To be argued by:
GEORGE SASSOWER, Esq.
30 minutes

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

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HYMAN RAFFE,

Plaintiff-Appellant,

[GEORGE SASSOWER, Esq.,

Appellant,]

-against-

FELTMAN, KARESH & MAJOR,

Defendant-Respondent.

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# APPELLANTS' BRIEF AND APPENDIX

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"Everything has a moral, if only you can find it" (Alice in Wonderland, Carroll)

APPELLANTS' BRIEF

GOD, MOTHERHOOD, and APPLE PIE

PRELIMINARY STATEMENT

1. This is an appeal from the Order of Hon. DAVID B. SAXE ["Saxe"], dated June 26, 1985 and entered on July 1, 1985 [A3].

2. The Order appealed from provided for:

a. The dismissal of plaintiff's action, which contained only a summons and notice, pursuant to CPLR 3211[a](1),(3), and (5) [A5].

b. An adjudication that appellant, George Sassower, Esq. ["Sassower"], was in non-summary criminal contempt, sentenced him to be incarcerated for ten days, and fined him $250, all without trial, hearing, or allocution [A6].

c. The denial of defendants' motion to hold Sam Polur, Esq. ["Polur"], in criminal contempt [A6], for whom Sassower entered the same plea as he did for himself [A44].

Instructively, for precisely the same contemporaneous conduct, Polur was, without trial or hearing, adjudicated in non-summary criminal contempt and sentenced to thirty days incarceration, by Hon. Alvin F. Klein, by Order dated and entered the same day.

d. The directions that defendants serve a copy of the Order appealed from to the Appellate Division, First and Second Department [A7].

3. Saxe denied plaintiff's cross-motion [A6], which requested:

a. A federally based declaration, as unconstitutional and void, CPLR §5222[b], insofar as it permits restraint "equal to twice the amount due" [A34]. Service was made on the Attorney General (Executive Law §72, CPLR §1012[b]) [A35], who chose not to intervene.

b. A federally based declaration that the defendant's restraint against plaintiff's accounts at two banks, each for twice the amount due, to be null and void, insofar as it exceeds the amount due defendant, plus interest and reasonable execution costs [A35].

c. A declaration that defendant's Subpoena duces tecum on Polur, purportedly in an attempt to discover plaintiff's assets, to be null and void (CPLR §5104) [A35], particularly since a restraint had already been placed on Raffe's assets, in excess of the amount due.

d. A declaration that "all other judgment enforcement proceedings by defendant" be declared "null and void" (CPLR 5104; Judiciary Law §753[3]) [A35].

4. Dismissed, by reason of the Order appealed from, were (a) plaintiff's action for damages by reason of the aforementioned and (b) his damage action suit for malicious prosecution, based on the dismissal of criminal contempt proceedings by Mr. Justice Martin Evans against plaintiff by Order entered January 4, 1985 [A5].

5. The action herein was commenced immediately after, Hon. KENNETH L. SHORTER denied defendants' similar motion [A45], which appellants believed should or would be followed by Saxe.

In that Order, Mr. Justice Shorter stated [A45]:

> "Upon the foregoing papers this motion by the receiver['s attorneys] to vacate two notices of motion, is denied. The CPLR does not provide for said relief. Furthermore, the receiver can submit papers in opposition to the motions raising the same arguments."

b. Saxe not only refused to follow the Order of Mr. Justice Shorter [A45], but, without trial or hearing, convicted Sassower and sentenced him to jail, in addition to dismissing the action.

6a. There are pending, related actions and proceedings against Saxe in the federal court and Appellate Division, Third Department, all preceding the Order appealed from.

Insofar as it is asserted that the actions of Judge Saxe were null and void because of a mandated disqualification, such issue is not before this Court.

b. Insofar as this Court may find that Mr. Justice Saxe should not have accepted the reference of this motion and cross-motion from the Justice Presiding at Special Term, Part I, the issue is before this Court.

c. The difference and distinction between the aforementioned is that a mandated disqualification gives rise to actionable damages (LaPier v. Deyo, 100 A.D.2d 710, 474 N.Y.S.2d 597), while the alternative situation only results in attorneys' fee damages (Pulliam v. Allen, U.S. , 104 S.Ct. 1970, 80 L.Ed.2d 565).

QUESTIONS PRESENTED

1Q. Can anyone be legally convicted of non-summary criminal contempt without a trial [with its right of confrontation] or the right of allocution?

A. Saxe ignored any and all law on the subject, even that mandated by the federal constitution (Bloom v. Illinois, 391 U.S. 194), in convicting and sentencing Sassower.

2Q. Can anyone be legally convicted of non-summary criminal contempt, without a trial, when his plea is [A44]:

> "To the charge of criminal contempt, the plea is 'not guilty', violation of equal protection, 'double jeopardy', and the application does not meet the constitutional and statutory pleading and notice requirements for contempt, civil or criminal".

