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March 17, 1986

Chief Judge Wilfred Feinberg
Circuit Judges, U.S. Court of Appeals
Second Circuit,
40 Foley Square,
New York, New York, 10007

Re: Chief Judge Wilfred Feinberg
Circuit Judge Irving R. Kaufman
Circuit Judge Thomas J. Meskill
District Judge Eugene H. Nickerson

Dear Judge Feinberg,

1a. Pursuant to Rule §0.24 of the Rules of the Second Circuit Court of Appeals, I make the within complaint against Your Honor, two (2) Circuit Judges, and a District Court Jurist, who I shall refer to collectively herein as "the accused".

b. Presently, I am uncertain about the feasibility of making Rule §0.24 complaints against other jurists in Your Honor's Court, who are involved in this corrupt situation, and I may choose some other course of action.

c. I will therefore leave it to Your Honor to chart a procedural course, in this joint complaint, that satisfies "the appearance of justice", since such a situation obviously was not contemplated by §0.24.

2a. Before extensively publishing this complaint, in and out of the judicial bailiwick, I shall afford "the accused", including Your Honor, and anyone mentioned herein, an opportunity to add, subtract, or amend, any portion of this complaint by any significant fact which could reasonably alter the thrust of this accusation.

b. I have taken great pains, and employed restraint, in order to conservatively recite the operative facts, essentially limiting myself to those facts which are uncontroverted and/or documented, all of which can be verified by filed papers in the state and/or federal judicial forums.

3. Additionally, before extensively publishing this complaint outside the judicial bailiwick in this Circuit, with some exceptions, I shall probably mail copies of same to every Circuit Court, District Court, Bankrupcy Judge, and U.S. Magistrate, and if anyone has any suggestions as to how to best advance the "interests of justice", as a result of the events in this matter, those suggestions will seriously be considered.

4a. The accused herein, including Your Honor, were and are part of a joint corrupt effort, which began by an attempt to conceal the larceny of judicial trust assets by KREINDLER & RELKIN, P.C. ["K&R"] and its clients, CITIBANK, N.A. ["Citibank"] and JEROME H. BARR, Esq. ["Barr"].

b. The larceny of judicial trust assets was triggered by an attempt to conceal the internal blunders at Citibank resulting from its illegal policy of compensating "estate chasers".

c. The criminal activity metastacized to the extent that it not only included the corruption of the accused and others on the federal bench, but also Presiding Justice FRANCIS T. MURPHY, of the Appellate Division, First Department, Presiding Justice MILTON MOLLEN, of the Appellate Division, Second Department, their respective thrall, Judge JOSEPH W. BELLACOSA, Attorney General, ROBERT ABRAMS, the criminal justice system, state and federal, and those who are supposed to monitor against improper conduct of judges and lawyers.

d. The misconduct of "the accused" is significantly serious, since basic federal constitutional rights were and are involved, and wherein the lowest in the federal hierarchy has the power to vacate the highest level in the state judicial system.

e. If federal judicial officers cooperate with corrupt state judicial officials in the deprivation of federal constitutional rights, then the federal scheme simply does not exist.

5a. The forces of corruption in this matter have extraordinary judicial, official, and political power, and "the accused" and other jurists and officials, state and federal, have simply mortgaged the "machinery of justice" to K&R, Citibank, and their co-conspirators.

b. For more than three (3) years the criminal activities of K&R, its clients, and their co-conspirators have been known, nevertheless such corrupt activities continue without abatement.

c. To resolve any doubt on the subject of larceny by K&R and its clients, several months after the event, an affidavit, executed by LEE FELTMAN, Esq. ["Feltman"] on March 5, 1986, which had theretofore been concealed in the non-public courtroom of Referee DONALD DIAMOND surfaced. The affidavit had been executed when the "thieves with law degrees" had a temporary falling out, and Feltman states therein (p. 6):

> "[T]hey [K&R, Citibank, and Barr] have substantially delayed the dissolution proceeding by impeding discovery sought by the Receiver concerning (i) the amounts that the Kaufman Estate received from Puccini after the Dissolution Order was issued enjoining such payments, and (ii) the books and records of Puccini that appear to be missing. For example, the Kaufman Estate refused to comply with a Subpoena Duces Tecum for eighteen months and remains in default in providing certain discovery despite judicial directives. Moreover, in an effort to block a lawsuit by me as Receiver against the Kaufman Estate to recover for the insolvent Puccini Estate the payments received and retained by the Kaufman Estate in violation of the Dissolution Order in this proceeding, they have adopted the position that my law firm has a conflict of interest and I should retain another firm to prosecute such suit, threatening to delay such required lawsuit by a disqualification motion [emphasis in original].".

THE BOTTOM LINES:

1a. I challenge "the accused", including Your Honor, to produce a single federal jurist, yourselves included, who would be willing to testify at a public hearing, subject to cross-examination, that Judge EUGENE H. NICKERSON had the power to hold me and my client in criminal and civil contempt, under the facts stated herein, or any set of facts supported by the Record!

b. I challenge "the accused", including Your Honor, to produce a single federal jurist, yourselves included, who would be willing to testify at a public hearing, subject to cross-examination, that he/she/they does not know that no federal judge, sitting in a court created by congress, does not have the power to convict anyone of non-summary criminal contempt, absent a plea of guilty, without a trial or hearing!

c. I challenge any senior member of the firm of K&R, the firm who engineered the massive larceny of the judicial trust assets, or FELTMAN, KARESH, & MAJOR, Esq. ["FK&M"], its prime co-conspirator, to testify under oath, subject to cross-examination, that he/she did not know that Judge EUGENE H. NICKERSON did not have the power to hold me or my client in criminal and civil contempt, without a trial, absent a plea of guilty, under the facts at bar.

d. The Act of March 2, 1831, and controlling opinions thereafter rendered (Nye v. United States, 313 U.S.33, 46; Ex parte Robinson, 19 Wall [86 U.S.] 505), made it eminently clear that District Judge James Hawkins Peck was to be the last federal judicial tyrant to employ such non-summary contempt power, without a trial, and Luke Edwards Lawless, Esq., was to be the last victim .

e. Any federal jurist who does not know the limitations of his/her non-summary criminal contempt power in the aforementioned respect, including each of "the accused", simply does not belong on the federal bench, in my opinion and in the opinion of President James Buchanan, the fifteenth President of the United States (Nye v. United States, supra)!

f. Federal jurists who know the limitations of their power in non-summary criminal contempt, but usurp same, particularly for corrupt purposes, should be exposed and made to account (Disciplinary Rule 1-103).

g. I charge that the action Judge EUGENE H. NICKERSON, holding me and my client in civil and criminal contempt, as were all His Honor's actions, to have been the result of a corrupt agreement between His Honor, K&R, Citibank, and their co-conspirators. His Honor held me and my client in civil and criminal contempt, without a trial, when His Honor knew that he had no such power, and His Honor did so for corrupt purposes, a charge of corruption never made against Judge James Peck.

h. The facts reveal that there simply was no default by either myself or my client. Nevertheless, when the matter is criminal, the issue is whether the accused made a voluntary and intelligent waiver of a constitutional right, to wit., the right to be present and confront his accusor.

i. Even when there is a voluntary waiver of the right to be present, there must be a trial. Absent a plea of guilty, in a criminal case, there simply must be a trial to predicate a finding of "guilt". There is no such thing in criminal law as an "inquest by affidavit". The accusors and their witnesses must be examined in "open court" (cf. Sassower v. Sheriff, 651 F. Supp. 129).

j. Thus, assuming arguendo there was a voluntary waiver of my and my client's right to be present, Judge Eugene H. Nickerson was compelled to have K&R testify under oath in support of the accusation before His Honor could find me or my client guilty of non-summary criminal contempt.

k. "The accused" herein knew and know this to be hornbook federal constitutional law, but for corrupt purposes, ignored same.

l. The opinion of Your Honor's Court (Exhibit "A"), was not only knowingly factually contrived, as shown hereinafter, but constitutionally infirm.

m. The factually and legally contrived opinion of Your Honor's Court is:

> "We are particularly unimpressed with appellants' excuses for their numerous defaults and their attempts to shift the burden to appellees on the basis of one late appearance by their counsel.
>
> Finally, we find Judge Nickerson's contempt order appropriate under the circumstances. We have reviewed appellant's claim that criminal contempt entitles them to a hearing and find no merit to appellant's procedural objection, in view of their failure to respond adequately to Judge Nickerson's order to show cause and the statement in Mr. Sassower's affidavit dated June 6, 1985, that no personal appearance was necessary."

n. The record shows no defaults by either myself nor my clients, and certainly no knowing waiver of the right to be present.

