SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----------x

DORIS L. SASSOWER and CAREY A. SASSOWER,

Plaintiffs,

Index No.
3607-1979

-against-

ERNEST L. SIGNORELLI, JOHN P. FINNERTY, WARDEN REGULA, ANTHONY MASTROIANNI, and THE NEW YORK LAW JOURNAL PUBLISHING COMPANY,

Defendants.

----------x

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

DORIS L. SASSOWER, Esq., first being duly sworn, deposes, and says:

I am one of the plaintiffs in the within action (my daughter is the co-plaintiff), have direct personal knowledge of the facts stated herein (except where otherwise stated), and make this motion to strike various defenses of the defendants pursuant to CPLR 3211(b); and for summary judgment, in whole or in part.

This is an action for damages under the laws, statutory and decisional, of this state, as well as under federal law ([1]Zarcone v. Perry, 78 A.D.2d 70, 75, 434 N.Y.S.2d 437, 440 [2d Dept.], aff'd in part, 55 N.Y.2d 782, 447 N.Y.S.2d 248). The complaint sets forth six causes of action (Exhibit "A").

The defendant, ERNEST L. SIGNORELLI, the Surrogate of Suffolk County, appears and answers by his attorney, ROBERT ABRAMS, Esq. (Exhibit "B"), and plaintiffs now move to strike his "First Affirmative Defense"; "Second Affirmative Defense"; "Third Affirmative Defense"; "Fourth Affirmative Defense"; and "Fifth Affirmative Defense"; and requests summary judgment against him.

---

1 Judicial economy is served by including appropriate citations in this affidavit, rather than repeating the factual matter once more with citations in a separate brief, necessitating duplication in reading (cf. David v. David, 74 A.D.2d 542, 543, 424 N.Y.S.2d 916, 917-918 [1st Dept.]).

The defendants, JOHN P. FINNERTY [Sheriff of Suffolk County], WARDEN REGULA [Deputy Sheriff and Warden of the Suffolk County Jail], and ANTHONY MASTROIANNI [Public Administrator of Suffolk County] appear and answer by "HOWARD E. PACHMAN [former], Suffolk County Attorney, by ERICK F. LARSEN, of counsel" (Exhibit "C"), and plaintiffs now move to strike their "First Complete and Affirmative Defense"; "Second Complete and Affirmative Defense"; "Third Complete and Affirmative Defense"; "Fourth Complete and Affirmative Defense"; "Fifth Complete and Affirmative Defense"; "Sixth Complete and Affirmative Defense"; "Seventh Complete and Affirmative Defense"; and "Eighth Complete and Affirmative Defense"; and requests summary judgment against them.

Defendant, NEW YORK LAW JOURNAL PUBLISHING COMPANY's answer (Exhibit "D"), against which plaintiffs now move, contains a "First Affirmative Defense"; "Second Affirmative Defense"; "Third Affirmative Defense"; "Fourth Affirmative Defense"; "Fifth Affirmative Defense"; "Sixth Affirmative Defense"; "Seventh Affirmative Defense"; and an "Eighth Affirmative Defense"; and requests summary judgment against it.

THE COMPLAINT

Omitting background material, plaintiffs' causes of action against defendants (excepting LAW JOURNAL who is pleaded against only in the "Fifth" and "Sixth" Causes of Action) are as follows:

First Cause: On June 10, 1978, the unjustified refusal to permit plaintiffs to visit their incarcerated husband/father.

Second Cause: On June 10, 1978, the unjustified refusal to permit plaintiff, Doris L. Sassower, Esq., permission to consult with her incarcerated client.

Third Cause: On June 10, 1978, the incommunicado incarceration of plaintiffs, denying them access to telephone, food, and bathroom facilities, as a result of serving a Writ of Habeas Corpus on defendants mandating the immediate release of George Sassower, Esq., on his own recognizance.

Fourth Cause: Harassment of plaintiff, Doris L. Sassower, Esq., after she had complied with CPLR §321(b) with respect to withdrawal as attorney, in retaliation for the activities of her husband, George Sassower, Esq., for the ulterior purpose of compelling him to desist from exercise of his legal rights.

Fifth Cause: On March 3, 1978, in blatant violation of Judiciary Law §90(10), there was published in the New York Law Journal a discourse asserting professional complaints against plaintiff, Doris L. Sassower, Esq., written by Ernest L. Signorelli. Also contained therein was the statement that it was being

> "forwarded ... to the Presiding Justice of the Appellate Division, Second Judicial Department, for such disciplinary action as he may deem appropriate".

Germane to the question of damages is the fact that I was resoundingly acquitted by the Appellate Division on all charges lodged against me, with leave to apply for sanctions against my prosecutors.

Fifth Cause: Defamation by reason of the aforesaid March 3, 1978 publication in the New York Law Journal.

Defendant, Ernest L. Signorelli does not plead truth, justification, or good faith, in his answer. This entire gratuitous sua sponte publication was a malicious fake, from beginning to end, not only against me, but also as against my husband, George Sassower, Esq.

Signorelli's own sworn testimony in October of 1981 reveals that this published diatribe was a carefully contrive conglomerate of fabricated and misleading statements. Not one of the more than thirty disparaging remarks contained therein -- not one --could be called truthful.

