forums, neither appellee's applications for a Writ of Prohibition, nor his plea of "double jeopardy" on this subsequently instituted criminal contempt proceeding, produced any relief before any jurist up to, and including, the New York State Court of Appeals.

2a. Through the intervention of Administrator XAVIER C. RICCOBONO ["Corruption Incarnate"], this subsequently initiated criminal contempt proceedings against appellee and Raffe were referred to Referee Diamond -- his *ex parte* selectee -- who issued two (2) Reports which, without a trial, found both appellee and Raffe each guilty of an astronomical number of criminal contempts, and recommended incarceration and very substantial fines.

b. The Diamond Report against Raffe, was not pressed for confirmation, when Raffe paid Feltman's law firm hundreds of thousand of dollars, by check, relinquished other substantial rights, including releases to them, their co-conspirators, including various state jurists, and agreed in writing to do whatever FKM&F desired, without limitation.

As long as Raffe obeyed the requests of FKM&F, he would neither be incarcerated nor fined!

The fact that appellee was still Raffe's attorney of record, did not prevent "the criminals with law degrees" from negotiating without appellee's presence or consent (Moustakas v. Bouloukos, 112 A.D.2d 981, 492 N.Y.S.2d 793 [2d Dept.]).

c. Appellee refused to negotiate with anyone on the basis of "judicial indulgences", as an offense to God and Man, and consequently the Diamond Report was made the subject of a motion to confirm before Hon. MARTIN EVANS.

d. Mr. Justice MARTIN EVANS, a veteran jurist, as well as about everyone else, actually knew that such Diamond Report against appellee was "unadulterated garbage", and knew its purpose was to extort and blackmail, and His Honor simply let it lie fallow for many months.

e. Once again, FKM&F sought the intervention of "Corruption Incarnate", and immediately thereafter Mr. Justice MARTIN EVANS confirmed same, but imposed no penalties upon appellee whatsoever.

f. FKM&F moved to renew, but once again Mr. Justice EVANS refused to impose any penalties upon appellee, and Feltman filed a notice of appeal.

3a. The renewal motion before Mr. Justice MARTIN EVANS, was only one (1) of three (3) substantially simultaneous submissions, based on the same accusations, the same assertions, and the same evidence.

b. The very same day that the renewal Order of Mr. Justice MARTIN EVANS was filed, effectively vindicating appellee, a second Order of these substantially three (3) simultaneous submissions was filed.

c. In this second Order, in the same entitled proceeding, Mr. Justice LESTER EVENS resoundingly vindicated appellee of criminal contempt. The Order reading as follows:

> "The motion to hold GEORGE SASSOWER in contempt is denied. With regard to charges of contempt related to Mr. Sassower's motion numbered 145 on the calendar of 12-30-85, that motion has been dismissed and contempt charges are now moot. Those charges relating to Mr. Sassower's purported conduct in matters other than motion #145 are insufficient to support a finding of contempt." [emphasis supplied]

c. Thereafter, in the third simultaneous submitted contempt proceeding, Mr. Justice SEYMOUR SCHWARTZ came to a conclusion other than guilty.

4a. Within two (2) business days after service of a copy of the Order of Mr. Justice LESTER EVENS, with notice of entry, in the Office of Staff Counsel of this Court, and in his presence, FKM&F, and their co-conspirators served appellee with four (4) more contempt motions, all based on the same accusations, assertions, and evidence, on which appellee was just resoundingly vindicated by Mr. Justice LESTER EVENS!

b. Once again applications for a Writ of Prohibition were denied by the state forums.