Furthermore, the only response necessary when the charge is criminal contempt is "not guilty", which is the response that was made.

Still further, as "the accused" know, if there is a intentional waiver of the right to be present, the court simply proceeds with the trial.

"The accused", especially Judge EUGENE H. NICKERSON knew, that even ex parte, K&R could not prove a prima facie case of criminal or civil contempt, as the record clearly reveals.

o. In short, "the accused" have corruptly bondaged themselves and the "machinery of justice" to those who have been engaged in the larceny of judicial trust assets, have perjured themselves, and engaged themselves in judicial and official corruption on a wholesale basis.

2a. I challenge "the accused", including Your Honor, to select any twelve (12) jurists they desire, with a presiding justice, all of whom satisfy "the appearance of justice" to (a) afford me a fundamentally fair public trial, according to law, and (b) limited to the allegations in the Record, and the evidence referred to therein, obtain three (3) of those jurists, out of twelve (12), find me "guilty" of criminal contempt. I seriously doubt "the accused" will obtain one (1) juror-justice to find me "guilty"!

b. I challenge "the accused", including Your Honor, to select any twelve (12) jurists they desire, and a presiding justice, who satisfy "the appearance of justice" to (a) afford me a fundamentally fair public trial, according to law, and (b) limited to the allegations in the Record, and the evidence referred to therein, have six (6) of those jurists, out of twelve (12), find me to have been in "civil" contempt. I seriously doubt "the accused" will obtain one (1) juror-justice to hold me in "civil contempt"!

c. In short, the only reason neither Judge EUGENE H. NICKERSON, nor Your Honor's Court afforded neither me nor my client a trial, is because "the accused" knew the charge was sham, and, as will hereafter be shown, even a "flunky" jurist could not find me guilty of anything!

d. I accuse "the accused" of usurpation of power; I accuse "the accused" of the usurpation of power for corrupt and/or unlawful purposes; and I accuse "the accused" of impeachable "high crimes and misdemeanors".

3a. Every rational view of all the proceedings before Judge EUGENE H. NICKERSON reveals His Honor to have been corrupted from the very start.

b. In the contempt proceedings K&R had knowledge before they commenced civil and/or criminal contempt that there would be no hearings, no trials, no nothing, except corruption, all hornbook blackletter law to the contrary notwithstanding.

c. K&R and FK&M, "the criminals with law degrees", engage in criminal conduct, including the corruption of jurists, and Judge EUGENE H. NICKERSON is one such jurist who is willing to perform almost any corrupt act, the known limitation of His Honor's judicial power to the contrary notwithstanding, and for a base criminal end.

4a. Business Corporation Law §1216[a] states that a final accounting and distribution of judicial trust assets should be made within one (1) year, and if not made within eighteen (18) months, the Attorney General, as a mandated ministerial "duty" must make application for same.

b. 22 NYCRR §§202.52, 202.53, provides that an accounting must be filed with the County Clerk "at least once a year".

c. Thus, the aforementioned mandatory ministerial ukases notwithstanding, there has never been an accounting filed in the County Clerk's Office in the almost seven (7) years since PUCCINI CLOTHES, LTD. ["Puccini"], was involuntarily dissolved, its assets and affairs becoming custodia legis at that point in time.

There can never be a true accounting filed in seven million light years without exposing the massive larceny of judicial trust assets, the blatant perjury, the corruption, judicial and official, and the extortion practiced by the "criminals with law degrees" and their stable of corrupt jurists, state and federal, nisi prius and appellate.

The advertisements in the New York Times and New York Law Journal in September 1986, concerning a "final accounting" were a fraud and a hoax. Such "accounting", final or otherwise, does not exit, it is "phantom", an "illusion", an "apparition", a "mirage", with as much reality as the "Emperor's New Clothes"!

d. The "only" hope of "the criminals with law degrees" and their stable of corrupt jurists, is to compel me to succumb to their desired "criminal code of silence", regarding their criminal conduct.

e. The answer has been, and always will be, "nuts"!

5a. 22 NYCRR §660.24[f], the Rule promulgated by Presiding Justice FRANCIS T. MURPHY, until repealed, effective April 1, 1986, provided that:

> "Any appointment made without following the procedures provided in this section, shall be null and of no effect and no person so appointed shall be entitled to recover any compensation for the services rendered or claimed to have been rendered."

b. Unquestionably neither FK&M, nor its successor FELTMAN, KARESH, MAJOR & FARBMAN, Esqs. ["FKM&F"], nor RASHBA & POKART ["R&P"] were appointed in accordance with §660.24.

c. Notwithstanding the ministerial prohibition of such Rule, the aforementioned corrupt firms, have been given essentially all of the remaining judicial trust assets of Puccini, "the judicial fortune cookie".

d. The "criminals with law degrees", their stable of corrupt jurists, including Judge EUGENE H. NICKERSON, have been "hoisted by their own petards", for I intend to continue to speak about judicial misconduct and corruption, and it is their continued course of barbaric conduct that speaks with a most eloquent tongue, in confirmation of my accusations.

BEIRUT ON THE HUDSON:

6. The corruption of "the accused" and others in the Second Circuit operate in tandem with similar activities in the First and Second Judicial Department, the Attorney General's Office, and is interrelated.

a. In a little more than one (1) year I have been convicted of non-summary criminal contempt four (4) times, each time without a trial!

b. In a little more than one (1) year I have been convicted, sentenced, and incarcerated, three (3) times, each time without a trial.

c. I have stated, and do state, that given a fundamentally fair trial, according to law, in any one of the aforementioned convictions, I will accept a six (6) month period of incarceration.

This offer has never been accepted by "the criminals with law degrees", nor their stable of corrupt jurists.

7a. As against such four (4) convictions, I have about twenty-five (25) results other than guilty, each one triggering constitutional or statutory "double jeopardy" prohibitions.

b. In takes a vivid legal imagination to conceive that within two (2) business days after I served a copy of an Order with Notice of Entry, which resoundingly vindicated me of criminal contempt, on the floor housing the Circuit Court of Appeals, Second Circuit, I am served with four (4) more contempt proceedings, charged with the same acts of misconduct.

c. Then, when such four (4) contempt proceedings resulted in findings other than guilty, Mr. Justice IRA GAMMERMAN, without any notice, without any motion papers, without any written accusation, without any hearing or trial, without any opposing papers, without any attempted compliance with Judiciary Law §756 or "due process" convicted me, and imposes criminal contempt sanctions -- or the fifth (5th) conviction is about one year!