SIGNORELLI'S ANSWER

1. Signorelli's himself affirmatively alleges that I withdrew from the estate matter on May 12, 1977 (Exhibit "B", ¶21), which is about thirteen months before the conduct complained about in the first three causes of action.

Signorelli's own alleged date of my "withdrawal" is before the conduct complained about in the fourth cause of action.

Signorelli's own alleged date of my withdrawal" is about ten months before the publication in the last two causes of action. In fact, the publication itself describes me as "former" attorney.

I claim that there was a lack of jurisdiction even before May 12, 1977, but for the purposes of this motion, such prior date is irrelevant.

In short, all the conduct I complain about was at a time when there was plainly no personal jurisdiction over me by Ernest L. Signorelli, the Surrogate's Court: Suffolk County, or anyone else in Suffolk County.

2. This defendant affirmatively alleges that he recused himself on February 24, 1978 (Exhibit "B", ¶21), which is more than three months before the conduct complaint about in the first three causes of action.

Signorelli's admitted date of recusal was about one week before publication of Signorelli's sua sponte harangue, which is the basis of the last two causes of action.

In short, on the face of five (5) of the six (6) causes of action in the complaint, there was a manifest lack of subject matter and personal jurisdiction by Ernest L. Signorelli because the events occurred after his recusal (Spires v. Bottorff, 317 F.2d 273, 274 [7th Cir.]).

Furthermore, at the time of the issuance of this malicious sua sponte published diatribe by "Columnist" Ernest L. Signorelli, there was no motion or other proceeding pending before him or the Surrogate's Court, Suffolk County.

In short, by such published statement, "Columnist" Ernest L. Signorelli was not making any adjudication involving the rights or liabilities of anyone. In an almost precisely identical situation (Matter of Haas, 33 A.D.2d 1, 304 N.Y.S.2d 930 [4th Dept.], app. dis. 26 N.Y.2d 671, 307 N.Y.S.2d 671), except that there was no public publication (and the Appellate Division assumed there would not be any official publication [10-11, 940]), the Court sealed the opinion of the Surrogate because, as here, "it decided nothing" (10, 940), but was merely intended as a lengthy ethical complaint of misconduct against the attorneys involved in the proceeding (6-7, 936-937).

Over the plaintiff, Carey A. Sassower, there was never any personal or subject matter jurisdiction by of the defendants or any court at the time of the alleged incidents.

3. The answers on their face reveal the egregiousness of the publication, since neither Signorelli nor any other defendant set up truth or justification, as either a complete or partial defense (34 NY Jur Libel & Slander, §80, p. 554, 556; 35 NY Jur Libel & Slander, §177, p. 92). This defendant does not even allege good faith in this publication (34 NY Jur, supra, §83, p. 558).

First Affirmative Defense: Pleading by way of defense that "[t]he complaint fails to state a cause of action" is improper and should be stricken (Konow v. Sugarman, 71 A.D.2d 1016, 1017, 420 N.Y.S.2d 411 [2d Dept.]).

Second Affirmative Defense: Judicial immunity.

a. Signorelli has the burden of showing "his ntitlement" to immunity (Harlow v. Fitzgerald U.S. , 42 CCH S.Ct. B3737, 3753 [6/24/82]; Dennis v. Sparks, 449 U.S. 24, 29, 101 S.Ct. 183, 187, 66 L.Ed.2d 185, 190), by giving "notice" and setting forth the "material elements" of such defense, labels do not suffice (CPLR §3013; Jerry v. Borden, 45 A.D.2d 344, 346-347, 358 N.Y.S.2d 426, 430 [2d Dept.]). Obviously, Ernest L. Signorelli, cannot comply.

b. The defense of judicial immunity is patently inapplicable, as a matter of law, to the first three causes of action, since there is no judicial immunity after recusal (Spires v. Bottorff, supra).

c. This alleged, and improperly pleaded, defense of judicial immunity is also patently inapplicable to all my causes of action, since they are based on Ernest L. Signorelli's conduct occurring after May 12, 1977, the date Signorelli himself alleges I withdrew from the case.

Rankin v. Howard (633 F.2d 844, 848 [9th Cir.] cert. den. 451 U.S. 939, 101 S.Ct. 2020, 68 L.Ed.2d 326), holds that both subject matter and personal jurisdiction are necessary in order to qualify for a Stump v. Sparkman (435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331) judicial immunity (see also 1 Antieau Federal Civil Rights Acts [Civil Practice] §99, p. 187).

d. The non-decision making conduct alleged in the complaint is clearly not judicial in nature. The doctrine of judicial immunity for damages is therefore inapplicable (Supreme Court of Virginia v. Consummers' Union, 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641, on remand, sub nom, Consumers' Union v. American Bar Association, 505 F. Supp. 822, app. dis. 451 U.S. 1012, 101 S.Ct. 2998, 69 L.Ed.2d 384; Rankin v. Howard, supra; Lopez v. Vanderwater, 620 F.2d 1229 [7th Cir.], cert. dis. 449 U.S. 1028, 101 S.Ct. 601, 66 L.Ed.2d 491; Beard v. Udall, 648 F.2d 1264 [9th Cir.]; Harper v. Merckle, 638 F.2d 849 [5th Cir.]; Harris v. Harvey, 605 F.2d 330 [7th Cir]; Murray v. Brancato, 290 N.Y. 52).

e. There is no judicial immunity for actions specifically prohibited by statute. Clearly, only the Presiding Justice or the Acting Presiding Justice of the Appellate Division may publish a disciplinary complaint against an attorney prior to conviction (Matter of Haas, supra, at p.10, 939-940). In view of my complete exoneration, with leave to apply for sanctions against my prosecutors for their utterly "meritless" proceeding, which exoneration is ironically confidential, the published and widely publicized complaint by Signorelli points up even more sharply the manifest injustice of the plea for judicial immunity.

f. Finally, as Signorelli's published assault on me itself reveals (giving the Law Journal notice by the publication itself), there was an expressed recognition of lack of jurisdiction over me at the time, for he described me therein as the "former" attorney.