A. Necessity knows no law (Aquinas, Summa Theologica, Benziger Ed. p. 1022). Tyranny abides by none.

3Q. Could Sassower be convicted of criminal contempt based on the finding that "it appears [Sassower's action was] in direct violation ..." [A6]?

A. Clearly the aforementioned is not the standard of proof in a criminal proceeding, which Saxe also chose to disregard.

4Q. Can Sassower be criminally convicted of violating the Order of Hon. Ira Gammerman, assuming he did so, when nothing contained thereon indicated that incarceration would be the consequence thereof (People v. Parker, 57 N.Y.2d 136, 454 N.Y.S.2d 967), and a diametrically opposite result was reached by Hon. Kenneth L. Shorter a little more than a week prior to the commencement of this action in a similar situation?

A. Saxe ignored the issue, as well as the Order of Mr. Justice Shorter [A46].

5Q. Was Sassower entitled to a hearing on the issue of equal protection, since constitutional and civilized values recognize that "guilt" is not the final determinative issue (Yick Ho v. Hopkins, 118 U.S. 356).

A. Saxe could care less when the prosecution is by Feltman, Karesh & Major, Esqs.

6Q. Was prosecution herein precluded by the constitutional and statutory prohibition against "double jeopardy".

A. Saxe completely disregarded the Order of Mr. Justice Martin Evans, rendered after a massive submission over a two year period, which by its general verdict precluded this criminal contempt proceeding.

7Q. Can Sassower be convicted of criminal contempt when the uncontroverted assertion is made that the two orders of Hon. Ira Gammerman ["Gammerman"], are null, void, and of no legal effect.

A. Saxe, crowned himself as the super-legislative body, and merely deleted the word "lawful" from Judiciary Law §753, in the Court's description of Judge Gammerman's Order [A5].

8Q. Are the Orders of Gammerman entitled to enforceable or collateral respect (Gilberg v. Barbieri, 53 N.Y.2d 285, 441 N.Y.S.2d 49) when it is asserted, shown, and everyone knows that they were obtained, inter alia, by fraud, by corruption, and lack subject matter and personal jurisdiction?

A. Sub silentio, held Saxe, those types of egregious orders are particularly deserving of judicial protection, by in terrorem interpretation, clearly rejected as unconstitutional in Cotting v. Godard (183 U.S. 79, 100-102), as effectively denying one access to the courts.

9Q. Assuming, arguendo, the two orders of Gammerman, are merely irregular or erroneous, are they to be treated with the same force and effect as if they were "null and void", when the "judicial machinery" has been seized, held hostage, and the normal corrective process made unavailable to the appellants (Aquinas, supra)?

In "Beirut on the Hudson" anything can and does happen, as the Saxe decision and order confirm.

10Q. Can Saxe and Gammerman, prohibit under penalty of incarceration, federally based actions, authorized to be brought in the state court?

A. Since neither Saxe, Gammerman, nor Referee Donald Diamond ["Diamond"], recognize the United States Constitution, they do not recognize the "Supremacy Clause" contained therein.

11Q. Is a criminal contempt proceeding void as against third parties, including Sassower, when it is not commenced as a separate proceeding (Long Island Trust v. Rosenberg, 82 A.D.2d 591, 442 N.Y.S.2d 563 [2d Dept.]), and the statutory warning does not conform to the size mandated by statute (Judiciary Law §756; Cohn v. Royal Globe, 67 A.D.2d 993, 414 N.Y.S.2d 19 [2d Dept.]).

A. Saxe does not involve himself in such issues.

12Q. Did Mr. Justice Saxe have the authority to publish a direction that defendants send copies of his order to the Appellate Division, First and Second Departments?

A. Presumably, Saxe believes himself to be or to possess the power and authority of the Presiding Justice of this Court (Judiciary Law §90[10]).

13Q. Should this motion have been referred to and entertained by Saxe?

A. Saxe, in preference to Cooke v. United States (267 U.S. 517), would rather rely on Lewis Carroll's, Alice in Wonderland (chap. 3):

> "I'll be judge, I'll be jury ... I'll [not] try the whole cause, and condemn you to death [anyway]".

14Q. Could or should appellant's action have been dismissed pursuant to CPLR 3211(a)?

A. Saxe held in the affirmative, in apparent conflict with the holding of Mr. Justice Shorter.

15Q. If Sassower should be incarcerated for 10 days for "apparently" disobeying the Gammerman edicts, what penalty should be imposed upon Saxe when he patently abuses the power of his office and "clearly", not "apparently", disobeys the Constitution of the United States, the Supreme Court of the United States, and about every law, statute and decision thereunder?