8a. The conviction vacated by Hon. DAVID N. EDELSTEIN on December 4, 1986, after a de novo consideration of the Report of U.S. Magistrate NINA GERSHON of November 24, 1986 (Sassower v. Sheriff, 651 F. Supp. 128), had unmentioned therein, the following.

b. It was commenced a mere twenty-six (26) days after Hon. MARTIN EVANS vindicated both me and my client, HYMAN RAFFE ["Raffe"] of non-criminal contempt after a voluminous submission by "the criminals with law degrees" over a period of more than two (2) years.

c. Not legally disturbed by such vindication, legally or otherwise, FK&M simply reinstituted the same charges in a new proceeding against both of us.

d. Once again it was referred to Hon. MARTIN EVANS, but this time, Administrator XAVIER C. RICCOBONO ["Corruption Incarnate"], had His Honor refer same to Referee DONALD ["Khadaffy"] DIAMOND, who operates from a non-public courtroom (see Newsday, November 2, 1986, "Exhibit B") and who physically excludes anyone who will not cooperate with his corrupt methods.

e. Without a trial or hearing, Referee DONALD DIAMOND, found both Raffe and myself guilty of more than sixty (60) counts of criminal contempt each, since "a plea of not guilty in a criminal proceeding is tantamount to a general denial in a civil proceeding, raising no triable issues of fact", which he repeated ad nauseam. Such statement seems to have been intended to improve on the opinion of the Circuit Court of Appeals (Exhibit "A").

Furthermore, said Referee DONALD DIAMOND, he knows of his own knowledge that we are guilty, so why waste time and money, which he also repeated ad nauseam.

f. Referee DONALD DIAMOND, does not concern himself with concepts such as "double jeopardy", "invidious and selective prosecutions", "retaliatory proceedings", "right to remain silent", "criminal proceedings brought by self-styled public prosecutors", "disclosure of exculpatory evidence", "the appearance of justice" in a contempt proceeding, or any other basic federal or state constitutional or civilized right.

g. Hon. MARTIN EVANS for more than seven (7) months failed and refused to confirm such report. Consequently, FK&M communicated with "Corruption Incarnate" -- Administrator XAVIER C. RICCOBONO, who intervened, once again, on their behalf.

h. Hon. MARTIN EVANS knew that the Report of DONALD DIAMOND was "unadulterated garbage", but in His Honor's own manner, His Honor made his compromise. He confirmed the Report of DONALD DIAMOND, as desired by Administrator XAVIER C. RICCOBONO, but refused to impose any sanctions upon me, penal or otherwise.

i. When the Appellate Division reversed the Order of Hon. MARTIN EVANS and imposed penal sanctions (Barr v. Sassower, 121 A.D.2d 324, 503 N.Y.S.2d 392 [1st Dept.]), it did not state that I had already been subjected to sanctions by the aforementioned "no-nothing" Order of Mr. Justice IRA GAMMERMAN, or that I, unlike Raffe, refused to deal in "judicial indulgences", or that the courtroom of Referee DONALD DIAMOND is non-public; or that there was no trial afforded; or that there was pending my application for the appointment of a Special Prosecutor, pursuant to County Law §701, to prosecute certain members of the Appellate Division, including Presiding Justice FRANCIS T. MURPHY, and certain nisi prius jurists, such as Administrator XAVIER C. RICCOBONO, and his personal selectees, to wit., Mr. Justice IRA GAMMERMAN and Referee DONALD DIAMOND.

j. The Report of Referee DONALD DIAMOND convicting Raffe of non-summary criminal contempt hangs like the "Sword of Damocles" over Raffe.

k. Raffe was compelled to purchase the "judicial indulgences" being sold by "the criminals with law degrees" and their stable of corrupt judges, and he paid hundred of thousands of dollars, by check, to FK&M; surrendered rights worth in the millions, including releases to the thrall of Presiding Justice FRANCIS T. MURPHY ["Hypocrisy Incarnate"], and the thrall of Administrator XAVIER C. RICCOBONO, and as long as Raffe obeys the desires of FK&M, he will not be incarcerated under the sham trialess criminal conviction of Mr. Justice ALVIN F. KLEIN, a "hard core" corrupt jurist; no motion will be made to confirm the Report of Referee DONALD DIAMOND; nor will Referee DONALD DIAMOND hurl herculian fines and penalties on him anymore.

l. If one should seek relief in the federal forum in the Second Circuit from such barbaric practices, as I did, including the nullification of judicial procedures in non-public courtrooms or inspection of Puccini's books and records held under "color of law", Hon. WILLIAM C. CONNER, holds such proceedings to be frivolous, and imposes monetary sanctions!

9. Repeatedly, the Sheriff of Westchester County has been given Orders from Referee DONALD DIAMOND, from the Courthouse where Peter Zenger was acquitted that he should "break-into" my premises, "seize all word processing equipment and software", and "inventory" my possessions, the Constitutions of the United States and State of New York, notwithstanding.

10a. My bank deposited assets have been seized by the Sheriff of the City of New York, based on a "phantom" judgment, all actions, related or otherwise, by which I could earn a livelihood "stayed", and other unlawful economic in terrorem decrees issued, compelling me to file an involuntary petition in bankrupcy (86 Bkcy 20500[HS]).

b. Even when, in jest, I complain about the seizure, under a "phantom judgment", of my bank deposited assets causing me to place my monies "in a non-interest bearing mattress", I am met with an application directing the Sheriff of Westchester County to "break-into" my home, and "tear apart" my "non-interest bearing mattress."

c. The Westchester County Attorney, assumed arguendo there existed a judgment, he nevertheless submitted an affidavit which stated that he:

> "opposes the totalitarian attempt to have [The Sheriff, his client] break into a judgment debtor's residence and tear apart a mattress in which the judgment debtor allegedly keeps money, all for the purpose of satisfying a $5,000 [phantom] judgment."

11a. Bankrupcy, which Your Honor is aware, operates automatically with its "stay" provision, is the only available remedy when Hon. BRUCE McM WRIGHT denies the CPLR 3211 motion of K&R and all K&R needs to do, and does, is go ex parte to Referee DONALD DIAMOND, who grants the motion and imposes costs of $25,000.

b. Bankrupcy, is the only federal remedy when I ask Referee DONALD DIAMOND's permission to make a motion to increase Puccini's assets by a minimum of $300,000 within forty-five (45) days, without risk and costs, and Referee DIAMOND denies the request, and imposes sanctions of more than $197,000 for requesting such permission.

c. Raffe, my client, has no alternative but to succumb, when for submitting a few line affidavit consenting to such request, Referee DIAMOND imposes sanctions of more than $200,000.

d. What other alternative is there when Referee DIAMOND dragoons a motion which seeks sanctions against LEE FELTMAN, Esq. ["Feltman"] for not submitting to an examination before trial, and for third party examinations, including that of Referee DIAMOND, and he imposes sanctions against Raffe, myself, and SAM POLUR, Esq. ["Polur"] of $37,500?

e. What other alternative is there when Hon. WILLIAM C. CONNER, United States District Judge, imposes draconian attorney fee costs, when federal relief is desired for the actions of Referee DONALD DIAMOND, who obviously graduated from the Kamakazi School of Law!

12a. Mr. Chief Judge, this is not only a complaint, it is a declaration of war, it is armageddon, it is agincourt, it is bastogne, against those who practice, believe in, or keep silent about judicial corruption.

b. It is a war against those who believe that judicial corruption is the supreme law of the land.

c. I remind Your Honor, that the business day following the jury verdict of "guilty" in the trial of Chief Judge MARTIN T. MANTON, the New York Times editorialized:

> "Nothing could strike a more deadly blow at the foundations of our democracy than the evidence, or the mere suspicion, that ... any litigant has an 'inside track' that all men do not come into court on the basis of equality." (New York Times, Monday, June 5, 1939, p. 16).

d. Your Honor, I swear, on the alter of God, that never again will I nor any other person, in my country have to flee his home in the middle of the night, and go into hiding, with his essential professional and personal possessions because an Order is issued directing the "break-in" of his home and "the seizure of all his word processing equipment and software" -- Never again, I swear it!

e. These things, and much more, could not have happened except for the conduct of "the accused" -- Your Honor, Circuit Judge Irving R. Kaufman, Circuit Judge Thomas J. Meskill, and especially, District Judge Eugene H. Nickerson.

