86-2458

To be argued by:
GEORGE SASSOWER, Esq.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

---x

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.

Motions
Apr. 7, 1987

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

---x

MEMORANDUM OF PETITIONER-APPELLEE

GEORGE SASSOWER, Esq.
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PRELIMINARY STATEMENT

1a. In Town of Newton v. Rumery (55 USLW 4304), Mme. Justice O'Conner, in concurring, stated (at p. 4308):

> "No court would knowingly permit a prosecutor to [drop criminal charges] ... in exchange for the defendant's cash payment to [his prosecutors]".

b. In the Second Circuit, FELTMAN, KARESH, MAJOR & FARBMAN, Esqs. ["FKM&F"] and KREINDLER & RELKIN, P.C. ["K&R"] -- "the criminals with law degrees" -- openly boast, with documented confirmation, that they control the "machinery of justice", state and federal, to the extent that they can "criminally extort" cash payments and secure other valuable considerations, in exchange for compounding criminal prosecutions.

c. While "the criminals with law degrees" and CITIBANK, N.A. ["Citibank"], can steal, perjury, corrupt and extort, aided, abetted, and facilitated by the jurists and public prosecutors, state and federal, seemingly at will, in the Second Circuit, they do admit defeat in attempting to compel appellee to succumb to their unlawful "reign of terror".

2a. It is now more than eighty-two (82) months, almost seven (7) years since PUCCINI CLOTHES, LTD. ["Puccini"] -- "the judicial fortune cookie" -- was involuntarily dissolved, its assets and affairs becoming custodia legis, under color of law, and not a single accounting has been filed, the statutory mandates notwithstanding (Bus. Corp. Law §1216[a]; 22 NYCRR §202.52[e], §202.53).

b. LEE FELTMAN, Esq. ["Feltman"], the appellant, the senior partner in FKM&F, the "self proclaimed public prosecutor", simply cannot file any true accounting without exposing the massive larceny, perjury, and corruption, with respect to Puccini's trust assets.

3a. Since appellee may defend the Order of Judge DAVID N. EDELSTEIN (Sassower v. Sheriff, 651 F. Supp. 128), by any means consistent with the Record, he does so without attempting to erode the legal correctness of the opinions of either U.S. Magistrate NINA GERSHON or Judge DAVID N. EDELSTEIN (Bloom v. Illinois, 391 U.S. 194; Pointer v. Texas, 380 U.S. 400).

b. Nevertheless, since the appellants have now factually contrived a "default" by appellee, such opinions should have added to them the basic proposition that there can be no "guilty" verdict in criminal law without sworn oral testimony at a trial or hearing, irrespective of the presence of a defendant.

Affidavits, without more, simply will not suffice to support a verdict of guilty!

STATEMENT

1. Petitioner-appellee, by three (3) motions, moves to dismiss the appeal of the intervenors-appellants based on (1) "double jeopardy" and/or "double punishment"; (2) invidious and selective prosecutions; and (3) that the proceedings involving Referee DONALD DIAMOND, including the present contempt proceeding, vel non, took place in the "non-public courtroom of Referee DONALD DIAMOND".

2. In appellee's 28 U.S.C. §2254 writ, he stated:

> "Double [multiple] jeopardy. Results other than guilty on same contentions about seventeen (17) times, including resounding vindication on the same day by Hon. LESTER EVENS; Double punishment (see annexed [state] Writ" [7]
>
> "On the same day that the Order of Mr. Justice MARTIN EVANS was entered, based on the same fact, evidence, assertions and contentions, the Order of Mr. Justice LESTER EVENS was entered in the same proceeding, which resoundingly vindicated petitioner.
>
> Additionally there were about fourteen (14) other contempt proceedings based substantially upon the same facts, evidence, assertions and contentions which did not result in convictions. Thus constitutional and statutory 'double [multiple] jeopardy', precludes any conviction or incarceration herein.
>
> Making punishment herein more egregious, subsequent thereto, when about eight (8) contempt proceedings had destined to result in non-convictions, Mr. Justice IRA GAMMERMAN, without any prior notice, without warning, without any supporting papers, without a trial, and was even the pretense of complying with Judiciary Law §756, or its constitutional basis, in the same proceeding, based on the same facts, evidence,

contentions, and assertions punished petitioner for contempt. Obviously, there can not be 'double punishment' for the same alleged crime under either constitutional or statutory standards of 'double jeopardy'!"[14-15].