A. The question remains to be answered, as is his relationship with the defendants!

## STATEMENT

1a. On May 2, 1985 the Justice Presiding at Special Term Part I, in the personal absence of appellants, referred defendants' motion to Mr. Justice Saxe.

b. Sassower, upon learning of such reference, asserted that Saxe suffered from a statutory (Judiciary Law §14) and constitutional infirmity [A57].

c. Actively pending at the time was (1) litigation between plaintiff, Sassower and Saxe, where money damages was sought, and (2) an appeal in this Court, highly critical of Saxe (Raffe v. Abrams, Sept. 1985 Term).

d. Representing Saxe in the above litigation was Senior Assistant Attorney General David S. Cook, Esq. ["Cook"], the attorney in the essentially one-man unit in the Attorney General's Office assigned to vouchsafe the assets and affairs of Puccini Clothes, Ltd. ["Puccini"]. Puccini was involuntarily dissolved on June 4, 1980, and from that day continuously to the present time Cook has been its statutory watchdog (Business Corporation Law §1214).

e. In a series of decisions in 1983-1984, Saxe had exhibited an unnatural solicitude towards the defendants, regarding Puccini merely as "a judicial fortune cookie".

One such determination was that Feltman, Karesh & Major, Esqs. in seeking fees from Puccini, the helpless judicial trust, was to be defended by Lee Feltman, Esq., without permitting vested adverse interests to participate.

f. On January 9, 1984, Sassower wrote to Attorney General, Hon. Robert Abrams, as follows [Raffe v. Abrams, Sept. Term, at 217]:

> "Enclosed please find Notice of Motion in the above matter, which is self-explanatory.
>
> The matter will [be] on for a hearing at Trial Term Part 10 in Supreme Court, New York County, on January 11, 1984 at 9:30 a.m. I suggest that you be present to set forth your position in this matter (Barr v. Puccini Clothes, Ltd.).
>
> To be explained, on another day, is the inactivity of your office after actual notice was given of the larceny of this involuntarily dissolved corporation and while its assets and affairs were in the custody of the court.
>
> Now for concealing such larceny for a period of almost two (2) years the Receiver's Law Firm desires legal fees for almost consistently taking a position contrary to the interests of their trusts!

> If your office has no intention of protecting the interests of those who have not, or have not, been permitted to intervene, I believe the record should so indicate.
>
> Very truly yours,
>
> GEORGE SASSOWER"

g. Cook personally responded to such inquiry by Sassower to the Office of the Attorney General, and then and thereafter was given a great deal of confidential information by Sassower regarding the "rape of Puccini", the judicial involvement of Saxe.

With adverse, albeit vested, interests excluded from participation in this legal charade, only the Attorney General had the ability to defend.

h. When Cook refused to intervene at that point, Sassower, on behalf of Raffe and Puccini commenced an Article 78 proceeding against the "Justices of the Supreme Court of the State of New York, County of New York", including Saxe, to compel compliance with the mandatory provisions contained in 22 NYCRR §660.24 [#20462, M-3651 & M-3808].

Cook, after receiving appropriate judicial authorization, urged dismissal, representing to this Court that this Court should presume that his judicial clients would obey the law, and give obedience to its ministerial directives [22 NYCRR §660.24(f)].

i. When Saxe awarded Feltman, Karesh & Major, Esq. ["FK&M"] every cent they desired, and gave Lee Feltman, Esq. ["LF"] a blank check to give Rashba & Pokart anything they desired (Raffe v. Abrams, supra, 6), albeit there festered a conceded non-compliance with §660.24, and Cook's representation to this Court regarding same [subd. "f"], Raffe and Puccini, by Sassower commenced an action against Saxe for his disobedience regarding non-discretionary, ministerial, non-immune mandates (Tango v. Tulevech, 61 N.Y.2d 34, 40-41, 471 N.Y.S.2d 73, 76-77).

j. Armed with Sassower's confidential information, Cook was commandeered to represent Saxe in this lawsuit while simultaneously remaining as Puccini's statutory watchdog -- and while still obtaining confidential information from Sassower, who was still seeking to have Cook intervene on behalf of Puccini.

In everyman's legal and ethical code The Judiciary [including this Court, which has given its approval to such incestuous relationship], unquestionably hit "rock bottom". Of the seventy assistant Attorney Generals available in the litigation bureau, Cook was commandeered to represent the judicial "miscreants"

k. Thus, there is pending in this Court appeals from the Judgment and Orders of Saxe (Raffe v. Abrams, supra) wherein Saxe's determinations are, ante litem motom, described as:

> "legally and ethically, ... 'the rankest compound of villainous smell that ever offended nostril' (Shakespeare's, Falstaff, Merry Wives of Windsor, III:v)".

In that proceeding, pending in this Court, the "Questions Presented" are:

> "1Q. Could nisi prius award very substantial fees to those whose appointment were in violation of the mandatory, ministerial, non-discretionary provisions contained in 22 NYCRR §660.24, despite the in haec verba prohibition contained therein [subd. 'f']?
>
> A. Mr. Justice Saxe, replied in the affirmative by simply ignoring the rule's existence.

2Q. Where the Attorney General, as the legal representative of the 'Justices of the Supreme Court, New York County', represented to this Court, in an Article 78 proceeding, that this Court should presume that his judicial clients give obedience to 22 NYCRR §660.24, did Mr. Justice Saxe have the lawful authority to wilfully disobey same?

