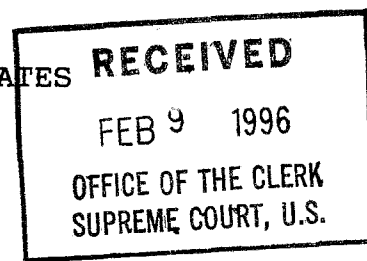


Case No.

IN THE SUPREME COURT OF THE UNITED STATES

October 1995

In re. Subroto Roy



PETITION TO

THE HON. CIRCUIT JUSTICE O'CONNOR AND THE HONORABLE COURT
FOR EXTRAORDINARY REMEDY OF WRIT OF MANDAMUS UNDER RULE 20

To require a Ninth Circuit Motions Panel allow a fairly
presented appeal as of right proceed to adversary
hearing before a Merits Panel or to En Banc Suggestion,
in a matter of relief from judgment in a Title VII/Due
Process case, for reason of fraud under Fed. R. Civ.
Proc. 60(b) (corruption of court officers and perjury)

Reason Making Necessary the Extraordinary Remedy of Mandamus

It is always extrinsic fraud calling for a new and fair trial when opposing counsel is found to have induced counsel to connive in a party's defeat Throckmorton 98 U. S. 65-66 (1878), citing Tovey v. Young Pr. Ch. 193 "laid down as long ago as the year 1702"; Fiske v. Buder 125 F.2d 841 (8th Cir. 1942) cited by Fed. R. Civ. Proc. 60(b) Advisory Committee. Inherent power of a federal court to investigate whether a judgment was obtained by fraud is beyond question, Hazel-Atlas 322 U. S. 238 (1943); power to unearth fraud is power to unearth it effectively; a federal court may vacate its own judgment or that below for reason of fraud Root Refining 169 F.2d 534 (1948), 328 U. S. 580 (1946).

Mandamus is properly granted in aid of the Court's original jurisdiction to compel a lower court "exercise its authority when it is its duty to do so" Mallard 389 U. S. 95 (1968) citing precedent, Moore's Federal Practice ¶ 110.27. Appeal was taken from a final order denying relief under Federal Rule 60(b) for reason of undenied extrinsic fraud. Even as Petitioner obeyed the ordered time-schedule by filing the Opening Brief, a Staff Attorney's sua sponte motion for summary affirmance was granted by a Motions Panel under local rule, denying further submissions and closing the docket. Mindful of the high burden to be discharged, Subroto Roy respectfully petitions for Writ of Mandamus to require the Motions Panel and Motions Attorney allow a fairly presented appeal proceed to maturity according to the ordered time-schedule, for adversary hearing before a Ninth Circuit Merits Panel or to lawful En Banc Suggestion.

Petitioner, Respondents, Defendant-Appellees

Petitioner: Subroto Roy, representing himself, informa pauperis

Respondents: Ninth Circuit Motions Attorney Susan Gelmis Esq.;
Ninth Circuit Motions Panel Judges the Hon. Harry PREGERSON, J.,
the Hon. William A. NORRIS, J., the Hon. Stephen REINHARDT, J.,
United States Court of Appeals for the Ninth Circuit, 121 Spear
Street, P. O. Box 193939, San Francisco, CA. 94119-3939.

Defendant-Appellees: University of Hawaii, Chung H. Lee, Richard
Dubanoski, Paul Yuen, Albert J. Simone, jointly represented by
Margery S. Bronster Esq., 425 Queen Street, Honolulu, HI 96813.

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Appendix of Record

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References marked [B 36/37/38 (A 1:201)] are to Appendix of Record [A 1: 201] filed in Roy v. University of Hawaii 94-6512, 115 S.Ct. 1994, 1995, served on all Respondents and Defendant-Appellees.

Affidavit of Informa Pauperis Status of Petitioner

Certificate of Service (in original)

Authorities of Law Relied Upon by the Petitioner

Reference in Petition

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LEARNED ARTICLES, TREATISES AND OTHER AUTHORITIES

Moore & Rogers, "Federal Relief from Civil Judgments",

Yale Law Journal 1946.....13, 17

Lanctot, "Defendant Lies, Plaintiff Loses"

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Moore's Federal Practice 1995.....7, 8, 10, 29, 33-35

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Jurisdictional Statement

Mandamus under Rule 20 is authorized by the All Writs Statute 28 United States Code § 1651 deriving from the Judiciary Act of 1789, in aid of the Court's original jurisdiction and general supervision of federal courts Federal Practice ¶ 110.26 et. seq.

Original jurisdiction of chancery to vacate judgment for reason of fraud is defined under Hazel-Atlas 322 U. S. 238 (1943), and Root Refining 328 U. S. 580 (1946), Moore and Rogers, "Federal Relief from Civil Judgments", Yale Law Journal 1946.

Constitutional Provisions and Statutes

14th Amendment to the United States Constitution

11th Amendment to the United States Constitution

42 United States Code § 2000, § 1981, § 1983, § 1985, § 1986

18 United States Code § 201

28 United States Code § 455

18 United States Code § 1621:1623

28 United States Code § 1651

Reference to Opinions Below

Mandamus is being sought to compel adversarial contest on the merits, by a briefing schedule already ordered by the Court of Appeals, of a fairly presented timely appeal taken from a July 28 1995 District Court order denying relief under Fed. R. Civ. Proc. 60(b) for reason of undenied extrinsic fraud on the court.