BACKGROUND:

1a. PUCCINI CLOTHES, LTD. ["Puccini"], a solvent corporation, was involuntarily dissolved by Order of the Supreme Court, New York County, on June 4, 1980 -- almost seven (7) years ago -- its assets and affairs becoming custodia legis at the time and ever since.

b. Hon. JOHN V. LINDSAY ["Lindsay"], the designated receiver and/or his law firm, WEBSTER & SHEFFIELD, Esqs. ["W&S"] was ex parte communicated with KREINDLER & RELKIN, P.C. ["K&R"], and as a result thereof Lindsay never executed his oath of office, nor filed the required indemnity bond, nor took possession of Puccini's assets.

c. Under the engineering of K&R, and its clients, CITIBANK, N.A. ["Citibank"] and JEROME H. BARR, Esq. ["Barr"], during the approximately eighteen (18) months that followed, subjected Puccini's judicial trust assets to massive larceny.

d. When, in January 1981, seven (7) months after the Order of dissolution, I accidently learned that Lindsay had not taken possession of Puccini's assets, I communicated with and informed the former mayor of my suspicions concerning the unlawful dissipation of assets, a subject on which Lindsay likewise concluded, whereupon, Lindsay declined the judicial appointment as receiver.

e. It was not until February 1, 1982 that the Court appointed a substitute receiver, who was LEE FELTMAN, Esq. ["Feltman"].

f. During 1981-1982, K&R, and its clients, Citibank and Barr, simply inundated the state tribunals with false and perjurious statements and affidavits denying that Puccini's assets had been dissipated.

2a. It was under a cross-guarantee provision in a stockholders agreement which proved decisive as to the conspiracy which existed by and between K&R, its clients, the firm of ARUTT, NACHAMIE, BENJAMIN, LIPKIN, & KIRSCHNER, P.C. ["ANBL&K"], Feltman, and his law firm, FELTMAN, KARESH, & MAJOR, Esqs. ["FK&M"].

b. K&R, on behalf of its clients, Citibank and Barr, had sued my client, HYMAN RAFFE ["Raffe"] alone, for seventy-five percent (75%) of an alleged Puccini indebtedness to Citibank.

c. I brought a third party action against EUGENE DANN ["Dann"] and ROBERT SORRENTINO ["Sorrentino"], who were represented by ANBL&K for two-thirds indemnification, and against Puccini for full indemnification, in the event such K&R lawsuit proved successful.

d. There was never any question that for any recovery made by the clients of K&R against my client, Raffe, he was entitled to subrogation rights against Dann, Sorrentino, and Puccini.

e. Furthermore, Hon. MARTIN B. STECHER had held that Raffe had the same rights against Dann, Sorrentino, and Puccini, under the theory of indemnification.

f. Thus at all times, ANBL&K, Feltman, and FK&M knew "what was good for Raffe, the defendant, in this cross-guarantee action, was good for Dann, Sorrentino, and Puccini, the third party defendants in that same action"!

g. K&R moved for summary judgment against Raffe in this guarantee action when it actually knew that Raffe would interpose as a defense that his rights of indemnification and subrogation had been prejudiced by the unlawful dissipation of Puccini's judicial trust assets.

h. To counter such contention, the following affidavits were re-submitted to Hon. THOMAS V. SINCLAIR, JR.:

(1) The Barr affidavit, the associate of K&R, who falsely swore:

> "Unfortunately, it is necessary to correct some of the incredible misstatements and outright falsehoods contained in the Raffe affidavits.
>
> The Estate of Kaufman [Citibank and Barr] has received no monies from Puccini Clothes, Ltd. ... [He and Citibank] do not have any access to it['s assets], nor have they received any monies from Puccini."

When, in April 1985, Barr confessed the aforementioned affidavit to have been perjurious, the document was destroyed and/or secreted by Referee DONALD DIAMOND, and he, "Judge Crater style", disappeared and could not be found by anyone, or so those on behalf of Administrator XAVIER C. RICCOBONO ["Riccobono"] said, for a vital period of time!

(2) Citibank, Barr's co-plaintiff, also re-submitted a judicially-filed affidavit to Mr. Justice Sinclair, which swore:

> "Raffe claims that the plaintiffs and the third party defendants have entered into some unspecified agreement ... and pursuant to which the 'assets [of Puccini] have been dissipated for the benefit of plaintiffs'. Once again, no documentary evidence has been submitted in support of this groundless assertion. ... The unsupported and baseless charge that the Estate [of Milton Kaufman] has dissipated the assets of Puccini Clothes, Ltd. is totally false. The Estate has received no monies whatsoever from Puccini Clothes, Ltd."

(3) Robert J. Miller, Esq., of K&R, re-submitted an affidavit, which stated:

> "... defendant (Raffe) may not argue that the automatic stay should be lifted, for discovery here is unnecessary and is simply a delaying tactic as the defendant, Hyman Raffe has absolutely no defense to this action."

i. Obviously, K&R and its clients would not have re-submitted such perjurious affidavits if they had not known beforehand that ANBL&K, Feltman, and FK&M would not reveal their perjurious nature.

j. Because ANBL&K, Feltman, and FK&M failed to expose such manifest and blatant perjury by K&R and its clients, a substantial judgment was recovered against Raffe, and Raffe recovered judgment over against the clients and trust of ANBL&K, Feltman, and FK&M, to wit., Dann, Sorrentino, and Puccini.

k. In addition, ANBL&K, Feltman, and FK&M also knew that the "attorney's fees and other expense" clause was a defensive clause only, and that the claim of K&R and its clients in this respect also, was false, but here again they did not assert same, once again betraying the legitimate interests of their clients and trust.

3a. Raffe and I kept pressing for an inspection of Puccini's books and records, and to avoid such inspection, Feltman and FK&M requested of Mr. Justice MARTIN H. RETTINGER, that he appoint RASHBA & POKART ["R&P"] to answer four (4) simple questions. It was subsequently learned that these were questions to which Feltman, FK&M, K&R, and ANBL&K already knew the answers.

b. Neither K&R, nor its clients, nor ANBL&K, nor Feltman, nor FK&M, nor R&P disclosed to the Court any pre-existing disqualifying relationships between R&P and those who were to be made the subject of such investigative inquiry, to wit., K&R and ANBL&K.

c. Indeed, it was thereafter learned that R&P were the accountants for K&R, and in this judicial assignment, R&P was to investigate their own client.

d. It was also thereafter learned that ANBL&K had unlawfully taken $10,000 from Puccini's trust assets, had the disbursement marked "legal" on Puccini's books, "laundered" such larcenous funds, giving R&P $6,200 in payment of their invoice to K&R, with ANBL&K keeping $3,800 as a "laundering fee".

e. With the aforementioned, and more, undisclosed, R&P was now to serve as investigatory accountants, when the accused firms to be investigated was their client and a firm that previously "laundered" monies to them, from this judicial trust.

4a. On November 7, 1983 -- three and one-half (3 1/2) years after Puccini was involuntarily dissolved, the initial "hard evidence" of this massive larceny surfaced, and in the months that followed the "hard evidence" and effective confessions of larceny, perjury, and corruption simply cascaded into my possession.

b. Implicit in such disclosures was the corrupt involvement of a number of state judges, including Mr. Justice DAVID B. SAXE ["Saxe"].

c. Saxe had refused Raffe and my requests to intervene when FK&M sought fees from Puccini, who was to be represented by Feltman, FK&M's senior partner.