5a. When it seemed obvious that these four (4) contempt proceedings were all going to terminate in dispositions other than guilty, Mr. Justice IRA GAMMERMAN, who with Referee DONALD DIAMOND were <u>ex parte</u> selected by "Corruption Incarnate" after <u>ex parte</u> consultation with K&R and FKM&F -- "the criminals with law degrees" -- imposed criminal sanctions against appellee.

b. As the basis of the Order of Mr. Justice IRA GAMMERMAN, there was <u>no</u> notice of motion, <u>no</u> order to show cause, <u>no</u> moving affidavit, <u>no</u> written accusation, <u>no</u> trial, <u>no</u> testimony, <u>no</u> attempted compliance in any respect with <u>Judiciary Law</u> §756, <u>nor</u> with the fundamentals of procedural or substantive due process, <u>nor</u> of any civilized right -- <u>no nothing</u> -- just criminal contempt punishment imposed upon appellee.

c. Consequently, when thereafter, the Appellate Division, reversed the sanctionless Order of Mr. Justice MARTIN EVANS (Barr v. Sassower, 121 A.D.2d 324, 503 N.Y.S.2d 392 [1st Dept.]), it visited upon appellee "double punishment".

d. The request by appellants that the Order of Judge DAVID N. EDELSTEIN be reversed, and reincarcerated, is a request by appellants that this "double punishment" be fully and totally served.

6a. Between the commencement of this contempt proceeding on January 30, 1985, until the action of the Appellate Division on May 24, 1986, in addition to the aforementioned contempt proceedings, there were many more contempt proceedings, with results other than guilty, most of which triggered constitutional, rather than statutory, "double jeopardy" prohibitions.

b. Where a result is reached other than guilty, "the criminals with law degrees" simply reinstitute the same or similar proceeding, geometrically, even a resounding vindication becomes a curse, an affliction, and a plague, as hereinbefore shown.

c. Against the appellee, a single practicioner, in this endless parade of contempt proceedings, with several always simultaneously pending, are three (3) financially affluent law firms, the potential resources of Citibank, the financial resources of a judicial trust (Puccini), an insurance company, the Attorney General Office, and even the resources of appellee's client, Raffe, who was compelled to agree to underwrite the expense of such contempt proceedings against appellee, his attorney, as the price for his freedom, and of course the active cooperation of a number of "hard core" corrupt jurists, state and federal.

7. These criminal contempt proceedings have, for the past several months ceased, not because of any action of any jurist, federal or state, <u>nisi prius</u> or appellate, but because the judiciary has become convinced that appellee has no intention of abandoning his professional duty or civilized rights, even if he is incarcerated one hundred (100) times, each time without a trial.

8a. One of the important societal values in "double jeopardy" prohibitions is to constitutionally protect the individual from the anxiety and expense of a second proceeding (<u>Green v. U.S.</u>, 355 U.S. 184), and this is uniformly recognized by all courts.

b. The qualified exception in the Second Circuit, is that "double jeopardy" and "double punishment" are not recognized where there is an attempt to expose or resist judicial misconduct, or so it seems!

9. The ultimate absurdity, legal and otherwise, is when the "Mollen thrall", in the disciplinary proceeding, speciously hold that it is not relevant how many times one is vindicated on the same charge, it is only the convictions that count, although the convictions were without any opportunity to defend!

10. Whatever the outcome of this appeal, the appellants and their criminal co-conspirators have been victorious, since the judiciary, state and federal, by the refusal to give any obedience to "double jeopardy" rights, have caused Raffe to succumb and pay tribute, appellee has been disbarred by the state courts, and is in a state of physical and mental exhaustion.

b. Nevertheless, appellee's response to the demands of surrender by these "criminals with law degrees" and their stable of corrupt judges, is still and will always be, "nuts"!

JURISDICTIONAL POINT II

APPELLANTS' APPEAL IS PURPOSELESS AND MUST BE DISMISSED.

1. Appellants' appeal can serve no purpose, and must be dismissed, since a reversal will compel appellee to continue a "double punishment", sentence (Smalis v. Pa., supra, at 1749).

2a. In Ex parte Lange (18 Wall [85 U.S.] 163, 168-169), the Court stated:

> "If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense ... there has never been any doubt of its entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offence. ... [A] plea of autrefois acquit or autrefois convict is a good defence."

b. The fact that the punishments by Mr. Justice IRA GAMMERMAN and the Appellate Division were both pursuant to patently void (trialess) convictions, makes the situation more egregious.

