UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEROY PEOPLES, Plaintiff, - against- BRIAN FISCHER, DOCS Commissioner, et al., Defendants.	Docket Number 11-CV-2694 (SAS)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR RECONSIDERATION

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEROY PEOPLES, Plaintiff, - against- BRIAN FISCHER, DOCS Commissioner, et al., Defendants.	Docket Number 11-CV-2694 (SAS)

PRELIMINARY STATEMENT

This memorandum of law is respectfully submitted on behalf of defendants Ward, Bezio and Rock in support of their motion pursuant to S.D.N.Y. Local Rule 6.3 seeking reconsideration the portion of this Court's May 3, 2012 Opinion and Order ("Opinion") partially denying their motion to dismiss, while dismissing all other named defendants from this action other than as-of-yet unserved and deceased defendant Drown.

I. RECONSIDERATION

To succeed on a motion for reconsideration or reargument, "the moving party must demonstrate that the court overlooked the controlling decisions or factual matters that were placed before the court in the underlying motion." Bonnie & Co. v. Bankers Trust Co., 170 F.R.D. 111, 113 (S.D.N.Y. 1997) (citations omitted). It is respectfully submitted that in partially denying defendants Ward, Bezio and Rock's motion, the Court may have overlooked certain legal precedent governing the factual matters raised in the briefing of the motion.

II. DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY

The doctrine of qualified immunity shields the remaining defendants in this action from liability under Section 1983. See Pearson v. Callahan, 129 S. Ct. 808, 815-18 (2009). Public officials such as the remaining defendants herein are protected by qualified immunity "so long as their conduct does not violate a clearly established statutory or constitutional right." Richardson

v. Selsky, 5 F.3d 616, 621 (2d Cir. 1993) (citation omitted). "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987). "A right is clearly established if (1) the law is defined with reasonable clarity, (2) the Supreme Court or the Second Circuit has recognized the right, and (3) a reasonable defendant would have understood from the existing law that his conduct was unlawful." Anderson v. Recore, 317 F.3d 194, 197 (2d Cir. 2003); Robison v. Via, 821 F.2d 913, 921 (2d Cir. 1987). In the absence of Supreme Court or Second Circuit precedent on point, a constitutional right is not "clearly established." Francis v. Coughlin, 891 F.2d 43, 46 (2d Cir. 1989) (citation omitted); Jermosen v. Smith, 945 F.2d 547, 550 (2d Cir. 1991), cert denied, 503 U.S. 962 (1992) ("the decisional law of the Supreme Court [or] the applicable circuit court [must] support the existence of the right in question"). Nor can a government official be expected "to recognize the significance of a few scattered cases from disparate areas of law" delineating a right that may be evolving. Rakovich v. Wade, 850 F.2d 1180, 1209-10 (7th Cir. 1988) (citations omitted).

The Court's decision appears to find that a 36 month S.H.U. sentence can constitute "cruel and unusual" punishment for the type of violations involved here. While the Complaint does not clearly make that claim, instead arguing that the Eighth Amendment claim centers around plaintiff's alleged assault by another inmate (which was dismissed) and the general indignity of being in S.H.U. (which was dismissed)[1] and that the other dismissed claims that the length of the S.H.U. sentence could have violated plaintiff's alleged First Amendment rights (by suppressing his ability to harass public officials by filing liens on them, potentially disrupting their ability to take out a mortgage or borrow to pay for their childrens' educational expenses, for

1 See Plaintiff's Opposition filed January 11, 2012 at p. 5.

example), Due Process and Equal Protection rights [2], there is no law or other precedent to support the claim that the time plaintiff spent in S.H.U. amounted to cruel and unusual punishment. Moreover, plaintiff, in fact, actually served less than 26 months in S.H.U. because his sentence was reduced for good behavior (and plaintiff cannot collect damages for time in S.H.U. he did not serve, nor can a defendant be liable for S.H.U. time that was not served)[3] and there is no clearly established law indicating that the length of a S.H.U. sentence alone can be considered cruel and unusual punishment. While the Court found that a S.H.U. sentence that long for a non-violent crime may be unwarranted (despite the fact that the crimes committed would constitute felonies under New York State law and federal law punishable by prison sentences well in excess of one year),[4] the Court may have overlooked that such an Eighth Amendment claim is not supported by "clearly established law" indicating that such a sentence can implicate the protections in the U.S. Constitution against cruel and unusual punishment solely due to its length.[5]

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2 See Complaint at pp. 6 - 7, 8 - 9.