In this Saxe scenario, Feltman, Karesh & Major, Esqs., sought fees from Puccini, who was to be represented by Lee Feltman, Esq. -- who incidentally did not even bother to appear to defend!

In the view of the corrupt jurists, Puccini, admittedly a constitutional "person" within the meaning of the XIV Amendment, was actually a "judicial fortune cookie"!

d. Stonewalled by such mockery of justice, I, during the early part of January 1984, wrote to Hon. ROBERT ABRAMS ["AG"], Puccini's statutory watchdog (Bus. Corp. Law §§1214, 1216), requesting that he intervene, on Puccini's behalf, in this Saxe orchestrated proceeding.

e. Senior Attorney, DAVID S. COOK, Esq. ["Cook"], the one-man unit in the Attorney General's Office, assigned to vouchsafe the assets and affairs of involuntarily dissolved corporations responded, and there was, in the period that followed, a great deal of information exchanged concerning judicial improprieties, and outright corruption.

f. When the A.G. [Cook] refused to intervene, I, during the third week of January, 1984, filed an action which, in its early stages, was assigned to Hon. EUGENE H. NICKERSON.

5a. The plaintiff in this essentially §1983 action was Raffe, individually and on behalf of Puccini.

b. The defendants included K&R, ANBL&K, Feltman, and FK&M (sometimes referred to as the "criminals with law degrees"), R&P, Citibank and Barr, the clients of K&R.

c. The complaint, in my opinion and others, was good, particularly since there was no doubt that Feltman, FK&M, and R&P were acting under "color of law".

d. There never was any adjudications made between Puccini, the helpless constitutional "person", and any of the defendants in the state actions.

e. Any adjudications between Raffe and the defendants were the result of a corrupt conspiracy, such as the cross-guarantee action before Hon. THOMAS V. SINCLAIR, JR., and which included as co-conspirators, those operating under "color of law".

f. As the further evidence of larceny, perjury, and corruption surfaced, I attempted to amend my complaint to include such evidence, in proper pleading form.

g. Judge Eugene H. Nickerson, stayed answers to the complaint, did not permit pre-trial disclosure, and dismissed the complaint, assessing attorneys' fees against myself and Raffe.

h. Such action by Judge Nickerson, was affirmed on appeal, and the corruption involved in such disposition will probably be made the subject of a future formal complaint.

6. Although the dismissal of this complaint by Hon. Eugene H. Nickerson, and the action of Your Honor's Court will probably me made the subject of a future complaint, a few comments may be relevant at this point.

a. Given the operative facts as set forth herein, even making a motion to dismiss the complaint, would seem suspect.

b. With the operative facts it would seem almost an impossibility for any person, attorney or lay, not to be able to set forth a valid cause of action, particularly on behalf of Puccini.

c. The realities of judicial life are such that when all affidavits by Feltman, commence with the phrase "I am a court-appointed receiver ...", it is nothing less than a euphemistic signal to the judiciary meaning "I am a friend of a colleague of Your Honor, and entitled to preferred treatment."

d. Court appointees, where the compensation is from a helpless judicial trust, are "sacred cows" in the judicial bailiwick, who are generally permitted to steal, perjure, contrive, and commit about every other crime, with judicial impunity. These are the "coins of the judicial realm"!

e. Where almost every state judicial official involved in the litigation, prior to the federal complaint, was corrupt, or deceived by Feltman, FK&M, K&R, ANBL&K, and R&P, and nothing was litigated, except on submitted papers, a good and valid §1983 action can be easily stated. What is difficult, if not impossible, under the given facts, is to set forth a complaint which is dismissible!

f. Where every act of Feltman and FK&M was contrary and adverse to their judicial trust, held under "color of law", it is simply impossible to have the complaint dismissed on behalf of Puccini, the judicial trust!

g. In short, without more, the action of Judge EUGENE H. NICKERSON and this Court is irresistibly and compellingly suspect, a situation which existed at the time the contempt matters were adjudicated.

* * *

The INSTANT COMPLAINT #1:

1a. Judge Eugene H. Nickerson, assessed attorneys' fees against my client, Raffe, a multi-millionaire, and myself, in favor of the defendants, and did not permit us to examine their original financial records, although strongly and vigorously demanded.

b. On their face they were contradictory, since while DONALD F. SCHNEIDER, Esq. ["Schneider"], of FK&M was having a long conference with MICHAEL J. GERSTEIN, Esq. ["Gerstein"] of K&R, Gerstein was having a "chinese lunch" in a taxicab.

Indeed a squad of soldiers do not consume as much food as Gerstein, who weighs about 130 pounds, claimed, as part of his expenses, in this litigation!

c. Unless Schneck & Weltman, Esqs., the attorneys for Rashba & Pokart, the "Certified Public Thieves", were charging $5.00 per page to Xerox, their expense in this respect was simply impossible.

d. Judge Eugene H. Nickerson threatened me with a reference to the Grievance Committee if I continued to claim the K&R claims to be watered and fraudulent, and I continued to make such claim, and reported myself to the Grievance Committee.

e. Judge Eugene H. Nickerson did not permit inspection of the original records, and in making such award, His Honor simply awarded forty percent (40%) of the requests made for services rendered, and gave one hundred percent (100%) reimbursement for disbursements claimed -- all without an opinion!

f. Based on such "non-opinion" awards, examine the opinion of the Circuit Court of Appeals (Exhibit "A")!

g. I claim that impounding the original time and disbursement records of all the defendants' attorneys, except D'Amato & Lynch, Esqs. and Senior Attorney, David S. Cook, Esq., will reveal their fraudulent nature.

THE INSTANT COMPLAINT #2:

2a. A little less than $20,000 was awarded in favor of K&R and its clients, the engineers of this larceny of judicial trust assets against Raffe and myself, in an action where no answers to the complaint were interposed, as burdens to be equally divided.

b. Without any demand for payment, K&R commenced supplementary proceedings against Raffe and myself in federal court, employing state procedures.

c. Under state law contempt is not an available remedy for a monetary indebtedness when other remedies are available (CPLR §5104, Judiciary Law §753[3]; Wides v. Wides, 96 A.D.2d 592, 465 N.Y.S.2d 285 [2d Dept.]).

d. At the time K&R commenced supplementary proceeding in 1985, it had in its possession a Dunn and Bradstreet report, dated August 9, 1984, which stated that Raffe's assets were about $10,000,000.00, and a Bishop Service Report, dated June 22, 1983, revealing no unfavorable information, and "a man of substantial wealth ... a millionaire". Consequently, a property execution could have easily brought a satisfaction of the judgment, since Raffe's banking associations were known.

e. Although the subpoenas in supplementary proceedings were not properly served, and as against two (2) of Mr. Raffe's corporate firms the subpoenas were improper in form (Long Island Trust v. Rosenberg, 82 A.D.2d 591, 442 N.Y.S.2d 563 [2d Dept.]), it was uncontroverted that, Raffe, his two corporations, and myself, were:

> "ready, willing and able to submit to an examination at the place we (I and Gerstein [of K&R] were at, to wit., 60 Center Street, New York, New York, and [neither] Mr. Gerstein nor any other member of his firm requested such examination.
>
> In fact the day before, [I] informed one of [Gerstein's] employees that if his firm desired such examination the following day at 60 Center Street he should advise [me], or if he desired it any other day instead. [I] never received any response, only the [thereafter served Order to Show Cause].
>
> [I] must have spoken to Mr. Gerstein at least ten times since service of this motion, and he never requested such examination.
>
> Any convenient time that Mr. Gerstein desires this examination, if [I am] available [I] will submit to such examination."

f. This offer was made notwithstanding the fact that on their face, the record reveals my subpoena was not timely served [CPLR 5224(b)]; nor properly served on Raffe [CPLR 2103 (b)(2)]; nor tender made of any fees to A.R. Fuels or Madison Heat Corp. [CPLR 5224(b)].

g. In addition to the aforementioned, K&R issued and served subpoenas in supplementary proceedings on Joan Raffe, Raffe's wife; James Carlin, Raffe's accountant; and Carlin & Lask (A32), Carlin's firm.

h. Despite the aforementioned undisputed facts, Gerstein in a patently perjurious affidavit, stated:

> "Sassower, Raffe, Madison Heat Corp. and A.R. Fuels Inc., respectively, failed to appear as required on April 25, 1985 and accordingly have wholly failed and neglected to comply with the provisions of the subpoenas duces tecum and are now in default.