POINT III

RAFFE V. CITIBANK (SUPRA) COMPELS THE CONCLUSION THAT THIS COURT WILL FABRICATE, WILFULLY USURP THE JURISDICTIONAL LIMITS OF ITS POWER FOR CORRUPT ENDS.

1a. Appellants only substantive objection to the Order of Judge DAVID N. EDELSTEIN and the Report of U.S. Magistrate NINA GERSHON, is the contrived assertion, first made in the closing remarks before U.S. Magistrate NINA GERSHON, that appellee defaulted at a ["phantom"] hearing before Referee Diamond, pursuant to some "phantom" oral notice, given on some "phantom" day, such hearing to be held on some "phantom" day, at some "phantom" time, and it is supported by some "phantom" minutes.

b. Appellee cannot find any assertion of any alleged or asserted "default" by him in the five hundred thirty-two (532) page Record on Appeal in the Appellate Division, First Department, or any other place.

Indeed, the totally contrived assertion of a "default" is refuted in the Reports of Referee DONALD DIAMOND itself, as well as in numerous other documents executed by FKM&F, Referee Diamond, and others.

c. In fact, DONALD F. SCHNEIDER, Esq. ["Schneider"] of FKM&F admitted that much, late in the hearings before U.S. Magistrate NINA GERSHON [119-120], which reads as follows:

> "THE MAGISTRATE: I am correct that there is nothing in the record that indicates one way or the other as to whether or not Mr. Sassower was [invited], to appear, did appear, waived the right to appear, didn't show up or anything of the kind. He says on the documentary evidence he finds that the petitioner is guilty. Is that not correct?
>
> MR. SCHNEIDER: There is nothing in the record but we are prepared to give testimony on that issue if your Honor finds that [it] is relevant in this proceeding. [emphasis supplied]
>
> MR. SASSOWER: Referee Diamond said repeatedly: No hearing is required. I don't know how he can give testimony that there was a default when Referee Diamond said ad nauseam: no hearing is required. A plea of not guilty is tantamount to a general denial and raises no triable issues of fact. The criminal procedure law of the State of New York states a plea of not guilty is a plea of not guilty as to each and every count of the indictment or the information."

d. Two (2) days later, on November 26, 1986, in opposition to the adoption of the Report of U.S. Magistrate NINA GERSHON, Schneider executed an affidavit [33-38] which stated in relevant part [34-35]:

> "I respectfully submit this Affidavit: (i) to set forth certain relevant facts which Magistrate Gershon did not permit the Receiver to adduce at the proceeding on November 24, 1986 and which brings this case squarely within within the recent holding by the Second Circuit in Raffe v. Citibank [supra], where the Court of Appeals for the Second Circuit unanimously affirmed a criminal contempt conviction of Petitioner Sassower without a hearing based upon the various submissions submitted to the District Court (Nickerson, J.); ... I appeared before Referee Diamond in April, 1985 in connection with the criminal contempt motion ready to try this case. Petitioner did not appear."

e. Appellants, Feltman and the Attorney General, both heavily and only rely upon Raffe v. Citibank (supra) for the proposition that (1) they may fabricate an assertion of default, when none, in fact, exists; (2) that such fabricated default constitutes a constitutional waiver of the rights contained in the confrontation clause; and (3) such fabricated default constitutes a "constitutional waiver", and relieves the court of the obligation to hold trial to find guilt.

f. In short, in appellee's view Raffe v. Citibank (supra), stands for proposition that this Court will fabricate, will even usurp the limits of its jurisdictional power, for base and criminal ends!

g. The repeated false and fabricated statements in the Briefs of the appellants that appellee was notified of a hearing, on some unknown day in April, 1985; to be held on some unknown date and time in April, 1985; and that appellee wilfully defaulted; will find redress in procedures provided by law, but if this Court desires to give the appellants an opportunity to proved such assertion, appellee has no objection.