3 See Harben Decl., Exh. H (showing two separate reductions in plaintiff's sentence in SHU). Plaintiff never pled that he served 36 months in S.H.U., only that it was his original sentence. In fact, this action was commenced before he was released from S.H.U. after serving almost 26 months. Id.

4 See U.S. v. Speight, 75 Fed. Appx. 802, ** 1 (2d Cir. Aug. 28, 2003) (affirming 72 month sentence imposed on inmate who filed false U.C.C. liens on federal judge and officials); 18 U.S.C. § 1521 (filing false U.C.C. liens on federal official may be punishable by up to ten years of imprisonment); N.Y. Penal Law 175.35 (filing a false U.C.C. lien is a Class E felony).

5 "Normal" conditions of S.H.U. confinement do not constitute an Eighth Amendment violation even for relatively long periods of confinement. See Branch v. Goord, 2006 WL 2807168, at *5 (S.D.N.Y. Sept. 28, 2006); Shannon v. Selsky, 2005 WL 578943, at *2, n. 4 and *6 (S.D.N.Y. Mar. 10, 2005) (twenty months served in S.H.U. for planning to organize a work stoppage and other disruptive protest-related activities allowed; noting solitary confinement for twenty-three hours a day with one hour of exercise is not an Eighth Amendment violation). S.H.U. confinement cannot be cruel and unusual unless it is "'totally without penological

At least one federal court in New York has implicitly concluded that 18 months in S.H.U. for U.C.C. lien violations is not excessive (see Neree v. O'Hara, 2011 WL 3841551 (N.D.N.Y. July 20, 2011), cited in defendants' opening Memorandum of Law regarding qualified immunity), while this Court has held elsewhere that it may be excessive and constitute cruel and unusual punishment. See Richardson v. Coffy, 2012 WL 76910, * 4 (S.D.N.Y. Jan. 9, 2012). Plaintiff, in fact, served less than 26 months in S.H.U., which, objectively is not vastly different than the punishment imposed in Neree and is certainly not "grossly disproportionately" longer than the Neree sentence, particularly when the type of conduct complained of could result in a ten-year prison sentence under some circumstances. Moreover, nothing in plaintiff's pleadings alleges that the conditions in S.H.U. were different from normal, admittedly restrictive, S.H.U. conditions and "pose[d] a substantial risk of harm" (Opinion at 29). Nothing about the length of the sentence shows "deliberate indifference" (id.) given that the Court's objection to the length of the S.H.U. sentence is that it was imposed in connection with a non-violent infraction, not that a 26 or 36 month S.H.U. sentence can *never* be appropriate. Whatever alleged "injuries" resulting from serving almost 26 (or even 36) months of confinement in S.H.U. would be the same whether the underlying infraction had been violent or non-violent. Clearly, for example, this Court would presumably not consider a 26 (or 36) month S.H.U. confinement to be unconstitutionally long if an inmate brutally murdered a judge, court personnel or corrections employee(s) while incarcerated, so there can be nothing cruel and unusual about the length of a sentence itself (that is a Due Process consideration). In sum, whether a S.H.U. sentence is too

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justification', 'grossly disproportionate,' or 'involve[s] the unnecessary and wanton infliction of pain.'" Smith v. Coughlin, 748 F.2d 783, 787 (2d Cir. 1984) (internal quotation marks and citations omitted). We have been unable to find a single Second Circuit or U.S. Supreme Court case, much less a New York district court case, that has found a S.H.U. sentence "grossly disproportionate."

long may raise a Due Process issue in some circumstances, but it does not raise a question of Cruel and Unusual Punishment/Deliberate Indifference.

The fact that different district court judges may have different views on the matter (as is clearly the case with this Court and the Neree court, for example) is why an alleged constitutional violation must be "clearly established" by Second Circuit precedent or higher precedent for qualified immunity to not apply. Otherwise, public officials in New York, for example, will be faced with potentially dozens of different standards from dozens of different judges around the state (if not hundreds of judges if Section 1983 claims are brought in state court) as to what is allowed in a given situation. This motion urges the Court to dismiss, on the basis of qualified immunity, at the very least, plaintiff's remaining Eighth Amendment claim to the extent the Court believes that one was pled. Plaintiff could then appeal that ruling to the Second Circuit. If that court determines that such a period of confinement is inappropriate under the circumstances, the Circuit could issue a ruling that puts prison officials on notice as to what type of S.H.U. sentence can be imposed.