A. Mr. Justice Saxe, replied in the affirmative again simply disregarding the representations of his attorney to this Court.

3Q. Where the firm of Feltman, Karesh & Major, Esqs. ['FK&M'], followed a deliberate charted course of corruption and betrayal of the interests of Puccini Clothes, Ltd. ['Puccini'], to its substantial damage, is that firm precluded from recovering monies from the carcass of the court's helpless judicial trust?

A. Mr. Justice Saxe, replied in the negative.

4Q. Where the firm of FK&M has not, and cannot, show any substantial services intended to, or which benefited Puccini, can they recover substantial fees for legal services?

A. Mr. Justice Saxe awarded FK&M everything they requested -- down to the very last half-penny!

5Q. Where the firm of Rashba & Pokart ['R&P'], as investigatory accountants, accepted a judicial assignment, are they entitled to substantial compensation where they did not disclose that they represented Kreindler & Relkin, P.C. ['K&R'], and/or its clients in the matter, all of whom were the subjects of appellants' accusations?

A. Mr. Justice Saxe, replied in the affirmative, giving the receiver a blank check to give to these accountants anything they desired from Puccini.

6Q. Where the firm of Rashba & Pokart, as investigatory accountants, accepted a judicial assignment, are they entitled to any compensation where they did not disclose that they previously received substantial 'laundered' funds from Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C. ['ANBL&K'], also the subject of appellants' accusations, in payment of an invoice rendered to K&R, the funds unlawfully taken from Puccini, the judicial trust, and entered as a 'legal' disbursement on Puccini's books?

A. Mr. Justice Saxe, replied in the affirmative, giving the Rashba firm a blank check from the judicial trust.

7Q. Where there is an overall agreement to commit larceny, perjury, and corrupt justice by K&R, ANBL&K, FK&M, and R&P, may the court financially underwrite same from the judicial trust?

A. Mr. Justice Saxe, replied in the affirmative.

8Q. Is a claim for fees by Feltman, Karesh & Major, Esqs., from Puccini, a farce and mockery of justice, when Lee Feltman, Esq., their senior partner, is supposed to represent Puccini, and then never bothers to appear or oppose such application?

A. Mr. Justice Saxe, saw nothing improper in such a legal proceeding or the conduct of the receiver in not opposing the application.

9Q. Could appellants', who independently had substantial financial interests in Puccini, be constitutionally and legally precluded from defending the claims against Puccini by FK&M and R&P, under the circumstances at bar?

A. Mr. Justice Saxe answered in the affirmative.

10Q. Where Senior Assistant Attorney General David S. Cook, Esq., who, except for titular superiors, is a one man unit in the Attorney General's Office assigned to vouchsafe Puccini's assets and affairs, and who received confidential information from appellants regarding the 'judicial rape of Puccini', could he thereafter be commandeered and embraced by some of the members of the judiciary to represent them for their transgressions upon Puccini, the judicial trust?

A. Impliedly, Mr. Justice Saxe, saw nothing improper.

11Q. Since an accounting has not been filed, final or interim, since Puccini was involuntarily dissolved on June 4, 1980, should have Mr. Justice Saxe directed Lee Feltman, Esq., the court appointed receiver, to file same, as appellant demanded, particularly where the documentary evidence reveals a massive larceny of judicially entrusted assets?

A. Mr. Justice Saxe responded in the negative.

12Q. Should have Mr. Justice Saxe directed Lee Feltman, Esq., the court appointed receiver to collect twice the amount unlawfully taken from Puccini, in accordance with statutory mandate?

A. Mr. Justice Saxe responded in the negative.

13Q. Should have Mr. Justice Saxe disinfected the 'temple of justice' in the Puccini matter, by orders of removal and disqualification, as demanded by appellants?

A. Mr. Justice Saxe rewarded these judicial scoundrels by granting them everything they desired!

14Q. Are draconian costs unconstitutional as violating free speech and access to the courts, where, as here, judicial improprieties and corruption are asserted, shown, and not even controverted?

A. Impliedly, Mr. Justice Saxe, asserted them to be appropriate."

2a. Saxe bottomed his disposition in this criminal matter, without trial or hearing with its attendant constitutional right of confrontation, on the basis that [A5]:

> "it appear[ed] that the commencement of this action by attorney George Sassower, [was] in direct violation of the permanent injunction Order of Honorable Ira Gammerman dated January 23, 1985, was done wilfully and full knowledge of the Order disobeyed, and that such conduct was intended to and has defeated, impeded, impaired and prejudiced the rights of defendant Feltman, Karesh & Major."

b. There are two (2) Orders by Hon. Ira Gammerman ["Gammerman"], dated January 23, 1985, each legally and ethically repugnant.

