

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

87cv1450
SDNY
GOETTEL

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 29th day of January, one thousand nine hundred and eighty-eight.

PRESENT:

Hon. James L. Oakes,
Hon. Jon O. Newman,
Hon. Roger J. Miner,
Circuit Judges.



Dennis F. Vilella, Donald Leighton
and Harold Cohen,

Plaintiffs,

and

George Sassower,

Plaintiff-Appellee,

v.

87-6211
87-6233

Hon. Marie G. Santagata, Hon. Bruce McM. Wright;
Hon. Martin Evans; Hon. Milton Mollen and Hon.
William C. Thompson, individually and as Presiding
Justice of the Appellate Division of the Supreme
Court, State of New York, Second Judicial Department;
Hon. Francis T. Murphy and Theodore R. Kupferman, as
Presiding Justice and Justice Presiding of the Supreme
Court of the State of New York, First Judicial Depart-
ment; Hon. Wilfred Feinberg, individually, and as Chief
Judge of the United States Court of Appeals, for the
Second Circuit; Hon. Irving R. Kaufman and Hon. Thomas J.
Meskill, Circuit Judges of the United States Court of
Appeals for the Second Circuit; Hon. Eugene H. Nickerson,
Judge of the United States District Court, Eastern District
of New York; Hon. Alvin F. Klein, Justice of the Supreme
Court of the State of New York; Hon. William C. Conner;
Hon. Ira Gammernan; Referee Donald Diamond; Administrator
Xavier C. Riccobono; Chief Administrative Judge Joseph W.
Bellacosa; Hon. Robert Abrams; Assistant Attorney General
David S. Cook, Esq.; Kreindler & Relkin, P.C.; Jerome H.
Barr, Esq.; Citibank, N.A.; and Rashba & Pokart,
Defendants,

and

Feltman, Karesh, Major & Farbman and
Nachamie, Levine, Spizz & Goldberg, P.C.,
Defendants-Appellants.

O R D E R

Appellant law firms appeal the denial of their motion by the United States District Court for the Southern District of New York, Gerard L. Goettel, Judge, seeking the appointment of an attorney to prosecute George Sassower for criminal contempt. Because we feel that Judge Goettel's denial was clearly within his considerable discretion, we affirm.

The power of the district courts to punish criminal contempts, and their ancillary capability to appoint a private attorney to prosecute such contempts, is "essential in ensuring that the Judiciary has a means to vindicate its own authority." Young v. United States ex rel. Vuitton et Fils, 107 S. Ct. 2124, 2131 (1987). But it is equally clear that the exercise of the contempt power should be "the least possible ... adequate to the end proposed," and that the "principle of restraint in contempt counsels caution in the exercise of the power to appoint a private prosecutor." Id. at 2134; see UFI Razor Blades, Inc. v. District 65, Wholesale, Retail, Office and Processing Union, 610 F.2d 1018, 1024 (2d Cir. 1979). In light of this mandated caution, it would be odd indeed for us to hold that Judge Goettel abused his discretion because he did not act aggressively enough.

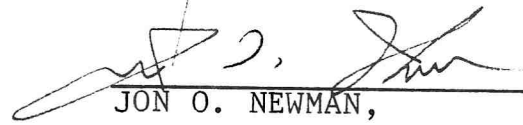
Equally important, the contempt power exists to protect the authority of the district court, not to vindicate private rights.

As such, the district court is undoubtedly in the best position not only to determine whether conduct constituting a contempt has occurred, but also to recognize whether such an order is necessary. The district court will also be better informed on the related issues of whether the contempt will be effective and the impact of the contempt proceeding on the rest of the action. All of these factors taken together make it unlikely that, except in an extraordinary case, we would ever reverse the district court's discretion to forego appointing a private prosecutor. This is not such a case.

Judgment affirmed.



JAMES L. OAKES,



JON O. NEWMAN,



ROGER J. MINER, Circuit Judges.

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.