

In The
SUPREME COURT OF THE STATE OF NEW YORK
October Term, 1991
No.

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SUPREME COURT, U.S.

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In re:
GEORGE SASSOWER,
Petitioner.
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x-----x
PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION
TO THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT
x-----x

x-----x
PETITION
x-----x

QUESTIONS PRESENTED

1. Should the U.S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT and Chief U.S. Circuit Judge J. CLIFFORD WALLACE, [hereinafter the "respondents"], be mandated to file petitioner's cross-motion, dated July 30, 1991, and render a determination thereon, wherein the relief requested by petitioner in such cross-motion was:

"to strike the appearance of Assistant U.S. Attorneys BARBARA L. HERWIG and EDWARD T. SWAINE, a rejection of their papers, purportedly on behalf of federal officials, as unauthorized, improper and a fraud upon this Court ..."?

2. Should the respondents be mandated to file petitioner's "General Bias Recusal Affirmation" of August 19, 1991, and render a determination thereon?

3. In view of the aforementioned return of petitioner's papers, should the respondents be prohibited from accepting a Notice of Appearance from Assistant U.S. Attorneys BARBARA L. HERWIG and EDWARD T. SWAINE for scope uncertified federal officials, in a different action and appeal, but

involving the same interests in the same court, particularly where the tortious conduct defended is hostile to governmental interests, monetarily and otherwise?

4. Where the plain language of the FEDERAL TORT CLAIMS ACT, as amended, the manifest statutory intent, the judicial decisions rendered thereunder, and the uniform practice of the Department of Justice whereby they only represent federal officers and employees, at federal cost and expense, when they are "scope certified" and the United States substituted as the defendant, should the respondents be prohibited from permitting a disparate practice by the Department of Justice when petitioner is involved?

5. Is the constitutional scheme violated when Department of Justice, Article I, attorneys, charged with the duty to prosecute those who transgress the criminal code, represent Article III jurists, sued in their personal capacities, when those Article III jurists are involved in, inter alia: the diversion of substantial monies payable "to the federal court" to private pockets; the larceny of judicial trust assets; extortion, and other criminal racketeering activities?

6. Where there exists an unlawful, criminal and unconstitutional arrangement between high echelon members of the federal judiciary and the U.S. Department of Justice, is remedial action by this Court warranted and/or mandated?

THE PARTIES

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U.S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT
Respondent
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Chief U.S. Circuit Court Judge J. CLIFFORD WALLACE
Respondent
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Ass't U.S. Attorney BARBARA L. HERWIG
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OPINIONS BELOW

None

JURISDICTION

- (i) None.
- (ii) None.
- (iii) Not Applicable
- (iv) 28 U.S.C. §1651[a]

CONSTITUTIONAL-STATUTORY PROVISIONS

1. Article III of the U.S. Constitution provides:

§1 The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. ... §2[1] The judicial power shall extend in all cases, in law and equity, arising under this Constitution, the laws of the United States ... to controversies to which the United States shall be a party

2. Article VI[2] of the U.S. Constitution provides that:

This Constitution and the Laws of the United States which shall be made in pursuance thereof; ... shall be the supreme Law of the Land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

3. The First Amendment of the U.S. Constitution provides that:

Congress shall make no law respecting ... abridging the freedom of speech ... or the right of the people peaceably ... to petition the government for a redress of grievances.

4. The Fifth Amendment of the U.S. Constitution provides that:

No person ... be deprived of life, liberty, or property without due process of law ...

5. 28 U.S.C. §2671. Definitions:

As used in this chapter ... the term "Federal agency" includes the executive departments, the judicial and legislative branches ...

6. 28 U.S.C. §2672 Administrative adjustment of claims:

The head of each Federal agency ... may consider, ... and settle any claim for money damages against the United States ... for injury ... caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment

7. 28 U.S.C. §2675

(a) An action shall not be instituted upon a claim against the United States for money damages for injury ... caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment ...

8. 28 U.S.C. §2679

(b)(1) The remedy against the United States ... for injury ... arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government --

(A) which is brought for violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized. ...

(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. ...

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such

action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

STATEMENT OF THE CASE

THE PETITION

1a. In response to a motion on behalf of scope uncertified federal officials, petitioner, on July 30, 1991, cross-moved:

"to strike the appearance of Assistant U.S. Attorneys BARBARA L. HERWIG and EDWARD T. SWAINE, a rejection of their papers, purportedly on behalf of federal officials, as unauthorized, improper and a fraud upon this Court ...".

b. Petitioner's cross-motion, with proof of service, were returned to him by the Circuit Court, unfiled.

2a. On August 19, 1991, petitioner mailed to the Circuit Court his "General Bias Recusal Affirmation", with proof of service.

b. The aforementioned affirmation was returned to petitioner by the Circuit Court, unfiled.