As our highest Court clearly stated in Bradley v. Fisher (80 U.S. [13 Wall] 335, 352, 20 L.Ed. 646, 651), where "want of jurisdiction is known to the judge, no excuse is permissible". This fundamental principle was reiterated in Stump v. Sparkman (supra, note 6 at p. 356, 1104, 339) and applied in Rankin v. Howard (supra) and Schoole v. City (524 F. Supp. 821, 820 [D.C. Ohio].

Third Affirmative Defense: Collateral estoppel.

This defense does not comply with CPLR §3013, since it does not give the requisite "notice" nor the "material elements" of this fictitious defense (Jerry v. Borden, supra).

Fourth Affirmative Defense: Improper venue is manifestly not a defense to an action (CPLR §509). If a defendant claims the venue is improper, there is a mandated procedure to be followed (CPLR 511). Unquestionably, plaintiffs chosen venue was proper (CPLR 503[a]), and the Order of August 20, 1979 in this action confirms the propriety of this choice.

Fifth Affirmative Defense: Statute of Limitations is clearly inapplicable, since the summons for service on this defendant was received by the Sheriff of Suffolk County on February 22, 1979 (Sanford v. Garvey, 81 A.D.2d 748, 438 N.Y.S.2d 410 [4th Dept.]).

ANSWER OF FINNERTY, REGULA, AND MASTROIANNI

First Complete Affirmative Defense: Res Judicata and/or collateral estoppel defense is not properly pleaded in accordance with CPLR §3013, since the defense does not give "notice", nor does it set forth the "material elements" of this fictitious defense (Jerry v. Borden, supra).

Second Complete Affirmative Defense: A Notice of Claim is not a pre-condition to this action (Williams v. Town of Irondequoit, 59 A.D.2d 1049, 399 N.Y.S.2d 807 [4th Dept.]).

Third Complete Affirmative Defense: Pleading by way of defense that "the complaint fails to state a claim upon which relief can be granted" is improper and should be granted (Konow v. Sugarman, supra).

Fourth Complete Affirmative Defense: The complete defense that plaintiff's injuries "were, in whole, or in part, caused by [my] own culpable conduct" is conclusory specious, frivolous, and legally insufficient as an escape for the intentional derelictions of the defendants. Furthermore, the allegation is a meaningless label failing to give to me or the Court the requisite "notice" of the "material elements" of the alleged defense (Jerry v. Borden, supra).

Fifth Complete Affirmative Defense: Improper venue is manifestly not a defense to an action (CPLR §509). If a defendant claims the venue is improper, there is a mandated procedure to be followed (CPLR 511). Unquestionably, plaintiffs chosen venue was proper (CPLR 503[a]), and the Order of August 20, 1979 in this action confirms the choice as proper.

Sixth Complete Affirmative Defense: The defense that the actions were immune because taken in "good faith" is specious, frivolous, and legally insufficient (Reimer v. Short, 578 F.2d 621, 628-629 [5th Cir], cert. den. 440 U.S. 947, 99 S.Ct. 1425, 59 L.Ed.2d 635; Whirl v. Kern, 407 F.2d 781 [5th Cir.], cert. den. 396 U.S. 901, 90 S.Ct. 210, 24 L.Ed.2d 177). The "good faith" defense is both objective and subjective (Harlow v. Fitzgerald, supra, at B3753; Garris v. Rowland, 678 F.2d 1264, 1271-1272 [5th Cir.]), and these defendants have the burden of not only alleging subjective good faith but also of giving the requisite "notice" and of setting forth the "material elements" of, at least, the objective good faith (Barr v. County of Albany, 50 N.Y.2d 247, 255, 428 N.Y.S.2d 665, 668-669; Garris v. Rowland supra; Jerry v. Borden, supra).

Seventh Complete Affirmative Defense: The defense that the actions were undertaken in "good faith" is specious, frivolous, and legally insufficient, for reasons set forth in "Sixth Complete Affirmative Defense".

Eighth Complete Affirmative Defense: Defendants were immune ministerial agents of Surrogate's Court and also protected by "prosecutorial immunity" is legally and factually meritless (Ferri v. Ackerman, 444 U.S. 193, 100 S.Ct. 402, 62 L.Ed.2d 355; Supreme Court of Virginia v. Consumers' Union, supra; Lee v. Willins, 617 F.2d 320 [2d Cir.], cert. den. 449 U.S. 861, 101 S.Ct. 165, 66 L.Ed.2d 78).

ANSWER OF LAW JOURNAL

First Affirmative Defense: A pleading by way of defense that "the complaint fails to state a claim ... upon which relief can be granted" is improper and should be stricken (Konow v. Sugarman, supra).