b. Appellee's §2254 Writ further states:

"Would not permit and did not negate petitioner's contention of invidious and selective prosecution by 'criminal with law degrees', who petitioner has exposed as engaged in the massive larceny of judicial trust assets, perjury, criminal extortion, and corruption, which includes the 'trio of judicial fixers' at nisi prius, to wit., Administrator Xavier C. Riccobono, Mr. Justice Ira Gammerman, and Referee Donald Diamond [8].

Criminal contempt proceedings, completely controlled by private adversarial counsel are plainly unconstitutional (Polo Fashions v. Stock Buyers, 760 F.2d 698 [6th Cir.], amicus invited, U.S. , 106 S.Ct. 565, 88 L.Ed2d 550; U.S. ex rel. Vuitton v. Klayminc, 780 F2d 179 [2d Cir.]), particularly where, as here, adversarial counsel are nothing better than 'criminals with law degrees' who have engaged themselves in the larceny of judicial trust assets, perjury, extortion, and corruption.

Simply to compel the receiver to account, on this judicial trust, and/or to submit his and his criminal co-conspirators records to an impartial examination would instantly reveal that the purpose of petitioner's unconstitutional convictions and incarcerations is nothing less than a desperate attempt to conceal massive criminal activity!

Private adversarial counsel, 'indulgence peddlers', have employed and are employing these sham criminal convictions as a means of criminal extortion, by compounding alleged criminal conduct and convictions to those who succumb or agree to succumb. [16]

The firms of FELTMAN, KARESH, MAJOR & FARBMAN, Esqs. and KREINDLER & RELKIN, P.C. are corrupt, who have not and can not account for the assets of Puccini, without exposing the massive larceny, perjury, and corruption that took place wherein they were the prime participants!

Obviously, petitioner is repeatedly convicted and incarcerated, not for what he did, but for what he knows, and his refusal to succumb to a 'code of silence' and incaction." [18]

Obviously, nothing herein is intended to adversely reflect upon the respondent, the Westchester County Sheriff or his attorney, the Westchester County Attorney. On the contrary, they have disobeyed for the past seven months the mandates originating from New York County to 'break-into' petitioner's premises, 'seize all word processing equipment and soft ware', 'inventory' petitioner's possessions and 'report' same, and even to 'rip open' petitioner's 'mattress'." [19]

c. Appellee's federal writ also states:

"No Trial. Referee Diamond held that a plea of 'not guilty' to criminal charges is tantamount to a general denial, which raises no triable issues of fact; Referee Diamond knows of his own knowledge that petitioner is guilty, and therefore no trial necessary; and similar 'garbage'. In the non-public courtroom of Referee Diamond, petitioner is barred. In any event there was no trial." [emphasis supplied] [4]

POINT I

APPELLANTS HAVE "FIXED" OR INTEND TO ATTEMPT TO "FIX" THIS COURT. CONSEQUENTLY, AS A MATTER OF LAW, THIS COURT SHOULD DISQUALIFY ITSELF.

1. The underlying convictions were for non-summary criminal contempt, where the "appearance of justice" is the constitutional criteria for the power and authority to adjudicate (In re Muchison, 349 U.S. 133; cf. Aetna v. Lavoie, U.S. , 106 S.Ct. 1580).

2a. The track record irresistibly compels the conclusion that some of the Judges of this Court will usurp their legal limitations of power in order to advance the criminal adventures of K&R; its clients, including Citibank; and FKM&F, for which there is presently a law suit (Vilella v. Santagata, 87 Civ. 1450 [GLG]), and wherein appellants are some of the co-defendants with members of this Court.