3a. In Raffe v. Citibank (supra) Judge EUGENE H. NICKERSON, on June 7, 1985, issued an Order holding appellee and his client, Raffe, in "civil and criminal contempt of court", without a trial, based on the wholly contrived assertion that there was a default on (1) April 25, 1985 and (2) May 30, 1985, which in an unpublished opinion, was affirmed by this Court.

b. Such action by Judge EUGENE H. NICKERSON; Chief Judge, WILFRED FEINBERG; Circuit Judge, IRVING R. KAUFMAN; and Circuit Judge, THOMAS J. MESKILL, has resulted in a lawsuit seeking, inter alia, money damages against them (Vilella v. Santagata, 87 Civ. 1450 [GLG]).

c. Feltman, FKM&F, K&R, the Attorney General, and members of his office are co-defendants in such lawsuit.

d. Judges FEINBERG, KAUFMAN, MESKILL, and NICKERSON, are also the subject of a Rule §0.24 complaint.

e. Furthermore, since appellee, who has been disbarred based, inter alia, on such and the other trialess convictions, which he was not allowed to controvert, has vowed that he will be "the last victim" of the unauthorized and unlawful use of the contempt power (cf. Nye v. United States, 313 U.S. 33, 46).

f. Appellee has vowed on the Alter of God that no person in his country will ever again be compelled to flee his home in the middle of the night with his word processing equipment, files, and other personal property, go underground, and otherwise become the subject of mentally depraved judicial and legal minds, whose object is a base criminal adventure.

g. In short, appellants and members of this Court are joint defendants in the above lawsuit, will be joint defendants in another lawsuit soon to follow, will be adversaries in a judicial disciplinary proceeding, adversaries in congress, the media, public interest groups, bar associations, and other organizations.

h. It is not simply a difference of opinion between appellee and members of this Court, if not the Court itself, it is Armageddon!

4. For the purpose of only establishing the fact that members of this Court were made defendants in good faith, the skeleton facts in Raffe v. Citibank (supra) are set forth:

a. K&R claimed that appellee and Raffe were in default on April 25, 1985 for a deposition.

b. On the return of the Order to Show Cause based on such contrived allegation of default, with great specificity, appellee totally demolished such default contention, and Judge Nickerson simply set the matter down for Tuesday, May 28, 1985 at 4:00 p.m. for deposition.

c. *Ex parte*, K&R conferred with Judge Nickerson and had the time changed to 3:00 p.m.

d. Appellee rearranged his schedule, was in Court at 3:00 p.m., was seen there by other attorneys and both clerks of Judge Nickerson, and when neither K&R, nor its claimed ["phantom"] stenographer appeared, appellee "time clocked" himself out at 3:22 p.m.

e. Again *ex parte*, K&R saw Judge Nickerson, and appellee was notified on Wednesday, May 29, 1985 that such deposition would take now place at 10:00 a.m. the following day, Thursday, May 30, 1985.

f. Immediately upon receipt of such notice, appellee notified his adversary that he was scheduled to proceed to trial in a state court. He also executed an affidavit of actual engagement, which was immediately served and filed, with a courtesy copy to His Honor.

Indeed, appellee did actually proceed to trial, the matter having been marked peremptorily against both sides.

g. Despite the fact that both Judge EUGENE H. NICKERSON and K&R knew that appellee had been scheduled to proceed to trial on Thursday, May 30, 1985 in a state court, and actually did so, on Monday, June 3, 1985, His Honor signed an Order to Show Cause why appellee and his client should not be "held in contempt", for their wilful and intentional default on May 30, 1985.

h. Service of such Order to Show Cause could be made by [regular] mail, as late as Tuesday, June 4, 1985, with appellee's response to be served personally on K&R by Thursday, June 6th, 1985 by 4:00 p.m.