Second Affirmative Defense: Absolute privilege pursuant to Judiciary Law §91 is deficient for the following reasons:

a. Local law cannot immunize federally guaranteed rights (Martinez v. California, 444 U.S. 277, 284 n. 8, 100 S.Ct. 553, 558, 62 L.Ed.2d 481, 488; Scheuer v. Rhodes, 416 U.S. 232, 243, 94 S.Ct. 1683, 1690, 40 L.Ed.2d 90, 100).

b. There is nothing in Judiciary Law §91 permitting this defendant to violate the confidentiality mandate of Judiciary Law 90(10). The general permission granted by one statute must yield to the specific prohibition of another statute (People v. Mobil, 48 N.Y.2d 192, 200, 422 N.Y.S.2d 33, 38). The statutory right of privacy, protected despite enactment of Civil Rights Law §74 (Shiles v. News Syndicate, 27 N.Y.2d 9, 18, 313 N.Y.S.2d 104, 110, cert. den. 400 U.S. 999, 91 S.Ct. 454, 27 L.Ed.2d 450), was manifestly not repealed by Judiciary Law §91.

c. Newspapers are a private business, free to publish or not to publish, and even the legislature cannot compel a newspaper to publish legal notices (60 CJS §21, p. 46-47). Newspapers are free to publish, even when the material used merely serves to advance the economic health of the publisher (James v. Gannett, 40 N.Y.2d 415, 422, 386 N.Y.S.2d 871, 876). Even the mere publication of an advertisement may sometimes give rise to liability (Blinick v. L.I. Daily Press, 67 Misc.2d 254, 256, 323 N.Y.S.2d 853, 855, app. dis. 71 Misc.2d 986, 337 N.Y.S.2d 859; cf. Pressler v. Dow Jones, A.D.2d , 450 N.Y.S.2d 884 [2d Dept.]). There is nothing in Judiciary Law §91 immunizing the Law Journal from liability for a defamatory publication or for printing material which is violative of a statute. There is nothing in the law which compelled the Law Journal to accept a commercial contract with the Appellate Division. There is nothing in Judiciary Law §91 which compels it to print all decisions, or all decisions from Signorelli or his Court. Judicial notice could be taken of the fact that the Law Journal, as a matter of policy, prints only selected decisions from certain courts

(except for the decisions of the Appellate Division, Second Department, which it prints in full) The Law Journal does not contend or allege that there was a judicial mandate that it print this particular gratuitous diatribe from Signorelli. For its own unexplained reasons, the decision to print it was its free choice.

d. Any immunity attaching to an initial publication does not attach to republication (Hutchinson v. Proxmire, 443 U.S. 111, 121 n. 10, 99 S.Ct. 2675, 2681, 61 L.Ed.2d 411, 422; Doe v. McMillan, 412 U.S. 306, 315-325, 93 S.Ct. 2018, 2026-2031, 36 L.Ed.2d 912, 922-928).

e. Signorelli, not having jurisdiction over me, cannot confer immunity upon anyone else.

Third Affirmative Defense: Civil Rights Law §74.

Civil Rights Law §74 does not immunize the unjustified publication of proceedings mandated by law as confidential (Shiles v. News Syndicate, supra; Daniger v. Hearst, 304 N.Y. 244).

b. Civil Rights Law §74 does not immunize the publication since at the time there was no "judicial proceeding" pending involving anyone (In the Matter of Haas, supra), let alone me, in particular either as an attorney or a party. Courts deal with issues in controversy which are presented to it for resolution, and may not render opinions which are non-dispositive, "deciding nothing", and "never intended to determine anything", but serving only to vent judicial spleen (In the Matter of Haas, supra).

If Signorelli had complaints of any kind or nature, either against me or my husband, whether of substance or meritless, he had the unbridled right to make a confidential complaint with complete immunity (Weiner v. Weintraub, 22 N.Y.2d 330, 292 N.Y.S.2d 667). This right did not empower him to abuse his office for that purpose. In fact, the Court in Weiner v. Weintraub (supra) justified the immunity on the ground that there was no prejudice to the attorney since the complaint was confidential (232, 669).

It is not "fair and true reporting", nor is it a "judicial proceeding" within the intent of the statute, when it is the result of an ex parte pleading or statement (Shiles v. News Syndicate, supra, note 4, at p. 15, 108; Williams v. Williams, 23 N.Y.2d 592, 298 N.Y.S.2d 473). The statute was not enacted to protect an extra judicial "hand-out" by an interested party (Williams v. Williams, supra). Mere reprinting is not safeguarded reporting entitled to protection.

Fourth Affirmative Defense: Judicial Proceeding.

a. There was no "judicial proceeding" pending involving anyone (In the Matter of Haas, supra), and particularly none involving me. An ex parte pleading or statement is not a "judicial proceeding" (Shiles v. News Syndicate, supra, note 4, at p. 15, 108).

b. This statement was prohibited by law (Judiciary Law §90[10], from being published.

b. As a matter of law, any past conduct has been spent (Wolston v. Readers' Digest, 443 U.S. 157, 99 S.Ct. 2701, 61 L.Ed.2d 450; Roshito v. Herbert, La , 413 So.2d 927; Briscoe v. Readers' Digest, 93 Cal Rptr 866, 483 P.2d 34).