> This default is wilful and intentional and has impaired and impeded the collection of the judgment. The conduct of the judgment debtors was calculated to and actually did impede, impair and prejudice the rights and remedies of the judgment creditor.
>
> ... Their conduct (as well as the conduct of the fuel oil companies controlled and/or owned by Raffe) in ignoring process issued in connection with proceedings to enforce the aforesaid judgment is a continuation of their outrageous tactics and shows the most flagrant contempt for and disregard of, this Court. Only by such an award of additional attorneys' fees can Sassower and Raffe be dissuaded from further disregard of their obligations. Accordingly, it is requested that the movants be awarded the additional attorneys' fees incurred with regard to the enforcement of this judgment including fees incurred in the instant motion."

i. In addition to revealing legal defects, I, in opposing stated:

> "Insofar as HYMAN RAFFE is concerned, the motion by Kreindler & Relkin, P.C. is moot since they have restrained twice the amount due (Exhibit 'A').

Indeed, K&R had potentially restrained four hundred (400) times the amount of a $10,000 judgment or $4,000,000 by serving two hundred (200) restraining notices.

Additionally, K&R intruded into Raffe's personal affairs by, in addition to the aforementioned, serving an information subpoena on American Express, and obtaining copies of all charges made against his credit card.

K&R also never revealed that it restrained the transfer under a certificate of deposit at the National Westminister Bank.

j. Thus, except for Mr. Gerstein's conclusory hyperbole, there was no jurisdictional predicate for contempt (CPLR §5104; §5225[b]).

Indeed, CPLR §5104 and Judiciary Law §753[3], specifically excludes "contempt" as a remedy in the situation at bar. It is only contemptuous:

> "to disobey an order for the payment of money in a case where, by law, execution cannot be awarded for the collection of such sum" (21 NY Jur.2d Contempt, §25., at p. 250).

k. On Friday, May 24, 1985, Mr. Gerstein, never mentioned the restraints that were placed on Raffe's and my assets. Judge Nickerson never delved into the issues, but merely designated His Honor's Courtroom as the place for the examination, which His Honor set as the next business day, to wit., Tuesday, May 28, 1985 at 4:00 p.m.

I arranged my schedule accordingly.

l. Having heard about some of Mr. Gerstein's remarks to Judge Nickerson, on May 24, 1985, from counsel who was present [Sam Polur, Esq], I served and filed an additional affidavit of May 28, 1985, which reads as follows:

> "1a. Respectfully requested is an opportunity to respond to the oral remarks made to this Court by Michael J. Gerstein, Esq., once a transcript of the proceedings of May 24, 1985 becomes available.
>
> b. The documents set alongside the remarks of Michael J. Gerstein, Esq., should leave no remaining doubt, as to the truth.
>
> 2a. In addition to restraining twice the amount due by Mr. Raffe, which appears, ipso facto, to be tortious (Lugar v. Edmondson, 457 U.S. 922; Warren v. Delaney, 98 A.D.2d 799; 469 N.Y.S.2d 975 [2d Dept.]) the subsequent service upon Mr. Raffe's wife, on May 25, 1985 (Exhibit 'A'); his accountants, on May 21, 1985 (Exhibit 'B'); and examination of Mr. Raffe's personal affairs (Exhibit 'C'), are clearly tortious conduct.
>
> b. In any event, deponent contends once a judgment creditor restrains twice the amount of the indebtedness (Exhibit 'D'), there can no longer be supplementary proceedings.
>
> c. This Court has been and is being abused by a proceedings which are null and void.
>
> d. To confirm such harassing tactics, the firm of Feltman, Karesh & Major, Esqs., also subpoened Sam Polur, Esq., (Exhibit 'E'), after also restraining twice the amount of the indebtedness, and suit has been commenced because of such misconduct by that firm.
>
> 3a. Deponent finds nothing in the moving papers indicating anything 'wilfull' in the so-called non-appearance.

The point is deponent was ready and willing to submit to an examination at the place that the Kreindler & Relkin, Esqs., were at, not at a place they were not.

b. In view of deponent's willingness to submit to such examination at 60 Center Street, if the Kreindler & Relkin firm believed they desired it at 500 5th Avenue, they should have advised deponent.

c. The same charade occurred with Mr. Polur who appeared at the Feltman offices, at the date and time set, and they refused to hold an examination, preferring to adjourn same, to which he objected.

Deponent is reasonably certain that had he appeared at 500 Fifth Avenue, the same charade that occurred with Mr. Polur would have been encountered.

d. Also unmentioned by the Kreindler firm is that they have attached a Certificate of Deposit which he holds in trust for his daughter (Exhibit 'F').

e. Any default was by the firm of Kreindler & Relkin, P.C., as evidenced by the many subsequent telephone calls wherein the subject was never even mentioned by Mr. Gerstein nor any member of the Kreindler firm."

m. Without being consulted or given prior notice, Mr. Gerstein obtained, ex parte, an "Interim Order", which set the examination at 3:00 p.m., instead of 4:00 p.m., the time initially set by Judge Nickerson.

I, again re-arranged my schedule, in order to attend at 3:00 p.m.

n. On Tuesday, May 28, 1985, at 3:00 o'clock in the afternoon, it was Mr. Gerstein, his firm, Kreindler & Relkin, P.C., and their client that defaulted, not me.

I appeared at Judge Nickerson's courtroom at precisely 3:00 p.m., waited until 3:22 p.m., and with no one appearing from the Kreindler & Relkin, P.C. firm, left the courthouse.

During such 22 minute stay, I spoke to Judge Nickerson's male and female law secretaries in the courtroom, and the time I departed is confirmed by the Clerk's Time Clock, which I filed a related affidavit with the Clerk of the Court.

In my affidavit of May 29, 1985, I stated:

"b. His Honor can confirm with his law secretaries that they saw your deponent in the courtroom at 3:15 p.m.; and one of the trial attorneys before His Honor [to His Honor's left], can verify that he saw your deponent in the Courtroom, according to the Court's wall clock, at 3:01 p.m.

3a. To make sure that your deponent was in the correct place, your deponent asked His Honor's female law secretary, if indeed he was in the correct place, since your deponent did not have such Order available at the time.

b. His Honor's law secretary stated to your deponent that it was [my] responsibility to make sure that I was in the correct place'.

c. After verifying that I was indeed in the correct place, and extending that logic to Mr. Gerstein that it was also his 'responsibility to make sure that he was in the correct place at the correct time', I left.

d. At such conversation at about 3:15 p.m. there was no indication by either of His Honor's law secretaries that they had seen Mr. Gerstein that day or heard from him.

d. I left the courtroom at 4:20 p.m. and was in the Clerk's Office at 4:22 p.m., where he filed his affidavit. ...

4. Left also for another day is the needless trouble and difficulty in changing my plans so that he could be in His Honor's court at 4:00 p.m., and then changing it once more, so that it could be 3:00 p.m.