It was therefore within the realm of reasonable possibility that appellee's opposing papers were due before he even saw such Order to Show Cause.

i. On page eight (8) -- page 8 -- of the supporting affidavit -- and at no place earlier -- penal sanctions were sought by K&R for appellee's "wilful default" on May 30, 1985.

j. Notwithstanding the almost impossible task imposed by Judge EUGENE H. NICKERSON, appellee fulfilled the requirements as set forth in such Order to Show Cause, with a blistering opposing affidavit which in part read:

> "In view of the apparent penal nature of this proceeding, deponent asserts the privileges contained in Amendment V of the United States Constitution. Deponent also respectfully requests that any hearing include the claim of the deprivation of 'equal protection' ".

k. With opposing papers before His Honor, on Friday, June 7, 1985, the return date of such Order to Show Cause, without any trial, hearing, allocution, nor anything else, Judge EUGENE H. NICKERSON, that same day, signed a K&R, long form Order, holding appellee and his client in "criminal, as well as civil, contempt" for failure to appear on April 25, 1985 and May 30, 1985; Rule 42b of the Rules of Crim. Proc., the Act of March 2, 1831, and Nye v. United States (313 U.S. 33) notwithstanding.

l. Significantly, at the time K&R commenced such supplementary proceedings against appellee and his client for $9,300 each, without any demand, it had in hand two (2) financial reports revealing that Raffe's assets were about $10,000,000 and identified his banking associations.

m. It also served upon various financial institutions two hundred (200) subpoenas each one restraining twice the amount of the judgment (CPLR §5222[b]), or about $4,000,000 on such $9,300 judgment and had also restrained appellee's bank assets.

o. There can be little question that Judge EUGENE H. NICKERSON did not have the jurisdictional power to impose a judgment of non-summary criminal contempt nunc pro tunc, for appellee's failure to appear on April 25, 1985 and May 30, 1985, even if such default did occur.

A person is entitled to known beforehand the criminal consequences of his non-appearance, assuming arguendo appellee did default.

p. There can be little question that Judge EUGENE H. NICKERSON did not have the jurisdictional power to hold in criminal contempt, when the first notice of same was on page 8 of the moving affidavit, and only in the form that penal sanctions were desired.

q. There is little question that having a response from the appellee, which did not include the plea of "guilty" as a matter of ministerial compulsion, appellee was entitled to a trial or hearing (Rule 42b).

r. In any event, for such a judgment for criminal contempt, Judge EUGENE H. NICKERSON had to take testimony, even if His Honor found that appellee had constitutionally waived his right to be present.

s. Judge NICKERSON also knew that K&R could not show criminal contempt, even if the trial was by an unopposed inquest, and thus His Honor ignored this fundamental requirement in issuing a judgment of conviction.

t. Instructively, for almost one and one-half (1 and 1/2) years, Judge NICKERSON had actual knowledge that K&R had engineered the larceny of Puccini's judicial trust assets, and nevertheless charted a steady and direct judicial course to aid, abet, and reward same.

5. On appeal, in an attempt to contrive jurisdiction, but failed, the Circuit Court held appellee's "jurisdictional objection to the contempt order [to be] groundless"; that they were "particularly unimpressed with appellants' excuses for their numerous defaults"; and that they "reviewed appellants' claim that criminal contempt entitles them to a hearing and find no merit to appellants' procedural objections, in view of their failure to respond adequately to Judge Nickerson's order to show cause ..."

a. What defaults? When only two (2) defaults were claimed at nisi prius, how could there be an assertions of "numerous defaults" by the Circuit Court of Appeals?

b. What excuses did appellee tender except an affidavit of actual engagement, on a less than one (1) day notice to appear for a deposition, after K&R defaulted!

c. Where there is no plea of guilty, can Judges Feinberg, Kaufman, and Meskill find a single federal judge in the entire United States who would testify in open court that appellee is not entitled to a trial or hearing when the charge is non-summary "criminal contempt"?

d. Can Judges Feinberg, Kaufman, and Meskill find a single federal judge in the entire United States who would testify in open court that appellee could not assert his 5th Amendment rights where the accusation seeks penal consequences?

e. Everyone, but everyone, including the learned jurists of the Circuit Court of Appeals for the Second Circuit know that as long as the accused does not utter or write the words "guilty", as a matter of ministerial compulsion, requiring no discretion whatsoever, the accused is entitled to a trial before he is found guilty, even if he voluntarily absents himself from such trial!