Fifth Affirmative Defense: Republication.

The material contained in the Signorelli diatribe was factual (not opinion) and untrue. There is no immunity in repeating and republishing a libel or violating a statutory right of privacy, even when it is initially immune from suit for damages (Hutchinson v. Proxmire, supra; Wolston v. Readers' Digest, supra).

Sixth Affirmative Defense: Republication

The material contained in the Signorelli diatribe was factual (not opinion) and untrue. There is no immunity in repeating and republishing a libel or violating a statutory right of privacy, even when it is initially immune from suit for damages (Hutchinson v. Proxmire, supra; Walston v. Readers Digest, supra).

Seventh Affirmative Defense: The First Amendment.

The First Amendment to the Constitution of the United States does not protect the publication of material statutorily mandated to be confidential (Shiles v. New Syndicate, supra); it does not protect a publication which is prohibited under penalties of contempt of court (Stevenson v. New Syndicate, 276 App. Div. 614, 618, 96 N.Y.S.2d 751, 756 [2d Dept.], aff'd other gr unds, 302 N.Y. 81), and does not prot ct

ministerial publications, i.e., the Sears-Roebuck Catalogue or Telephone Directories. Legislative or judicial reports obtain their immunity from other provisions of the law, and such immunity does not extend beyond the manifest necessity of the official function (Hutchinson v. Proxmire, supra; Doe v. McMillan, supra; Murray v. Brancato, supra). If publication to the profession serves a legitimate public concern it has received legislative sanction by a State Law Reporting Bureau (Judiciary Law §§431, 432; Murray v. Brancato, supra, at 56-57).

There is no constitutional right to defame or to invade a statutorily protected right of privacy of a private person in a matter not in the sphere of legitimate public concern (Chaplinsky v. New Hampshire, 315 U.S. 568, 572, 62 S.Ct. 766, 769, 86 L.Ed. 1031, 1035; Greenberg v. CBS, 69 A.D.2d 693, 419 N.Y.S.2d 988 [2d Dept.]).

The written determination and filing of a decision of a Court is privileged, as a part of the judicial function, not its distribution (Murray v. Brancato, supra)

The manifest purpose of the constitutional amendment was to protect those who report on or about governmental functions, not to reward with immunity ex parte distribution of governmental "hand-outs" of "badges of infamy" (Hutchinson v. Proxmire, supra; Wisconsin v. Constantineau, 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed.2d 515). The freedom to express was constitutionally exalted to protect the critical American Lawyer, not the sycophantic New York Law Journal, which serves its economic interest by not criticizing the Appellate Division (from whence it derives its contract) or Surrogates (who routinely issue orders of publication).

Clearly, since Surrogate Signorelli lacked jurisdiction over me, he could not employ the color of his office to immunize a defamatory publication by another.

Eighth Affirmative Defense" Article I, §8

Article I, §8 of the Constitution of the State of New York, is and should be interpreted in tandem with the First Amendment of the Constitution of the United States. Consequently any argument raised to this defendant's "Seventh Affirmative Defense" should be applied to its "Eighth Affirmative Defense".

SUMMARY JUDGMENT (Causes One, Two, and Three)

1. On June 22, 1977, Surrogate Ernest L. Signorelli, admitted to practice law for more than 30 years, a former District Attorney, Justice of the Peace, District Court Judge, and County Judge, and then Surrogate of Suffolk County, (a) without any accusatory instrument, (b) without notifying my husband that he intended to have a trial on a charge of criminal contempt or any other alleged crime, (c) tried, (d) convicted, and (e) sentenced him to be incarcerated in the Suffolk County Jail, all in absentia.

Surrogate Signorelli, then assuming the role of "Sheriff" Signorelli, directed two Suffolk County Deputy Sheriffs to transgress their bailiwick (County Law §650; Public Officers Law §2; Criminal Procedure Law §1.20 [34-b])), and arrest my husband in Westchester County, which they did the following morning, June 23, 1977.

My husband, completely unaware of the events the prior day at the time of this arrest, managed to quickly prepare a Writ of Habeas Corpus. However, he was denied any and all demanded opportunities to present such Writ of Habeas Corpus, was not taken to a local magistrate as he demanded. Even his demand that he be taken to the Suffolk County Jail, as provided in the Warrant of Commitment (where he believed he could expeditiously present his Writ of Habeas Corpus) was rejected.

Instead, my husband was taken to Surrogate's Court and for several hours held incommunicado. Again, all the requests by my husband for an opportunity to present his Writ of Habeas Corpus or to use a nearby telephone (at his own expense) were denied by "Sheriff" Signorelli and his Deputies.

Eventually, the Star Chamber was convened, presided over by "Inquisitor" Signorelli, who himself interrogated the prisoner.

My husband, again asserted his right to present his Writ of Habeas Corpus and asserted his Fifth Amendment and other constitutional rights. When he refused to waive them, my husband was remanded to the Suffolk County Jail, and eventually released pursuant to his Writ of Habeas Corpus. The Writ was sustained.

The shocking and palpably false response of Acting Supreme Court Justice Signorelli at a hearing of October 30, 1981, to a question posed by Hon. ALOYSIUS J. MELIA, tells an unbelievable story (SM:63-64):

> "THE REFEREE: 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 answer the questions at the point that he interposed the 5th Amendment?
>
> THE WITNESS: No, I believe he did not have that right."