III. LIEUTENANT WARD WAS NOT PERSONALLY INVOLVED

Putting aside whether the remaining defendants are entitled to qualified immunity as to plaintiff's purported remaining Eighth Amendment claim, Lt. Ward should be dismissed from this action for lack of personal involvement. Plaintiff has only alleged that Lt. Ward was involved in plaintiff's initial and potentially short-term (depending on the outcome of the disciplinary hearing) confinement to S.H.U. immediately after receiving a misbehavior report and after banned U.C.C. materials were found in plaintiff's cell. Any such claims are inter-related with plaintiff's general challenge to the prison regulations in question (which were dismissed) and his search and seizure claims (which were also dismissed), not with the issue of

whether the subsequent sentence to S.H.U. was unconstitutional.[6]

The Court's Opinion appears to find nothing wrong with an inmate being placed in S.H.U. for some period for violating the applicable regulations. The Opinion does not find the regulations themselves unconstitutional, or that plaintiff was unconstitutionally issued a misbehavior report, or that plaintiff's materials were unconstitutionally confiscated. The Court appears to have grounded its decision under the proposition that the sentence imposed by unserved defendant Drown (and upheld by defendants Rock and Bezio) may have been too long. But no inference can be made from plaintiff's Complaint and the record before the Court that Lt. Ward ordered plaintiff to be sentenced to 36 months in S.H.U. (or to actually serve almost 26 months in S.H.U.) or that he had any role in allowing that sentence to stand. In fact, there is no basis to infer from the Complaint or the record that Lt. Ward could have done anything about the S.H.U. sentence that was imposed on plaintiff. Accordingly, Lt. Ward was not personally involved in what the Court has found to be potentially constitutionally objectionable, namely the imposition of a 36 month S.H.U. sentence. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1948-49 (2009).

6 Interim confinement in S.H.U. prior to a disciplinary hearing is administrative, not punitive, and thus Due Process rights are not implicated as the record demonstrates that plaintiff was advised of the charges against him. See Bolden v. Alston, 810 F.2d 353, 357 n. 3 (2d Cir.), cert. denied, 484 U.S. 896 (1987).

CONCLUSION

For all the foregoing reasons, defendants Rock, Bezio and Ward respectfully request that reconsideration be granted and all remaining claims against them dismissed.

Dated: New York, New York
May 17, 2012

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
Attorney for Defendants Rock, Bezio and Ward

By: /S/
JEB HARBEN
Assistant Attorney General
120 Broadway - 24th Floor
New York, New York 10271
(212) 416-6185

JEB HARBEN
Assistant Attorney General
of Counsel

At a Term, Part TSP of the Supreme Court of the State of New York, County of Queens. At the Courthouse thereof, located at 88-11 Sutphin Blvd., Jamaica, New York, on the 4th Day of May 2010.

ORIGINAL

PRESENT:

HONORABLE MARTIN J. SCHULMAN,
JUSTICE OF THE SUPREME COURT

QUEENS COUNTY CLERK
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10 MAY 12 AM 9:42

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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Richard A. Brown,	:	
District Attorney of Queens County,		**ORDER & JUDGMENT**
Petitioner	:	
		SPECIAL PROCEEDING
and	:	**INDEX NO. NO.** [redacted]
Eric Rosenbaum		
Assistant District Attorney,	:	**BEFORE:**
Petitioner		**HON. MARTIN SCHULMAN, JSC**
	:	
-against-		
	:	
Leroy Rodney Peoples,	:	
Respondent		