While at no time, judicially or extra-judicially, has Sassower, Raffe, or Polur admitted to the violation of same, indeed they deny any such accusation, Sassower does contend that such Orders are null and void, legally, ethically, and morally.

c. Gammerman Order #1 (purportedly settled at Special I), dated January 23, 1985, on its face, fails to reveal any of the usual stamp marks (in or out) of Special I, or any other indication that it was ever seen by any of the clerks therein.

This Order also has no County Clerk's stamp on it, nor any indication that it was ever seen by the clerks in the County Clerk's Office.

The books and records at Special Term Part I and the County Clerk's Office, confirm that such Order never passed through those offices before it was found by Sassower, almost one month later, in the County Clerk's file.

Defendants must inform this Court of the "judicial" route taken by such purported Order, and if it fails to do so, which thus far it has, this Court should demand explanation of the "sewer odyssey" of such Order.

d. Gammerman Order #2, dated January 23, 1985 [A19-A32], purportedly made pursuant to "oral decision on December 19, 1984", on its face reveals, in part, lack of subject matter jurisdiction [A27].

Here again the defendants must inform this Court, the "judicial" process whereby such out-of orbit Order was secured, and if it fails to do so, this Court should demand same.

1. Again, while disclaiming any disobedience, appellants contend that these Orders are null, void, and of no effect, legally or otherwise.

2. Cook has conceded that the terms of the Gammerman orders notwithstanding, "it has no legal effect upon him, his office, and his (judicial) clients."

3. The attorneys for Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C. ["ANBL&K"], have likewise made, sub silentio, a similar concession.

4. An examination of the minutes of December 19, 1984, which the defendants and their co-conspirators never exhibit, will reveal a lack of personal jurisdiction, as against Raffe.

5. An examination of the minutes of December 19, 1984 will manifestly reveal that this Order #2 was entered after an ex parte arrangement had been made by defendants or on their behalf, between December 19, 1984 and January 23, 1985, with Gammerman.

6. Sassower, has in effect, a confession from Donald F. Schneider, Esq., a partner in defendants' firm, from Michael J. Gerstein, Esq., of Kreindler & Relkin, P.C. ["K&R"], and from Gammerman himself confirming same.

7. Subject matter and personal jurisdiction, ignored by defendants, K&R, and Gammerman, are issues in a contempt proceeding (21 NY Jur2d, Contempt §28, p. 255).

8. To prevent examination of these orders, this Court was "duped" into issuing its Orders of May 21, 1985 [M-1875 and M-1972]. The defendants and K&R knowing that the hearings "ordered" by this Court will cause them to be "hoisted by their own petards", now have nisi prius "dragging its feet" with respect to same.

d. Assuming, arguendo, the Gammerman Order #2, which enjoins appellants from communicating with the Grievance Committee or any professional disciplinary body, with appellants' documented evidence of perjury, larceny, and corruption, is merely "irregular", rather than "null and void"; the question arises as to whether it may be disobeyed with impunity when it provides that such Order and others may not be vacated or modified, except by Gammerman's permission and consent.

Gammerman, "Napoleon I" style, crowned himself, "Judge of Judges", and as "the Court of First and Last Resort" (cf. Eskridge v. Washington, 357 U.S. 214).

Thus, appellants cannot obtain an order confirming that the Gammerman Orders are of no legal effect by and between appellants and the Attorney General, as agreed and conceded by that Office, except with Gammerman's permission.

Thus, appellants in a proceeding against the clients of the Attorney General, cannot assert their right to a public courtroom during judicial proceedings, their constitutional right not to be harassed in violation of "double jeopardy", their indispensible right to procedural and substantive "due process" and other basic federal constitutional rights, except with the permission and consent of Gammerman.

Where access to lawful authority does not exist, as here under the Gammerman ukase, the "Aquinas doctrine" concerning "knowing no law" is triggered.

e. Thus although Hon. ARNOLD L. FEIN, of this Court, was justifiably livid when he learned on May 9, 1985, that Sassower had been excluded from an "American Courtroom during an American Trial", His Honor did not [because of the unavailability of a transcript] have the "full flavor" of what had actually transpired, which under the Gammerman Order needs his permission to remedy.

Equally significant, is that such exclusionary practices still continue and have been extended by Diamond to include Polur.

f. Here presented, is what actually happens in "an american courtroom during an american trial" at 60 Center Street:

The trial transcript of Thursday, April 18, 1985, reads as follows:

> "MR. GERSTEIN: Your Honor, we take the position, and we will demonstrate subject, of course, to your ruling, at the appropriate time and ultimately to the jury's decision as to what is and isn't related --
>
> THE COURT: Anything under 16792 [Barr #2] I assume is all we're going to be involved with.
>
> MR. GERSTEIN: My contention, your Honor, the plaintiffs' contention, as set forth in our trial memorandum, is that all of these subsequent actions, and we'll show you by citing from them, the pleadings as to how they are --
>
> THE COURT: I don't want any of those if they're not under this index number. I told you that before. I want to be restricted to that. ... How, if you are contending that they harassed you with other motions, and so forth, maybe that involves another lawsuit. But that's not one --"

After His Honor received some ex parte "marching orders", he peremptorily excluded Sassower, imposed a "gag" order, and permitted plaintiffs' attorneys, Kreindler & Relkin, P.C., to introduce matters on which Sassower was, is, and always has been the attorney of record.