2. Thereafter, my husband on application of defendant, Anthony Mastroianni, was served with motion papers charging him with criminal contempt (cf. Ross v. Sherwood, A.D.2d , 450 N.Y.S.2d 872 [2d Dept.]). My husband pleaded "not guilty" and interposed other defenses to the proceeding.

The matter was set down for trial and on the first such date, my husband was in the midst of a trial in Supreme Court, Bronx County before Hon. JOSEPH DiFEDE, whereupon Surrogate's Court again tried, convicted, and sentenced my husband in absentia.

Learning of such conviction and sentencing, my husband on March 24, 1978 wrote to defendant Finnerty and his attorney that if they desired to proceed on this patently unconstitutional conviction (Exhibit "E")

> "you [County Attorney] or the Sheriff may telephone and I will make arrangements to be in Special Term in New York, Bronx, or Westchester at your desired time of arrest."

Clearly, the manifest purpose of such offer was the available opportunity for my husband to obtain an immediate Writ of Habeas Corpus, as was his right.

Defendants did not accept such offer. Instead, they made numerous forays into Westchester County and New York City (at taxpayers expense) in order to" capture" my husband at such time and place that would preclude ready access to the courts in order to obtain a Writ of Habeas Corpus, and also to harass and embarrass him and his family.

On June 24,1982, I heard Erick F. Larsen, Esq., the Assistant Suffolk County Attorney describe to the Appellate Division, reminiscent of the John Dillinger era, the shocking plans, which he later vetoed, of the Suffolk County Sheriff to surround the Federal Courthouse in order to "apprehend" my husband as he was leaving that courthouse.

My husband make no effort to avoid capture, for there were times that the Suffolk Sheriff's Office called my office (embarrassing me with my secretary), and I heard my husband return the call and tell them they could arrest him in court in New York, Bronx, or Westchester or at the home of a Supreme Court Judge in Westchester or New York at any time upon reasonable notice.

On (Saturday) June 10, 1978, three months after my husband's in absentia conviction, two Deputy Suffolk County Sheriffs, came to Westchester County once more in still another attempt to "capture" him. I understand that they arrived at about 7:30 A.M. and apparently waited until no one was around to seize their quarry.

At about 9:30 A.M., they seized him and quickly abducted him to Suffolk County.

According to the testimony of Deputy Sheriff Anthony Grzymalski on October 17, 1978 (which I heard) when they captured him he "was screaming at the top of his voice, 'Police, Police. Somebody call the police'" (SM 15), without avail for they quickly left the scene with my handcuffed husband.

Deputy Sheriff Anthony (Arnold Schwarzenegger) Grzymalski further testified that when their vehicle was in vicinity of the New Rochelle Police Department, my husband managed to open the window and began to "yell, 'Police. Police. Police.'" (SM 37, 39). An altercation ensued between this fully armed "Arnold Schwarzenegger" Deputy Sheriff and his 30 year old partner on one side and my 55 year old handcuffed husband on the other.

Incredibly, according to this Deputy Sheriff's testimony, as a result of this altercation, the Deputy Sheriff was injured (rather than the other way around), thereafter compelled to seek hospital treatment, and lost about 10 or 11 days from work.

When I heard about the abduction later that morning, I immediately tried to communicate with a Supreme Court judge in order to have a Writ of Habeas Corpus signed. I finally was able to communicate with Hon. ANTHONY J. FERRARO, proceeded to his home and had same endorsed and signed (Exhibit "F").

I finally arrived, with my daughter, in Riverhead with the original Writ. Since I was concerned about the condition of my husband (having heard, in the interim, about the altercation) and also concerned that I only had the original endorsed and signed Writ (and no photostatic copy), I decided to initially see my husband, with my daughter, without presenting the Writ.

Although I arrived during visiting hours, as soon as I stated who I desired to visit, my daughter and I were beset with obviously false delaying excuses, until we were finally advised that visiting hours were over (First Cause of Action).

In the interim, I learned that attorneys could see their clients after normal visiting hours, so upon being informed that visiting hours were over, I took out my business card and requested to see my client.

Once again, I was given various patently false excuses in not honoring the request (Second Cause of Action). When it became apparent that request was not going to be granted, or not granted until the expiration of an inordinate period of time, I presented the Writ of Habeas Corpus and requested that my husband be immediately released.

After some consultation between the Desk Officer (and then unknown superiors), my daughter and I were incarcerated, kept <u>incommunicado</u> for several hours, without food, water, or bathroom facilities, despite our protests, pleas, and emotional breakdown (Third Cause of Action).

It appears perfectly obvious, that the dilatory and then manifestly outrageous and inhuman conduct of Suffolk County officialdom on the evening of June 10 and morning of June 11, 1978, was an attempt to stall for time in order to find illegitimate alternatives for not releasing my husband.

The conduct of the Signorelli entourage against my husband, during this time, which I learned about after our eventual release, I leave for another and appropriate forum.

Once again, I was given various patently false excuses in not honoring the request (Second Cause of Action). When it became apparent that request was not going to be granted, or not granted until the expiration of an inordinate period of time, I presented the Writ of Habeas Corpus and requested that my husband be immediately released.