5a. Annexed hereto is still another restraining subpoena, dated May 22, 1985, against Mr. Raffe's assets.

o. Thereafter, after Mr. Gerstein defaulted, he, ex parte, saw Judge Nickerson and had the "Interim Order" amended, changing the date and time of the examination to Thursday, May 30, 1985, at 10:00 a.m..

Except for the physical change, there was no reason set forth or record made of what took place, or what was said, ex parte, to affect such change.

Nevertheless, with unmitigated gall, there followed a barrage of criticism from K&R faulting me for (1) not waiting longer; (2) not telephoning K&R so that I would have learned that Gerstein would be late; and (3) for not seeing some privately retained "phantom" stenographer.

Evaded is the question as to why Gerstein did not telephone my office or the Court with the advise that he would be late; or why he was late; or who or where was his "phantom" stenographer, who allegedly was present, but not seen.

p. Again without proper service of the "Amended Interim Order" on anyone, I submitted an affidavit of May 29, 1985, which stated:

> "1a. This affidavit is not intended as an acknowledgment that your deponent was properly served with any Order directing his appearance on May 30, 1985, at 10:00 a.m.
>
> b. It is intended to advise the Court that your deponent told Michael J. Gerstein, Esq., at about 1:00 o'clock this afternoon that he was actually engaged on trial tomorrow [peremptorally against all sides], and would be unable to physically attend His Honor's Court.
>
> c. Left for another day was Mr. Gerstein's response.
>
> b. In a Brief served about two years ago upon the Kreindler & Relkin firm, deponent stated:
>
> > Creditors are entitled to no more than full payment (Honeyman v. Jacobs, 306 U.S. 539, 544-545) and may not complain when 'they get no more than that' (Gelfert v. National City Bank, 313 U.S. 221, 233).' "

This affidavit of actual engagement was before the Court on May 30, 1985, and indeed I went to trial that day in state court.

q. Based upon such trial engagement elsewhere, on Monday, June 3, 1985, Mr. Gerstein secured an "Order to Show Cause why Raffe, Sassower, A.R. Fuels, Inc., and Madison Heat Corporation Should Not Be Held In Contempt."; (a) which acknowleged his failure to timely appear on May 28, 1985; (b) omitted anything about my prior trial engagement in a state court, and thus according to Gerstein, my default was "wilful and intentional"; (c) and still never advised the court of the U.S. Marshal's restraints and levy.

Instead, with more conclusory, but baseless hyperbole, Gerstein stated:

> "This (May 30, 1985) default is wilful and intentional and has impaired and impeded the collection of the judgment. The conduct of the judgment debtors and witnesses was calculated to and actually did impede, impair and prejudice the rights and remedies of the rights and remedies of the judgment creditor. ... Their conduct (as well as the conduct of the fuel oil companies controlled and/or owned by Raffe) in ignoring both the original subpoenas issued in connection with proceedings to enforce the aforesaid judgment, and also ignoring this Court's order of May 28th, is a continuation of their outrageous tactics of defiance, and shows the flagrant contempt for, and disregard of this Court."

Continuing, Mr. Gerstein, on page 8, of his affidavit, stated:

> "Accordingly, it is requested that Raffe, Sassower, A.R. Fuels and Madison each be fined $1000 per day until they appear for deposition, plus all attorneys' fees incurred by Kaufman's Estate and my firm in enforcing this judgment. Upon information and belief, Raffe is a multi-millionaire, and A.R. Fuels & Madison have a net worth of millions of dollars.

I, responded as follows:

> "1a. This affidavit is made with respect to the Contempt Order to Show Cause, dated June 3, 1985; served in the late afternoon or evening of June 4, 1985; seen June 5, 1985; which requires personal service by June 6, 1985 'before 4:00 P.M.'.
>
> b. Mr. Gerstein has been advised that he may, if he desires, hand pick-up a copy of this affidavit this afternoon.
>
> c. By reason of prior engagements and commitments, the aforementioned, including appearance on such short notice, is impossible, except on pains of irreparable harm to third parties.
>
> d. Additionally, since the only issue before the Court is 'Contempt', which, as a matter of law, must be disposed of by a hearing, a personal appearance would be a waste of judicial time.

e. By the simple expedient of asking your deponent whether he will be available before making these short, non-emergency, two day applications, these problems can be avoided by Mr. Gerstein.

f. The record is clear, the intent is to harass because of deponent's evidence of the larceny, perjury, and general corruption of the Kreindler & Relkin, P.C. firm, as partially revealed in the Appellants' Brief appealing the judgment of His Honor which was served and filed yesterday in the Circuit Court of Appeals.

2a. In deponent's affidavit of May 29, 1985, he stated:

> 'This affidavit is not intended as an acknowledgment that your deponent was properly served with any Order directing his appearance on May 30, 1985, at 10:00 a.m.
>
> b. It is intended to advise the Court that your deponent told Michael J. Gerstein, Esq., at about 1:00 o'clock this afternoon that he was actually engaged on trial tomorrow [peremptorally against all sides], and would be unable to physically attend His Honor's Court. '

b. Indeed, deponent was on trial that day, and at about 4:00 p.m., the trial court, upon request of deponent's adversary, granted him a continuance.

c. Despite both oral notice and sworn affidavit, beforehand, of a prior trial engagement, Mr. Gerstein asserts in his present moving papers that deponent 'wilfully disregard[ed] an order of this court' [¶1, p.2].

d. For this and all other [false] statements and allegations made by Mr. Gerstein, deponent on his own behalf and on behalf of Mr. Raffe request a hearing pursuant to the applicable law, including Rule 43 of the Rules of the Southern and Eastern Districts.

3a. At such hearing deponent intends to call as witnesses, both law assistants to Hon. Eugene H. Nickerson, and deponent believes that they will confirm that in addition to Mr. Gerstein not being present neither was any stenographer, who he states he 'ordered" and 'was present at 3:00 P.M.'.

b. There are other matters which have come to deponent's attention, but since the file could not be located on June 4, 1985, he cannot, at this juncture, set forth whether additional reasons exist for the recusal of His Honor on such subject.

4a. Mr. Gerstein requests, in his moving affidavit, that (¶17, p. 8):

> 'Raffe, Sassower, A.R. Fuels and Madison each be fined $1000 per day until they appear for deposition, plus all attorneys' fees incurred by Kaufman's Estate and [his] firm in enforcing this judgment.'

b. In view of the apparent penal nature of this proceeding, deponent asserts the privileges contained in Amendment V of the United States Constitution.

c. Deponent also respectfully requests that any hearing include the claim of the deprivation of 'equal protection'.

5a. Annexed hereto is a copy of the backdated letter of Feltman, Karesh & Major, Esqs. to Samuel Polur, Esq. (Exhibit 'A'), which was unavailable at the time deponent executed a prior affidavit, in support of my contention that the Feltman and Kreindler firms are abusing process and the courts for which suit has already been commenced.

b. Deponent reserves the right to supplement this affidavit on receipt of the minutes of May 30, 1985, which he is now ordering.

6. Nothing contained herein shall constitute an admission of jurisdiction in this matter.

WHEREFORE, it is respectfully prayed that the Kreindler & Relkin motion be set down for a hearing and then its motion be vacated and/or denied, with costs, including those provided in Rule 43[d]."

A letter dated June 6, 1985, accompanied Sassower's filed affidavit, which read as follows:

"Honorable Sir:

Enclose please find ... our Opposing Affidavit.

A copy of such opposing affidavit was served personally at about 9:00 p.m. on Mr. Gerstein.

We have determined to remain silent on the issue and put Mr. Gerstein and his firm to their proof on the issue, as the best way to terminate this harrassment."