Additionally a Rule §0.24 complaint (87-8503) pends against some of the members of this Court, wherein it is presently intended that the limits of the rule will be exhausted by appellee, if necessary.

b. The skeleton facts for such action and complaint, as set forth in appellee's brief, for such lawsuit, and §0.24 complaint, are as follows:

> In Raffe v. Citibank, Judge EUGENE H. NICKERSON, on June 7, 1985, issued an Order holding appellee and his client, HYMAN RAFFE ['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 (#85-7471).
>
> K&R claimed that appellee and Raffe were in default on April 25, 1985 for a deposition.
>
> 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.

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

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.

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

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.

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.

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.

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.

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' '.

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.

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.

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.

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.

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.

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).

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.

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.

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.

c. 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 ...'

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?

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!

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 was not entitled to a trial or hearing when the charge is non-summary 'criminal contempt'?

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?

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.

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).

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

3. Given the multitude and strength of the constitutional defects in this conviction, no rational attorney would appeal the Order of Judge DAVID N. EDELSTEIN unless he had a 'fix' in this Court, or reasonably believed that he could 'fix' the judges of this Court once again, as FKM&F openly boast they can do!

POINT II

THE APPELLANT-RECEIVER AND HIS LAW FIRM ARE PLAYING FAST AND LOOSE WITH THE JUDICIAL SYSTEM BY THEIR OPPOSING AFFIDAVIT.

1a. Feltman, the appellant-receiver, and FKM&F, his law firm are playing "fast and loose" with this Court, particularly when they present themselves to this Court as "criminal prosecutors", supposedly operating under a code of ethics which is attempting to do justice, rather than convict (Berger v. U.S., 295 U.S. 78).

b. They and their co-conspirators are not only "thieves with law degrees", but have employed the "machinery of justice" to extort (Code of Professional Responsibility, Disciplinary Rule, 7-105).

2a. The short, factually bereft, evasive, opposing affidavit of DONALD F. SCHNEIDER, Esq. ["Schneider"] of FKM&F states [p. 2-3]:

> "Sassower's three motions, each of which in essence seeks summary affirmance of the District Court's Order .... are based entirely conclusory and unsubstantiated contentions. ...

Sassower contends that his subject criminal contempt conviction is barred by the principle of double jeopardy in view of his exoneration of contempt charges on 'at least seventeen' occasions. Not one of these decisions constituting a so-called 'exoneration' appears either in the Record or is annexed to Sassower's Affirmation on this motion.

In his moving Affirmation, Sassower does not contend that any of the other alleged contempt proceedings was based on any, let alone all, af the same sixty-four charges which resulted in the subject Criminal Contempt Order; he only argues, once more in conclusory fashion, that his conviction 'was prohibited by double jeopardy concepts.' The simple reason for his carefully worded Affirmation is that not one of the subject sixty-four counts was ever made a basis for contempt in any other proceeding.

If Sassower had been subjected to double jeopardy, it would be very simple for him to submit to this Court a copy of the charges on which he claims to have been previously placed in jeopardy. The fact is that there is nothing in the Record on this appeal or on this motion which 'uncontrovertibl[y]' demonstrates (as Sassower contends, let alone even raises any legitimate inference, of a double jeopardy bar.

Similarly, the Record is utterly bereft of any evidence to support his 'invidious' prosecution and 'non-public courtroom' contentions.

None of Sassower's contentions on these three motions were briefed or addressed by the District Court, and they should not be determined summarily by this Court without a full briefing of the issue."

b. The only correct assertion in Schneider's affidavit is that the U.S. Magistrate NINA GERSHON and Hon. DAVID N. EDELSTEIN did not discuss these issues in Sassower v. Sheriff (supra), albeit making mention of some of them (at p. 129). Obviously, their Honors concluded it was unnecessary to pass on such issues, in view of the conclusion reached.

3a. If a court permits adversary civil counsel to serve as a criminal prosecutor (U.S. ex rel. Vuitton v. Klayminc, supra; McCann v. N.Y. Stock Exchange, 80 F.2d 211 [2d Cir.]), the court has the concomitant responsibility to assure the accused that he is being afforded due process (Brady v. Maryland, 373 U.S. 83; United States v. Agurs, 427 U.S. 97; Disciplinary Rule 7-103b).

b. The Record reveals that appellant simply ignores appellee's United States v. Agurs (supra) demands [420-424].