After some consultation between the Desk Officer (and then unknown superiors), my daughter and I were incarcerated, kept incommunicado for several hours, without food, water, or bathroom facilities, despite our protests, pleas, and emotional breakdown (Third Cause of Action).

It appears perfectly obvious, that the dilatory and then manifestly outrageous and inhuman conduct of Suffolk County officialdom on the evening of June 10 and morning of June 11, 1978, was an attempt to stall for time in order to find illegitimate alternatives for not releasing my husband.

The conduct of the Signorelli entourage against my husband, during this time, which I learned about after our eventual release, I leave for another and appropriate forum.

On June 24, 1982, my husband presented his oral argument to the Appellate Division, Second Department, before Hon. Justice Presiding Vincent A. Damiani, Hon. Moses A. Weinstein, Hon. Isaac Rubin, and Hon. Seymour Boyers.

My husband, with me sitting alongside, as his concluding presentation, related, in relevant part, the events at the Suffolk County Jail on June 10, 1978.

Mr. Justice Moses A. Weinstein, leaned forward, addressed Assistant Suffolk County Attorney Erick F. Larsen, Esq., stated that these were serious charges, and what he had to say with respect to them.

Mr. Larsen arose and following is an almost haec verba recitation of his statement:

> "When I [Erick Larsen, Esq., Assistant Suffolk County Attorney] was informed that the Sheriff had succeeded in capturing Mr. Sassower, I immediately proceeded to the Jail in Riverhead. Now I have processed thousands of applications by illiterates, but this Writ of Habeas Corpus was executed by one of the most illiterate persons I have ever seen."

Pursuant to CPLR 2214(c), I demand the production of the Original Writ of Habeas Corpus so that this Court may see whether such Writ was, in fact, endorsed and signed by an "illiterate" Judge.

I respectfully submit that the law does not require that only directions from "literate" judges be obeyed, nor does it empower the defendants to be the ex parte arbiters of the literacy of the judiciary in another district of their department.

A similar expressed justification was held legally unacceptable as a matter of law in Reimer v. Short (supra).

My husband, convinced that such attempted contrived enunciated justification before the Appellate Division on June 24, 1982, was a "cover", made inquiry (as appears from his annexed affidavit).

To prevent needless embarrassment, I insist that papers submitted by the Suffolk County Attorney, they, and particularly Erick F. Larsen, Esq., reveal in proper affidavit form, the complete events of the evening of June 10, 1978.

It is my understanding that Mr. Larsen communicated with Ernest F. Signorelli (who at that time officially recused himself), who in turn communicated with, directly or indirectly, with Presiding Justice Milton Mollen, of the Appellate Division, Second Judicial Department. It is my further understanding, that the avowed purpose of such communication was an attempt to ex parte rescind my husband's release, until at least, Monday, June 12, 1978. It is my further understanding that Presiding Justice Milton Mollen communicated with the Judge who signed the Writ of Habeas Corpus.

Significantly, there was no claim by Erick F. Larsen, Esq., on June 10, 1978, that the Writ of Habeas Corpus was unintelligible, was endorsed and signed by an "illiterate judge", or that Mr. Larsen and the defendants were not fully aware of the contents and mandate of the Writ of Habeas Corpus, and the legal conduct required by them with respect to such Writ.

The alternative to anything less than a full disclosure by defendants, the Suffolk County Attorney's Office, and Erick F. Larsen, Esq., must be the compelled testimony of members of the judiciary (Dennis v. Sparks (supra at 30-31, 187, 191).

The Suffolk County Attorney's Office should be reminded that they do not, did not at the time, nor, on information and belief, do they presently represent Ernest L. Signorelli. Consequently, the problem of privileged communication does not arise.

SUMMARY JUDGMENT (Fourth Cause of Action)

Even if my husband's conduct were in any way unjustified, which clearly it was not, the defendants have no legal right to harass and embarrass me for my husband's conduct (Griswold v. Conn., 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510; Darnell v. Lloyd, 395 F. Supp. 1210). There was no excuse for repeated telephone calls, for inquiry to neighbors, or for the service of subpoenas for appearances at non-existent court proceedings, when I had no have any relevant information. These subpoenas were returnable at dates the matter was not even scheduled for trial (Timson v. Weiner, 395 F. Supp. 1344 [Ohio]).1 This was purely because Anthony Mastroianni or his attorney wanted to interview me under color of law at their convenience in Riverhead and to simultaneously harass me.

SUMMARY JUDGMENT (Fifth Cause of Action)

The blatant broadcasting of public professional complaints against me to herald the desired institution of disciplinary proceedings was a manifest violation of my professional statutory right of privacy. As the Court said in Matter of Haas, supra, 10, 939-940):

> " Next, we remind the Surrogate that the matter of disciplining attorneys for professional misconduct is vested in the respective Appellate Divisions (Judiciary Law §90). If he has such proof it should be [privately] submitted to this court for appropriate action."

Not only was I vindicated on the Signorelli published charges, but, obviously aware of the falsity of the charges against me and my husband, Signorelli and/or his Court, destroyed or suppressed official court documents, clearly vindicating us or confirming of his own damnable conduct.

SUMMARY JUDGMENT (Sixth Cause of Action)

In the absence of plea by any of the defendants of truth or justification, it seems that no detailing of the evidence is necessary for summary judgment. In the event this Court believes otherwise, I set forth a brief summary of the relevant facts.