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The Petitioners Richard A. Brown, District Attorney of Queens County and Assistant District Attorney Eric Rosenbaum, by their attorney, Peter A, Crusco, Executive Assistant District Attorney, of Counsel, having brought a special proceeding declaring that the said UCC-1 filing number 200910140592863 filed by respondent naming Petitioners District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum is null

and void *ab initio*; and declaring that UCC-1 filing number 200910140592863, is a sham to intimidate and harass the Office of the Queens County District Attorney and its employees; and that Petitioners District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum are not parties to any agreement with the respondent giving rise to any lien or security interest in favor of respondent Leroy Rodney Peoples in any property of Petitioners and that Petitioners, and their property, real and personal, are no subject to any lien or security interest in favor of respondent; declaring that Petitioners District Attorney Brown and Assistant District Attorney Eric Rosenbaum are authorized to file, and the Department of State of the State of New York is authorized to accept for filing, a UCC-3 statement terminating the aforesaid false UCC-1 filed by respondent Leroy Rodney Peoples, and that Petitioners are further authorized, without further leave of the Court, to file, and the New York State Department of State, without further leave of the Court, be authorized to accept, a UCC-3 termination statement with respect to any additional UCC-1's respondent Leroy Rodney Peoples may hereafter file purporting to perfect a lien or security interest on the property of Petitioners; and enjoining respondent from filing or recording, or attempting to file or record, any further instruments purporting to encumber the property of Petitioners, and any other state, county or municipal employee without leave of this Court; and ordering that the Superintendent of the Upstate Correctional Facility, Malone, New York, or any facility to which respondent Leroy Rodney Peoples may be transferred, may act as a special monitor to oversee any disbursements from and or receipts into respondent's Leroy Rodney Peoples' inmate account to assure that no funds therein are utilized to facilitate the filing of Uniform Commercial Code liens or any other liens or encumbrances

against Petitioners or any other public officials or employees without the prior approval of the Court; and awarding statutory damages in the amount of $500 for the false filing to be paid by respondent Leroy Rodney Peoples to Petitioner District Attorney Brown, pursuant to Uniform Commercial Code § 9-625; and Respondent having answered;

Now upon reading and filing of the Verified Petition dated February 19, 2010, and after hearing Peter A. Crusco, Esq, Executive Assistant District Attorney, counsel for the Petitioners, in support of the motion and respondent Leroy Ronald Peoples, in opposition to the motion thereto, and after due deliberation having been held thereon, and upon oral decision of the Court on April 15, 2010,

Now upon motion of Peter A. Crusco, Esq., Executive Assistant District Attorney, for the Petitioners, District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum, it is

Ordered, that the branches of the petition for an order declaring that the said UCC-1 filing number [redacted] filed by respondent Leroy Rodney Peoples naming Petitioners District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum is null and void *ab initio*; and declaring that UCC-1 filing number 200910140592863, is a sham to intimidate and harass the Office of the Queens County District Attorney and its employees; and that Petitioners District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum are not parties to any agreement with the respondent Leroy Rodney Peoples giving rise to any lien or security interest in favor of respondent in any property of Petitioners and that Petitioners, and their property, real and personal, are not subject to any lien or security interest in favor of respondent;

declaring that Petitioners District Attorney Brown and Assistant District Attorney Eric Rosenbaum are authorized to file, and the Department of State of the State of New York is authorized to accept for filing, a UCC-3 statement terminating the aforesaid false UCC-1 filed by respondent, and that Petitioners, District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum, are further authorized, without further leave of the Court, to file, and the New York State Department of State, without further leave of the Court, be authorized to accept, a UCC-3 termination statement with respect to any additional UCC-1's respondent may hereafter file purporting to perfect a lien or security interest on the property of Petitioners, District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum ; and enjoining respondent Leroy Rodney Peoples from filing or recording, or attempting to file or record, any further instruments purporting to encumber the property of Petitioners, District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum , and any other state, county or municipal employee without leave of this Court; and ordering that the Superintendent of the Upstate Correctional Facility, Malone, New York, or any facility to which respondent Leroy Rodney Peoples may be transferred, may act as a special monitor to oversee any disbursements from and or receipts into respondent's inmate account to assure that no funds therein are utilized to facilitate the filing of Uniform Commercial Code liens or any other liens or encumbrances against Petitioners District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum or any other public officials or employees without the prior approval of the Court; and awarding statutory damages in the amount of $500 for the false filing to be paid by respondent Leroy Rodney Peoples to Petitioner District Attorney Brown, pursuant to Uniform Commercial

Code § 9-625, is hereby granted; And it is further

Ordered, adjudged and declared that the said UCC-1 filing number 20091014059286 3 filed by respondent naming Petitioners District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum is null and void *ab initio*; and, it is further,