3a. With knowledge that petitioner's papers were being returned unfiled, Assistant U.S. Attorneys BARBARA L. HERWIG ["Herwig"] and EDWARD T. SWAINE ["Swaine"] filed a Notice of Appearance for "Judges James L. Oakes, George C. Pratt, Charles L. Brieant, William C. Conner and Eugene H. Nickerson", who were being sued by petitioner in their individual capacities, in another action and appeal, pending in the same Court where the interests were the same, under a covering letter dated August 26, 1991.

b. At no time did Herwig, Swaine, or anyone else, controvert petitioner's assertion that absent a scope certification, federal attorneys were not authorized, at federal cost and expense, to represent federal officials and/or employees for tortious conduct.

c. The evidence is clear and compelling that Ms. Herwig knew her actions are unlawful, if not criminal, and that she and others in the U.S. Department of Justice, operating in consort with high echelon members of the federal judiciary, are defrauding the federal treasury, in an attempt to conceal and advance an egregious judicial racket.

4. Ms. Herwig unquestionably knows the impropriety of her conduct since her credentials are impressive, as she is apparently the ultimate authority in the Department of Justice on the FEDERAL TORT CLAIM ACT ["FTCA"], as amended, her name appearing on many of the recently reported Circuit Court cases on the subject and her interpretation of FTCA, judicially noted and published (Melo v. Hafer, 912 F.2d 628, p. 540 n. 17 [3rd Cir.-1990], cert. granted U.S. , 111 S.Ct. 1070 [1991]).

5. Except where petitioner is involved, the plain reading of the statute, the manifest intent, the decisions of the courts, and the position of the Department of Justice is clear and consistent with the following:

a. If the act or omission was "within the scope of office or employment", then a "scope" certificate is issued, the United States is substituted as the defendant, and the action is

defended at federal cost and expense, including the satisfaction of any judgment recovered.

b. If there is no "scope" certificate extant, the United States is not substituted as the defendant, federal government does not defend, no federal monies are disbursed for the defense of such action, nor does the sovereign satisfy any judgment which might be recovered.

c. It follows from the foregoing that defending uncertified defendants, in their individual names, by federal attorneys, at federal cost and expense, would be unauthorized and a fraud upon the federal treasury.

d. Neither Ms. Herwig, nor any member of the Department of Justice, nor any court, as far as petitioner is aware, has controverted the above legal propositions and conclusion.

6a. The evidence, documentary and otherwise, conclusively reveals that federal jurists are involved in the larceny of judicial trust assets, diversion of moneys payable "to the federal court" to private pockets, extortion, bankruptcy fraud, and other racketeering activities, all of which is known by the Department of Justice and Ms. Herwig.

b. The manifestly unconstitutional plan and scheme of Presiding Justice FRANCIS T. MURPHY ["Murphy"] of the N.Y. State Appellate Division, First Department, Chief U.S. Circuit Court Judge JAMES L. OAKES ["Oakes"] of the Second Circuit, and Chief U.S. District Court Judge CHARLES L. BRIEANT ["Brieant"] of the Southern District of New York [hereinafter "MOB"] is to deny to

petitioner access to the courts, federal and state, for any and all relief, even when irresistibly compelling - the mandate of Article III, Amendment I and Amendment V of the U.S. Constitution notwithstanding.

c. Obviously where federal judges are involved in, inter alia, the diversion of monies payable "to the federal court" to private pockets, no scope certification can be legitimately obtained, nor is it attempted.

REASONS FOR THE GRANT OF THIS WRIT

1a. Unless relief is granted, petitioner will never be able to make a proper presentation to this Court, due to his inability to file his papers and arguments in the Circuit Court (Will v. Calvert Fire Ins. Co., 437 U.S. 655 [1978]).

b. The duty of a court and judge is to make a determination on issues presented (Cohens v. Virginia, 19 U.S. [6 Wheat] 264, 404 [1821]), not as here, denying petitioner access to the court and disparate treatment (Bolling v. Sharpe, 347 U.S. 497 [1954]), through the physical rejection of his intended filings.

2a. The Department of Justice has been corrupted being corrupted by this criminal racketeering adventure, of a constitutional magnitude, and has been dragooned to defend Article III jurists, personally, defrauding the federal government thereby.

b. Furthermore, by dragooning the Department of Justice to defend the aforementioned officials in their privately

motivated criminal adventure, the judges involved have effectively immunized themselves from criminal prosecution.

Dated: September 1, 1991

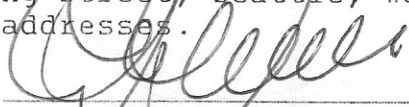

Respectfully submitted,

GEORGE SASSOWER
Petitioner, pro se
16 Lake Street,
White Plains, N.Y. 10603
(914) 949-2169

CERTIFICATION OF SERVICE

On September 3, 1991, I state under penalty of perjury, that I served a true copies of this Petition by mailing same in a sealed envelope, first class, with proper postage thereon, addressed to the U.S. Circuit Court of Appeals for the Ninth Circuit, Box 547 San Francisco, California 94101-0547; Hon. J. Clifford Wallace, 940 Front Street, San Diego, California 92189; Hon. Kenneth W. Starr and Ass't U.S. Attorney Barbara L. Herwig, U.S. Department of Justice, 10th Street & Constitution Avenue, Washington, D.C., 20530, and Stafford, Frey, Cooper & Stewart, Esqs., 500 Watermark Tower, 88 Spring Street, Seattle, Washington 98104, that being their last known addresses.

Dated: September 3, 1991



GEORGE SASSOWER
16 Lake Street,
White Plains, N.Y. 10603