Thus, for example, appellee demanded [at 424]:

> "Set forth a true copy of any contemporaneous motion or proceeding for substantially similar relief."

c. The aforementioned affidavit submitted by FKM&F to this Court is a fraud upon this Court and deprives appellee of due process.

POINT III

DOUBLE JEOPARDY AND DOUBLE PUNISHMENT BARS THIS APPEAL AND IT MUST BE DISMISSED.

1a. Feltman's Record on Appeal at the Appellate Division, First Department, filed with Judge DAVID N. EDELSTEIN, reveals:

b. Appellee's affidavit of February 1, 1985 which states [Rec. 103]:

> "Implicit in the Order ... entered January 4, 1985 is a finding that deponent [appellee] was 'not guilty' of criminal contempt.

Consequently double jeopardy has attached to this subsequent proceeding (Constitution of the United States, Amendment V and XIV, and the Constitution of the State of New York, Article 1, §6).

If there is any question concerning the intent of the movants [FKM&F], annexed is their Order with Notice of Settlement [Rec. 104-110]."

c. To such plea, Referee DONALD DIAMOND, stated [Rec. 159]:

"I report that no factual issue is raised by the conclusory claim of 'double jeopardy' in [appellee's] affidavit that would bar the granting of the relief requested in the action-in-chief."

d. Whether there was an intent by Hon. MARTIN EVANS to find appellee "not guilty" or a mere failure to proof, is irrelevant since "double jeopardy" clearly attached to a proceeding commenced by FKM&F, a mere twenty-six [26] days later (Smalis v. Pennsylvania, U.S. , 106 S.Ct. 1745; Burks v. U.S., 437 U.S. 1).

e. Appellee, in his motion papers states and sets forth (p. 6), without any denial from neither Feltman nor FKM&F nor anyone else that on the same day that this conviction was rendered against appellee, to wit., January 27, 1986, Mr. Justice LESTER EVENS, in the same case, based on the same allegations, assertions, and evidence resoundingly vindicated appellee.

Such Order, <u>in haec verba</u>, reads 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."

In appellee's brief at the Appellate Division, First Department, he stated:

> "The charges of criminal and civil contempt herein against Sassower, was only one (1) of three (3) similar motions, made upon the same allegations and evidence, during the same short period of time, all simultaneously <u>sub judice</u>!
>
> b. When the first vindicating order and decision [per Hon. LESTER EVENS] was served upon the 'criminals with law degrees', with notice of entry, within two business days, Sassower was inundated with four (4) more similar motions, based upon the same allegations and evidence, again to hold him in criminal and civil contempt.
>
> Thus, as against 'felons with law degrees', who obviously have captured and hold hostage the 'machinery of justice', vindication has become a curse, as vindication only triggers, in geometric fashion, new, repetitive, proceedings, based upon the same assertions and evidence."

This Order is also recited, without any denial, in appellee's moving papers, which this Court should judicially notice (Rule 201).

f. Also, not disputed by appellant Feltman, nor his law firm, FKM&F, as stated in appellee's writ and his motion papers, that while pending appeal, and with six (6) contempts all resulting in results other than "guilty", the other personal selectee of Administrator Xavier C. Riccobono, to wit., Mr. Justice Ira Gammerman, without notice, warning, trial, due process, nor anything else, imposed criminal contempt sanctions against appellee (Rule 201).

Consequently, appellee's incarceration during November-December 1987, constituted "double punishment", which by this appeal, appellants desire to be continued until completion of the imposed term!

In addition to "double jeopardy" there cannot be, as a matter of law, "criminal contempt" where judges disagree. For if judges disagree, there is "reasonable doubt" (California v. Molitor, 113 U.S. 609, 618)!

POINT IV

THERE CAN BE NO FIRM REVERSAL UNLESS APPELLEE'S CONTENTION OF "INVIDIOUS AND SELECTIVE PROSECUTION" IS RESOLVED.