Ordered, adjudged and declared that UCC-1 filing number 20091014059286 3, is a sham to intimidate and harass the Office of the Queens County District Attorney and its employees; and that Petitioners District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum are not parties to any agreement with the respondent Leroy Rodney Peoples giving rise to any lien or security interest in favor of respondent in any property of Petitioners and that Petitioners, and their property, real and personal, are not subject to any lien or security interest in favor of respondent; and it is further,

Ordered, adjudged and declared that Petitioners District Attorney Brown and Assistant District Attorney Eric Rosenbaum are authorized to file, and the Department of State of the State of New York is authorized to accept for filing, and waiving appropriate fees, the UCC-3 statements terminating the aforesaid false UCC-1 filed by respondent Leroy Rodney Peoples, and that Petitioners are further authorized, without further leave of the Court, to file, and the New York State Department of State, without further leave of the Court, is authorized to accept, a UCC-3 termination statement with respect to any additional UCC-1's respondent Leroy Rodney Peoples may hereafter file purporting to perfect a lien or security interest on the property of Petitioners; and enjoining respondent from filing or recording, or attempting to file or record, any further instruments purporting to encumber

the property of Petitioners District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum , and any other state, county or municipal employee without leave of this Court; And it is further,

Ordered that Petitioners, District Attorney Richard A. Brown and Eric Rosenbaum may file with the New York State Department of State within twenty (20) days from the date of service upon the respondent Leroy Rodney Peoples of this judgment and order, together with notice of entry, the UCC-3 termination statements with regard to UCC-1 filing number 200910140592863 which shall indicate that the liens are null, void and of no legal effect, and reference the lien to the petition, and this order and judgment, and such UCC-3 termination statements and order and judgement may be entered in the Department of State data base and website, waiving any applicable fees; and it is further

Ordered, adjudged and declared that the Superintendent of the Upstate Correctional Facility, Malone, New York, or any facility to which respondent may be transferred, may act as a special monitor to oversee any disbursements from and or receipts into respondent's inmate account to assure that no funds therein are utilized to facilitate the filing of Uniform Commercial Code liens or any other liens or encumbrances against Petitioners District Attorney Richard A. Brown and Assistant District Attorney Eric Rosenbaum or any other public officials or employees without the prior approval of the Court; and it is further

Ordered, and adjudged that pursuant to Uniform Commercial Code § 9-625, the petitioner, Richard A. Brown, District Attorney of Queens County with offices at 125-01 Queens Blvd., Kew Gardens, New York, recover of the respondent, Leroy Rodney Peoples, residing at the Upstate Correctional Facility, P.O. Box 2001, Malone, New York 12953,

Docket Inmate No. DIN05A2620, the sum of five hundred dollars ($500), and that Petitioner have execution therefor; and it is further

Ordered that the Petitioner, Richard A. Brown, District Attorney of Queens County may commence a separate proceeding, if he deems it necessary, in order to obtain the relief sought from the New York State Department of State and the New York State Department of Corrections.

DOCKETED BY SJ

QUEENS COUNTY CLERK RECORDED FILED 10 MAY 12 AM 9:42

ENTER,

HONORABLE MARTIN J. SCHULMAN
JUSTICE of the SUPREME COURT
STATE OF NEW YORK
QUEENS COUNTY

No. 186956

STATE OF NEW YORK, COUNTY OF QUEENS, SS: I, GLORIA D'AMICO, COUNTY CLERK AND CLERK OF THE SUPREME COURT, QUEENS COUNTY, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL FILED OR RECORDED IN MY OFFICE ON 5-12-10 AND THAT IT IS A CORRECT TRANSCRIPT THEREFROM AND OF THE WHOLE OF THE ORIGINAL.

WITNESS MY HAND AND SEAL OF SAID COUNTY AND COURT ON 09.21.2010

Gloria D'Amico
Clerk

CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CIVIL TERM: PART SPECIAL TERM

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DISTRICT ATTORNEY RICHARD A. BROWN and
ASSISTANT DISTRICT ATTORNEY ERIC ROSENBAUM,

Petitioners,

- against -

Index No.
4212/10

HEARING

LEROY RODNEY PEOPLES,

Respondent.

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125-01 Queens Boulevard
Kew Gardens, New York 11415
April 14, 2010

B E F O R E:

THE HONORABLE MARTIN J. SCHULMAN,
J U S T I C E

A P P E A R A N C E S:

RICHARD A. BROWN, ESQ.
District Attorney - Queens County
Attorney for the Petitioners
125-01 Queens Boulevard
Kew Gardens, New York 11415
BY: PETER A. CRUSCO, ESQ.