The proposition is sufficiently basic that neither Judge Feinberg, Judge Kaufman, Judge Meskill, nor Judge Nickerson, would dare, in a public forum or courtroom, deny same.

f. If this Court desires, once again, to repeat the performance of Judges Feinberg, Kaufman, and Meskill, it will be amply publicized, as is appellee's lawful right.

g. There can be little question that Judge Feinberg, Judge Kaufman, Judge Meskill, and Judge Nickerson each know that Congress by the Act of March 2, 1931 took away any power they might claim to have to incarcerate without a trial or hearing (see Rule 42b, Rules of Criminal Procedure).

h. Here again the Circuit Court of Appeals knew that K&R were thieves, perjurors, and corruptors, but again went to their aid!

JURISDICTIONAL POINT IV

THIS COURT IS NOT CONSTITUTIONALLY QUALIFIED TO ADJUDICATE THIS MATTER

1a. The underlying proceeding is criminal contempt where the criteria for constitutional adjudicatory qualification is the "appearance of justice" (In re Murchison, 349 U.S. 133), which is not the subject of any harmless error analysis (Delaware v. Van Arsdall, U.S. , 106 S.Ct. 1431).

b. If there should be any difference or distinction between a contempt proceeding and a habeas corpus proceeding where the underlying crime is contempt, such distinction or difference evades appellee.

c. In any event the holding in Aetna v. Lavoie (U.S. , 106 S. Ct. 1580), should disqualify the entire circuit for there are other Circuit Courts that can adjudicate this matter. There simply is no "duty to sit" when alternative tribunals exist.

JURISDICTIONAL POINT V

THIS COURT, BY RECOGNIZING FELTMAN, AS RECEIVER, TO APPEAL IS AIDING, ABETTING, AND FACILITATING CRIMINAL CORRUPT ACTIVITIES.

1a. The appellee has never done any act which was adverse to the interests of Puccini.

b. Indeed, it is appellee who has aided Puccini's legitimate interests, by exposing that appellant, Feltman, his law firm, and their co-conspirators have wrongfully and/or criminally taken vast amounts of its assets.

2a. Thus, by what moral or ethical right can the appellant, Feltman, and his law firm, FKM&F, claim compensation from Puccini for pursuing appellee?

b. This Court has an administrative obligation to assure itself that in its forum, Puccini, a helpless "person" is not being betrayed by its court appointed representative (Evitts v. Lucey, 469 U.S. 387; Strickland v. Washington, 466 U.S. 668).

c. By even entertaining this appeal, without inquiring as to the source of appellant's compensation, a fraud is being committed on Puccini and the judicial process.

JURISDICTIONAL POINT VI

THIS COURT, BY RECOGNIZING ABRAMS TO INTERVENE IS AIDING, ABETTING, AND FACILITATING CRIMINAL CORRUPT ACTIVITIES.

1a. The statutory obligation of Abrams, the Attorney General, is to compel Feltman to account, and terminate this charade on justice.

b. Instead, he has been permitted to intervene by falsely claiming that the constitutionality of a statute is in issue, when it is not.

2a. This Court's obligation is to insure a clean tribunal, free from fraud and corruption, and doing such things that may be needed to accomplish that result (Hazal-Atlas v. Hartford, 322 U.S. 238; Universal v. Root, 328 U.S. 575).

b. Abrams application to intervene should be denied, *nunc pro tunc*.

CONCLUSION

APPELLANTS' APPEAL AND LEAVE TO INTERVENE SHOULD BE DISMISSED AND/OR VACATED, AND/OR THE ORDER AFFIRMED, WITH SUBSTANTIAL COSTS.

Dated: March 30, 1987

Respectfully submitted,

GEORGE SASSOWER, Esq.
Appellee-pro se.