1a. There can be no more serious charge against a public prosecutor, de jure or de facto, or the judiciary, then the assertion that the criminal process is being employed to "extort" or "blackmail" a person into making payments.

b. There is nothing in the several opinions in Town of Newton v. Rumery (supra) to indicate otherwise.

2. None of the allegations and assertions set forth in appellee's moving papers have been controverted, which in haec verba reads as follows:

> 1. This affirmation is made in support of a motion to dismiss the above appeal based on invidious and selective prosecution by the 'self-styled, self-appointed public prosecutors', who operate under a 'Capone Code of Criminal Ethics'.
>
> 2a. These multiple, repetitious, and baseless contempt proceedings, brought by KREINDLER & RELKIN, P.C. ['K&R'] and its clients, including CITIBANK ['Citibank'], and FELTMAN, KARESH, MAJOR & FARBMAN, Esqs. ['K&R'] contrary to their judicial trust (Strickland v. Washington, 466 U.S. 668), are not brought to vindicate violations of the mandate of society, but to extort, blackmail, and harass, for a private criminal end.
>
> b. These convictions serve simply as 'judicial indulgences' for private and criminally corrupt purposes.
>
> c. As against the resources of Citibank and a affluent judicial trust, affirmant is helpless, and indeed has been driven into bankrupcy.
>
> 3a. The best example are the convictions of Mr. Justice ALVIN F. KLEIN ['Klein'], a 'hard core' corrupt state jurist.
>
> b. In a single proceeding, in one document, he found HYMAN RAFFE ['Raffe'], SAM POLUR ['Polur'], and your affirmant guilty of non-summary criminal contempt and sentenced each to be incarcerated for non-summary criminal contempt for thirty (30) in a proceeding brought by K&R and FKM&F, 'the criminals with law degrees'.
>
> 4a. Raffe paid hundreds of thousands of dollars, by check, relinquished considerations worth in the millions, including releases to Klein, Administrator XAVIER C. RICCOBONO ['Corruption Incarnate'], Mr. Justice IRA GAMMERMAN, and Referee DONALD DIAMOND, and other members of the judiciary, and he never served a minute of incarceration.

A Report of Referee DONALD DIAMOND, similar to the one in Sassower v. Sheriff (supra), was agreed never to be moved for confirmation, as long as Raffe obeyed the instructions of FKM&F.

b. Polur served his full term of incarceration, but when he left the scene, the disciplinary proceeding against him based on such trialess conviction was held in abeyance to insure continual submission to a 'code of silence'.

c. Affirmant served his full term also, but when he refused to succumb to 'the criminals with law degrees' and refused to deal in 'judicial indulgences' was disbarred based on inter alia such conviction.

5a. These 'criminals with law degrees' who have engaged in criminal activity, including judicial corruption, have been employing the criminal process for private criminal ends.

b. Obviously these 'criminals with law degrees' do not operate under any Berger v. U.S. (295 U.S. 78) standard, do not make any Brady v. Maryland (373 U.S. 83) disclosures, or respond to any United States v. Agurs (427 U.S. 97) demands."

POINT V

THERE CANNOT BE A CONSTITUTIONAL JUDICIAL PROCEEDING, CONTEMPT OR OTHERWISE, IN A "NON-PUBLIC COURTROOM".

1. The Gordian Knot should be cut, and all proceedings, contempt or otherwise, in the non-public courtroom of Referee DONALD DIAMOND, must be declared null and void (Matter of Oliver, 333 U.S. 257).

2a. The photograph in Newsday on November 2, 1986, annexed to the moving papers, revealing its non-public character, makes the concession by the Attorney General supererogatory, and the silence by FKM&F, eloquent.

b. Except in very limited situations, not applicable herein, it simply is not a judicial proceeding if the presiding judicial official has the power to, and does, exclude the public or any member thereof.

CONCLUSION

THIS COURT MUST RECUSE ITSELF. THE APPEAL BY THE APPELLANTS MUST BE DISMISSED OR SUMMARILY AFFIRMED, WITH SUBSTANTIAL COSTS.

Dated: April 5, 1987

Respectfully,

GEORGE SASSOWER, Esq.
Attorney for appellee