Respectfully,

GEORGE SASSOWER"

r. Without any trial or hearing, on June 7, 1985, Judge Nickerson signed an "Order of Civil and Criminal Contempt" against Raffe, Sassower, Madison and A.R. Fuels. The Order provided that:

Raffe, I, A.R. and Madison were (1) each fined $1,000 per day each from June 7, 1985; (2) that they were to pay appellees' attorneys' fees; (3) the fines to continue at $1,000 per day for each appellant until they submitted to an examination in supplementary proceedings; (4) failure to appear by June 17, 1985 would subject them to arrest and incarceration at the Metropolitan Correctional Center.

s. I promptly filed their Notice of Appeal and applied to Judge Sifton, in Judge Nickerson's absence, for a stay, which was denied.

t. By this time, June 11, 1985, I had received and gave Gerstein a copy of the check issued by National Westminster Bank to the United States Marshal in full satisfaction of Raffe's indebtedness.

u. Notwithstanding an "in hand" possession of a photostatic copy of the check issued to the United States Marshal in full payment of the judgment by Raffe, Gerstein commenced Contempt proceedings against his wife, Joan Raffe, his accountant, James Carlin, and James Carlin's firm, Carlin & Lask.

Gerstein's moving affidavit again makes the conclusory, but unfounded, statement:

> "The conduct of the witnesses was calculated to and actually did impede, impair and prejudice the rights and remedies of the judgment creditor."

Continuing, Mr. Gerstein states:

> "Only by an award of attorneys' fees can Joan Raffe and Carlin be dissuaded from further disregard of their obligations. Accordingly, it is requested that the movants be awarded judgment against Joan Raffe, James Carlin and Carlin & Lask for the additional attorneys' fees incurred with regard to the enforcement of this judgment, including fees incurred in the instant motion."

v. Still having his assets under restraint, I borrowed the money necessary to pay the judgment against him, and sent a copy of the receipt of the U.S. Marshal to Kreindler & Relkin, P.C., with an affidavit annexed thereto.

w.. With actual knowledge of full payment, Gerstein opposed appellees motion for a stay in this Court with a filed affidavit which states:

> "All the contemnors need do to obtain a stay of the fines is to appear for deposition. Instead of simply appearing for deposition, the contemnors have launched their latest campaign by seeking a stay of the order, first from Judge Sifton and then from this court. Such a stay is thus entirely unnecessary, since it is contained within the terms of the very order they seek to stay, simply by the contemnors' appearance for deposition. ... Raffe is a multi-millionaire, who has apparently chosen to allow the fine to accrue rather simply appear for deposition. In the circumstances of his own personal wealth, as well as the wealth of his companies, A.R. Fuels and Madison Heat Corp., the amount of the fine is clearly not excessive. There is no possible reason why the contemnors cannot simply appear for deposition. [emphasis in the original]
>
> 12a. Finally, we wish to advise the court that as of this writing, we have not been paid any portion of the underlying judgment." [emphasis supplied]

Obviously omitted by Gerstein is any indication or statement that the United States Marshal had the monies on appellees' behalf to satisfy their judgments, and such payments discharged the obligation of the appellants (CPLR §5209).

x. Appellants' Notice of Appeal, carried with it Gerstein's deceit to the Circuit Court of Appeal!

One week after Mr. Gerstein had "in hand" the documentary evidence of full payment, he now returned to District Court and had Judge Sifton sign an Order to Show Cause:

> "why an order should not be made and entered imprisoning Hyman Raffe and George Sassower for criminal and civil contempt for failing to honor the order of Judge Nickerson dated June 7, 1985 finding them in contempt and imposing fines upon them until they appear for deposition, and directing the arrest of the contemnors by the United States Marshal and their confinement in the Metropolitan Correctional Center until their appearance for deposition, production of document and the payment of fines fixed in the order of June 7, 1985 ..."

Mr. Gerstein's supporting affidavit states:

> "No payment on account of the underlying judgment of February 22, 1985 have been received by Movants. ... It is requested that the motion be made returnable before Judge Nickerson on the earliest convenient date."

Thus even after full payment, Mr. Gerstein insisted on examinations in supplementary proceedings of all parties and witnesses!

3a. Under the aforementioned facts, or any fair statement of the facts supported by the Record, "the accused" herein, Judge EUGENE H. NICKERSON, nor Chief Judge WILFRED FEINBERG, nor Circuit Court Judge, IRVING R. KAUFMAN, nor Circuit Court Judge, THOMAS J. MESKILL, could not, in a hundred million light years obtain a conviction for non-summary criminal contempt, if I or my client were afforded a fundamentally fair trial, according to law, and they knew it.

b. Consequently, "the accused" aiding, abetting, and facilitating "criminal elements", usurped jurisdictional power, (Ex parte Robinson, supra; Nye v. United States, supra) contrived "phantom" defauts, to convict, without a trial or mandated hearing. A hearing or trial which is mandated whether the accused is present or not!

c. Even ex parte, K&R the firm that engineered this criminal charade from beginning to end, corrupting jurists, federal and state, nisi prius and appellate, at every stage, with the active participation of FK&M, could not obtain a verdict of criminal contempt had it been compelled to testify.

4a. Your Honor, every pre-text has been employed to deprive me of a trial on each and every one of my convictions, but I nevertheless insist that those who I accuse, including Your Honor, be afforded an absolutely fair trial.

b. There is more to the horror story set forth herein, which I will extensively publish, because these things will never happen again in my country!

GEORGE SASSOWER, Esq., an attorney, admitted to practice law in the federal courts within the Second Circuit Court of Appeals, and the Second Circuit Court of Appeals, does hereby affirm the above statement to be true under penalty of perjury:

Dated: March 17, 1987

GEORGE SASSOWER

FOR THE

SECOND CIRCUIT

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 13th day of September, one thousand nine hundred and eighty-five.

Present:

HONORABLE WILFRED FEINBERG,
Chief Judge

HONORABLE IRVING R. KAUFMAN,

HONORABLE THOMAS J. MESKILL,
Circuit Judges.

HYMAN RAFFE, individually and on behalf of PUCCINI CLOTHES, LTD.,

Plaintiffs-Appellants,

- against -

CITIBANK, N.A., et al.,

Defendants-Appellees.

85-7251
85-7471

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED.

1. We find that the fee requests submitted by the defendants' counsel are in compliance with the standards set forth in New York Association for Retarded Children v. Carey, 711 F.2d 1136, 1147-48 (2d Cir. 1983).

2. We reject appellants' apparent claim that an evidentiary hearing was required on the fee awards; since appellees established a reasonable basis on which to award fees and the district court heard any objections thereto, it did not abuse its discretion in not holding an evidentiary hearing.

Exhibit "A".

3. Since an award of fees to the defendants in this case has already been affirmed by this court by summary order dated January 22, 1985, any claim that the Attorney General is not entitled to fee is barred by the doctrine of res judicata.

4. Appellants' objection to Judge Nickerson's method of calculating fees is meritless in light of authority in this circuit supporting similar computations. New York Association for Retarded Children v. Carey, 711 F.2d at 1146.

5. Because the basis of the contempt order was appellants' failure to respond to orders requiring their testimony, not the non-payment of the judgment, appellants' jurisdictional objection to the contempt order is groundless. Furthermore, we find appellants' claims that they made full payment prior to the contempt order unsupported by the record.

6. We are particularly unimpressed with appellants' excuses for their numerous defaults and their attempts to shift the burden to appellees on the basis of one late appearance by their counsel.

7. Finally, we find Judge Nickerson's contempt order appropriate under the circumstances. We have 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 and the statement in Mr. Sassower's affidavit dated June 6, 1985, that no personal appearance was necessary.

8. We have considered all of appellants' arguments and find them to be without merit.

WILFRED FEINBERG, Chief Judge

IRVING R. KAUFMAN,

THOMAS J. MESKILL,
Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this Court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any

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Exhibit "3"