Even after Sassower was compelled to testify, so that the trial record could properly set forth what these other cases were about, the exclusion and "gag" directive were reimposed:

> "THE COURT: Mr. Sassower, I'm going to excuse you from the courtroom because my rule is back in force. You're not involved in this case and I'd asked you to remain outside the courtroom for the remainder of the trial.
>
> MR. SASSOWER: May I say something?
>
> THE COURT: Yes.
>
> MR. SASSOWER: I invoke, your Honor, the Constitution of the United States and everything thereunder, including Judiciary Law, Section 4. And I specifically except to your Honor's ruling, but I obey it.
>
> THE COURT: Yes.
>
> MR. SASSOWER: Thank you, your Honor. Does that cover any conversations, if I may, with Mr. Polur?
>
> THE COURT: It's still in effect.
>
> MR. SASSOWER: Thank you."

The following example of a "Gestapo mentality" makes any further editorial comment supererogatory:

> "MR. GERSTEIN [K&R]: And this morning, as I walked into the building, I observed Mr. Sassower and Mr. Polur together.
>
> MR. POLUR: Your Honor, may I address myself to that, very respectfully? This is sort of a vigilante criminal statement from that man. Nobody is going to stop me from being with somebody. I heard the Court's order and I'm obeying the Court's order. This is such despicable language and thoughts. You're spying on me?

MR. GERSTEIN: Excuse me, sir.

MR. POLUR: Spy? What is he saying, Judge?

THE COURT: He has a right to do that. As far as the Court is concerned, I want reports. I want to know -- would you just calm down -- I want to know if in fact you are conferring with him. And if you are, I want to know about it. And if anybody, and I say this to anybody in your office, Mr. Relkin, or anybody else who's an officer or a participant in this court, such as the Court Officer or the Clerk or the Court Reporter, if they see at any time you confer with him, I want to know about it, because it's very important to me."

g. Clearly, both Sassower and Polur fully comprehend the mandate of obedience during a trial, even when manifestly unconstitutional and indeed despicable, the Saxe commentary notwithstanding.

POINT I

THE ORDER APPEALED FROM IS CONSTITUTIONALLY INVALID

1. Bloom v. Illinois (391 U.S. 194) brought within the umbrella of the Fourteenth Amendment, a limitation on the power of the state regarding any procedures it may desire to employ in the adjudication of non-summary criminal contempt.

2. Prior thereto, and certainly after, both in the federal forum and in this state, for non-summary criminal contempt, absent a plea of guilty, a trial or hearing was and is a pre-condition for any adjudication of guilt.

Mr. Justice White, speaking for the Court in Bloom v. Illinois (supra, 201-208) stated:

> "Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both. In the words of Mr. Justice Holmes:
>
> > 'These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in the English speech'
>
> criminal contempt is a crime in every fundamental respect ... . 'Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation.' We thank this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty imposes.' It has also been recognized that the defendant in criminal contempt proceedings is entitled to a public trial before an unbiased judge. ... In modern times, procedures in criminal contempt cases have come to mirror those used in ordinary criminal cases. ... We cannot say

> that the need to further respect for judges and courts is entitled to more consideration than the interest of the individual not to be subjected to serious criminal punishment without the benefit of all the procedural protections worked out carefully over the years and deemed fundamental to our system of justice. Genuine respect, which alone can lend true dignity to our judicial establishment, will be engendered, not by fear of unlimited authority, but by the firm administration of the law through those institutionalized procedures which have been worked out over the centuries." [authorities omitted].

3. The failure to permit allocution, deprived the Court of the opportunity to evaluate its determination against arguments of counsel.

The deprivation of "free speech" or the opportunity for allocution, deprives the potential listener of that knowledge he might otherwise have to make rational judgment before irreparable harm (Bounds v. Smith, 430 U.S. 817, 826).

4. Had Saxe permitted allocution, Sassower might have tendered to the Court Bloom v. Illinois (supra) or reminded His Honor that he was entitled to a determination on the issue of "double jeopardy" and a hearing on the issue of "invidious discrimination".

## POINT II

## JUDGE GAMMERMAN'S ORDER WAS NOT VIOLATED BY THIS ACTION

1a. Plaintiff's action herein is based on violations of 42 USC §1983, based on defendants' conduct subsequent to December 19, 1984 and/or January 23, 1985.

b. This federally based action (Lugar v. Edmondson, 457 U.S. 922), was based on (1) post-judgment restraints and procedures (Warren v. Delaney, 98 A.D.2d 799; 469 N.Y.S.2d 457 [2d Dept.]) [A37], and (2) malicious prosecution "under color of law" (36 NY Jur., Malicious Prosecution, §12, p.266) [A38].