LEROY RODNEY PEOPLES
Defendant Pro Se

JACQUELINE FERRERIS
Senior Court Reporter

COURT CLERK: All rise. All persons having business in this Special Term draw near, give your attention and you shall be heard.

The Honorable Martin J. Schulman presiding.

MR. CRUSCO: Good morning, Judge.

THE COURT: Morning.

COURT CLERK: This is Number 1, Index Number 4212 of 2010, Richard Brown versus Leroy Peoples.

COURT OFFICER: Coming out. Have a seat.

THE COURT: Is this the same subject of a previous one?

MR. CRUSCO: Judge, this is a separate, different matter with a different respondent, Judge.

THE COURT: Oh, oh. Someone told me that it was one that I did before. I just wanted to make sure I didn't.

MR. CRUSCO: You did a similar one with respect to another defendant, Judge.

THE COURT: Okay.

MR. CRUSCO: This is a summary proceeding brought by Assistant District Attorney Brown in order to terminate liens and further equitable and statutory relief pursuant to Uniform Commercial Code, your Honor. I have attached to the petition

order to show cause exhibits which indicate that -- the basis for the UCC-1 that was filed by the respondent.

The UCC-1 ending in number 2863 is completely falsified. The respondent had filed documents with the DA's office on three dates in 2008 and 2009 purportedly being conditional acceptance for values, notice of fault and opportunity to correct and notice of intentional tort, those documents were speeches and essentially threatened the DA and the Assistant DA that unless we somehow modified the sentence that he would file a bogus lien on the DA and Assistant DA Rosenbaum.

In response to that, Judge, the DA sent him two letters asking him to cease and desist and warning him that if he were to proceed with this unwise action that we would take necessary action against him. Those are in the letters that are attached to -- as Exhibit F to the exhibit dated 7/24 and 9/21 of 2009.

Despite those warning letters, Judge, the respondent did in fact falsify and file with the Department of State the bogus lien against the DA and Assistant DA Rosenbaum and accordingly we filed the order to show cause in order to terminate that

and spurious equitable statutory relief to void that bogus lien and to clear the reputations and credit worthiness of DA Brown and ADA Rosenbaum.

I received a response to the petition which again, Judge, is part of it, just pseudo-legal, for want of a better term, nonsense in which the respondent claims that he has a right as a sovereign citizen, as a corporate entity to proceed with no recourse available to the DA or to the State. Judge, we would ask for -- that our request be granted as set forth in the order to show cause.

THE COURT: Mr. Peoples, do you have anything you wish to add to show cause why the purported lien is valid in addition to what you have put in your papers?

MR. PEOPLES: Otherwise, no, sir.

THE COURT: Okay, thank you.

Accordingly, the Court which parenthetically thinks that initially when papers are answered like this that I should be able to review the papers, decide whether a hearing of any kind is necessary 'cause this is a civil proceeding on an order to show cause. It's not even a civil proceeding that is quasi criminal in nature or such that may challenge the conditions of someone's incarceration

or the validity of a conviction, it doesn't go anywhere near any of those civil proceedings and so, therefore, I feel like any other civil proceeding I should either be able to make a decision on papers or after reading papers decide whether a hearing is required in as much as whether or not there are contested matters of relevant fact and the -- I know the district attorney is zealous in guarding of citizens' rights, no matter whether they are incarcerated or convicted or not and once they dot every I and cross every T, but it's my feeling in these cases if I decided that a hearing was not necessary, on a worst case scenario, the Appellate Division may disagree with me and then order me to hold a hearing.

So, I wish that in the future I would have the opportunity to look at the papers and decide whether we are going to go through the time and expense of having a hearing. But in any event, based upon the papers before me and based upon the record that was just held here now and the opportunity for -- to show cause why the purported lien is valid, the Court grants the District Attorney's petition in all respects.

MR. CRUSCO: Thank you, Judge.

THE COURT: Prepare the appropriate orders.

MR. CRUSCO: Yes, sir.

* * * * * * * *

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL MINUTES TAKEN OF THIS PROCEEDING.

JACQUELINE FERRERAS
Senior Court Reporter

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