2. Assuming, arguendo, personal jurisdiction under the Gammerman orders over plaintiff, which appellants deny, Sassower contends:

a. Neither Gammerman nor any other judge or governmental official, even when in haec verba provided, can legally immunize future intentional torts. Certainly, there is nothing in the order herein (or in the underlying undisclosed transcript) which manifests such intention (cf. Gross v. Sweet, 49 N.Y.2d 102, 424 N.Y.S.2d 365).

b. Plainly, Gammerman did not, nor does he now have subject matter jurisdiction, under the Supremacy Clause of the United States Constitution, to prohibit federal claims authorized to be brought in the state court (Brody v. Leamy, 90 Misc.2d 1, 20, 393 N.Y.S.2d 243, 257).

If the acts of Congress and the Supreme Court of the United States permit federal actions to be brought in the state court, then no state judge, including Gammerman, may prohibit same or penalize one for resorting to such state to vindicate a federal right.

## POINT III

## AS A MATTER OF LAW, VIOLATION OF THE GAMMERMAN ORDERS, WITHOUT MORE, MAY NOT HAVE PENAL CONSEQUENCES.

1. In real life, one must constantly choose between conflicting and irreconcilable laws, rules, regulations, and orders, spiritual, moral, and secular. Such legitimate evaluation requires knowledge of the consequences, not only to one self, but to others.

Legal systems provide frameworks for the evaluation of action. There is a compelling distinction between the framework of obligations and that of sanctions.

The law itself, at times, invites legitimate disobedience in order to provide a base for a justiciable controversy.

2. Criminal sanctions and incarceration cannot be the penalty for disobedience, without prior constitutional warning (Vail v. Quinlan, 406 F. Supp. 951; Judiciary Law §756).

Indeed, the rules of this Court, in more urgent circumstances provide that in the absence of "the most flagrant and offensive misbehavior" the court "should [first] warn or admonish ... and afford an opportunity to desist" (22 NYCRR §604.2[2][c]).

When, as here, incarceration may be the result, constitutional notice must be given beforehand, in the Gammerman Order itself, before it is asserted, as a matter of law (People v. Parker, 57 N.Y.2d 136, 454 N.Y.S.2d 967).

3a. In the area of enforcement or collateral effect, particularly when penal consequences are advanced, the law has not placed each and every judicial order on a basis of equality (Gilberg v. Barbieri, 53 N.Y.2d 285, 441 N.Y.S.2d 49).

b. Thus assuming, arguendo, the Gammerman orders were and are legally recognized as valid, it does not follow, ipso facto, that they will be enforced with penal consequences.

c. Any examination of the Gammerman orders, with its patent "out of orbit" provisions reveals that no court would seriously give some of them force and effect, and indeed some judges have not.

To report misconduct to the Grievance Committee, is apparently obligatory (Disciplinary Rule 1-103), nevertheless the Gammerman order, read "Saxe style", could result in criminal sanctions.

## POINT IV

## THIS COURT HAS A NON-DELEGABLE OBLIGATION TO REMEDY AN ABUSE OF JUDICIAL POWER

1a. This Court has been accused by appellants, particularly Sassower, of "neglect of duty", legally and ethically, in permitting the defendants to openly and continuously betray the court's helpless judicial trust at nisi prius and before this Court (Evitts v. Lucey, U.S. , 105 S.Ct. 830, 83 L.Ed.2d 821).

b. The very boldness, openness and arrogance of the corruption in the "temple of justice" made and makes silence intolerable, and indeed unethical.

2a. Contempt, summary and non-summary, borders on the unconstitutional herein, where the very judicial institution attacked prosecutes and pronounces punishment. Only manifest necessity can justify contempt proceedings when the judicial system or any member thereof is made the object of criticism.

b. As with all draconian remedies, it should be "the least possible power adequate to the end proposed" (Anderson v. Dunn, 19 U.S. [Wheat.] 204, 211, 5 L.Ed. 231; Feingold v. Walworth, 238 N.Y. 446).

c. This manifest rejection of constitutional limitations, by one who knew he was disabled from adjudicating this matter (Cooke v. United States, 267 U.S. 517) only breeds disrespect for the judiciary, could only compel the intervention of the legislative arm or the media for correction.

POINT V

APPELLATE ADVOCACY SHOULD NOT BE CHILLED BY NOT CONDEMNING THE EXERCISE OF JUDICIAL AUTHORITY BY SAXE

1. It was the abuse of power by Federal District Judge James Peck who imprisoned and disbarred an attorney for criticizing his opinion on appeal, which drastically curtailled the judicial contempt power by the Act of 1831 (Bloom v. Illinois, supra).

2a. Can this Court afford to chill the right of effective advocacy by condoning a nisi prius jurist who invites, accepts and entertains a related criminal contempt proceeding, when there are many other coordinate jurists available?

b. If Sassower's brief in Raffe v. Abrams (supra) falsely or misleadingly states the questions presented to this Court, the judiciary is not without power to take corrective or punitive measures.

Punishment cannot be imposed by the judge whose judgment and orders are being appealed, particularly where Cook is privy to Sassower's views of Saxe's conduct in that matter.

POINT VI

THIS COURT SHOULD NOT ABDICATE ITS EXCLUSIVE JURISDICTION UNDER JUDICIARY LAW §90[10]

1. This Court has exclusive jurisdiction pursuant to Judiciary Law §90[10] (Erie v. Western, 304 N.Y. 342, 346, cert. den. 344 U.S. 892) and a concommitant responsibility to protect those unjustifiably attacked (Matter of Stern, 137 App. Div. 909, 910, 121 N.Y. Supp. 948, 949 [1st Dept.]).

2a. To insure full and free access to the Grievance Committee, anyone and everyone, including Saxe or the defendants, may file a complaint with this Court or the Grievance Committee, with impunity.

b. The impunity should die with the needless publication or overpublication (50 Am Jur 2d, Libel & Slander, §278-283, p. 797-803), nevertheless against members of the judiciary who do not obey the limits of their office. The courts have and should speak forceably and effectively (Matter of Wilhelm, 88 A.D.2d 6, 14-15, 452 N.Y.S.2d 957, 963 [4th Dept.-Simons, J.]; Matter of Haas, 33 A.D.2d 1, 304 N.Y.S.2d 930 [4th Dept.], app. dis. 26 N.Y.2d 646, 307 N.Y.S.2d 671).

POINT VII

DISMISSAL PURSUANT TO CPLR 3211(a) IS UNAUTHORIZED

1. Saxe incorrectly refused to follow the adjudication of Hon. KENNETH L. SHORTER [A45].

2. Defendants do not deny that plaintiff has good and cognizable causes of action. He should be granted his day in court.

## POINT VIII

## SAXE KNOWS LITTLE, IF ANYTHING, ABOUT THE CASES CITED

1a. Since Monday, July 1, 1985, when the New York Times published the story that it will soon be "ex-Surrogate Signorelli", it has become acceptable, if not fashionable, to speak of the Surrogate's behavior.

The leader of the Conservative Party is quoted as stating that Signorelli "was 'a tyrant' who 'totally lacks judicial temperment'". The chairman of the Republican Party, in not supporting his re-election, questions Signorelli's appointments.

Severally years ago, in the press, the public learned that Signorelli was using the courthouse for his private extra-marital exploits.

2a. Nine (9) years ago Sassower knew, but did not expose, what was happening in Suffolk County.

b. That knowledge, without more, by a person not bondaged to the Suffolk County establishment, made him dangerous, particularly since he possessed certain documents.

c. Thus, (1) without any accusation; (2) without notice of any trial or hearing; Sassower was (3) tried; (4) convicted; and (5) sentenced, all in absentia.

Without knowledge of those events of the previous day, Sassower was arrested during the early hours, held incommunicado, transported back to Suffolk County, again held incommunicado.

All requests and demands for permission to present a Writ of Habeas Corpus were denied.

After conviction, it was Jailor Signorelli, and not Surrogate Signorelli. Thus in response to a Signorelli question, Sassower responded appropriately.

That response was the subject of judicial inquiry, and one quote is revealing and instructive:

> "Judge MELIA: That was not the question. The question was: Did you believe that he [George Sassower] had a right to advance the 5th Amendment and decline to interpose the 5th Amendment?
> SURROGATE SIGNORELLI: No, I believe he did not have that right."

d. The one question Judge Melia and other civilized people never asked Sassower: "Why, if you were innocent, did you plead the 5th"?

The "on the record" response of Sassower, when asked that question in Suffolk County, was "because it represents man's struggle to make himself civilized"!

e. The point is that Signorelli gave Sassower a choice, the forfeiture of basic constitutional rights or jail. Sassower chose jail.

That choice was never afforded by Saxe!

3. Saxe also cites Kelly v. Sassower, without knowing that at a full and plenary hearing, Sassower's adversary was vehemently denounced by the Court's own attorneys and the hearing judge as one who repeatedly lied and misled various judges, including some of the judges of this Court.

4. Mr. Justice Holmes correctly observed:

> "One thinks that an error exposed is dead, but exposure amounts to nothing when people want to believe." (Holmes-Pollack Letters, p. 219).

POINT IX

THE MORAL

1a. There is no question that Saxe and Hon. Alvin F. Klein know and fully understand, as a matter of ministerial certainty, that this non-summary criminal contempt conviction is null and void.

b. Sassower is not the "disobeyer of the law", it is but Saxe and Klein.

2a. The moral is painfully clear that in a courtroom or in judicial circles you can denounce "God, Motherhood, and Apple Pie" and be assured of calm judicial reception.

b. But to merely have or hold the information that Sassower had about Signorelli, or now has about the judicial machinery in the Puccini litigation, causes the roof to cave in.

## CONCLUSION

THE ORDER APPEALED FROM MUST BE REVERSED, WITH COSTS

Dated: July 15, 1985

Respectfully submitted,

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