Initially, "Columnist" Signorelli specified my alleged misconduct as part of his catalogue of alleged legal sins committed by my husband. Those accusations were shown to have been fabricated, misleading, and fictitious. He thereby placed me in a false light.

January 1, 1976.

Ernest L. Signorelli replaces Surrogate Pierson R. Hildreth, as Surrogate of Suffolk County. Pending in that court is the Estate of Eugene Paul Kelly, wherein my husband, George Sassower, Esq., is the executor.

June 8, 1976

The return date for the Citations issued by the Court at the instance of my husband in the Estate of Eugene Paul Kelly.

In May of 1976, my husband was stricken and hospitalized with Guillain-Barre Syndrome, which completely paralyzed his hands and legs. This malady thereafter became well known as the unintended result of the Swine-flu vaccinations.

As a result of this unexpected paralysis of the attorney-executor, I caused to be sent to Surrogate's Court by Certified Mail (#606838) on June 2, 1976 my affirmation of that date, which read as follows:

> " This affirmation is in support of an application [to] adjourn and fix a new date for the return of the 'Citation' in the above matter, presently set for the 8th day of June, 1976.
>
> That except for THOMAS KELLY, everyone necessary to be cited has been timely served.
>
> That said THOMAS KELLY survived the deceased, EUGENE PAUL KELLY, but died subsequently (date presently unknown), and as far as affirmant can ascertain there is no estate which has been filed or administered.
>
> That it seems that THOMAS KELLY was the recipient of funds from the Department of Social Services of the City of New York and since they probably would be entitled to the funds of THOMAS KELLY, it is that Department with whom arrangements will have to be made in this regard.
>
> Furthermore, the executor, GEORGE SASSOWER, Esq.was taken ill with what has been diagnosed as a Guillain-Barre syndrome, which caused a paralysis of Mr. Sassower's hands and legs and his hospitalization.
>
> That although recovery is indicated, the length of time is at present uncertain, but affirmant believes that within two months Mr. Sassower should have sufficiently recovered to substantially engage in his usual working activities.

WHEREFORE, affirmant prays that this matter be adjourned for two months in order to complete jurisdiction."

The Report of Judge Melia dated August 27, 1981, states (p. 16):

" Mr. Kuzmier [Deputy Chief Chief Clerk of the Suffolk County Surrogate's Court] testified that he was in Court, and called the calendar, on June 8, 1976. There was no appearance by anyone.

The calendar reads, in relevant part, as follows:

'Eugene Paul Kelly. No appearance. The Court, on its own motion, will adjourn this matter to June 22, 1976, for all purposes. The Clerk is directed to send appropriate letter of admonition to the attorney for petitioner and petitioner.' (Ex. 23a)

On June 9, 1976, Mr. Kuzmier sent a letter to the respondent [Doris L. Sassower] which she admittedly received.

It reads in part as follows:

'Dear Madam:

On June 8, 1976 no personal appearance was made nor any communication directed to the Court [was received].

The Court on it's own motion adjourned the matter until June 22 at 9:30 A.M. and has directed that you and the petitioner be present in Court on that date.' (Ex. 24a.)"

3. It was reluctantly admitted by Surrogate Signorelli that on the call of the calendar on June 8, 1976, his Court had a copy of my affirmation of June 2, 1976.

"Q. I show you the affirmation of Doris L. Sassower dated June 2, 1976, Exhibit Y, which was sent to your court by certified mail, and ask you if you saw or were made aware of its contents on or prior to June 8, 1976?

...

Q. Do you have any notes in your file to show that this affidavit was received by the Court?

A. ... I have here a communication, which is apparently sent to Doris Sassower and which is dated June 10, 1976 and apparently was sent by the Clerk of my accounting department, Joseph Wolin. ... Its subject is the estate of Eugene Paul Kelly. 'I return herewith ... . The affirmation is returned as it was not on notice to Schacter, Abuza & Goldfarb who have appeared in this matter.'

...

THE REFEREE: ... What's the date of that?
THE WITNESS: June 10th, 1976.

THE REFEREE: That indicates that, does that indicate to you, Judge, that that affidavit of Mrs. Sassower was received prior to June 10th?
THE WITNESS: Judge, I would assume so, but I really am not sure. I really am not sure.

Q. Well, after the non-appearance on June 8th, did the Court cause to be sent out this letter of June 9, 1976? (Document handed to the witness.)

A. I would assume that if this letter went out and from reading the Clerk's minutes of the notation that I undoubtedly indicated to the Clerk that such a letter should be sent out.

Q. Well, does this letter look like a copy of a true letter emanating from Surrogate's Court, Suffolk County?
A. Does it appear to be?

Q. That's right.
A. A copy of a letter that we would normally send out?

Q. Right.
A. Yes, it does.
MR. SASSOWER: I offer this letter in evidence.
THE REFEREE: Any objection, Mr. Grayson?
MR. GRAYSON: No objection.
THE REFEREE: Received, AN in evidence.
(Letter dated 6/9/76 marked Respondent's Exhibit AN in evidence.)
...

Q. I refer you to Exhibit AN in evidence where it states that on June 8th no personal appearance was made, nor any communication directed to the Court. Did you notice that? (Document handed to the witness.)
A. That's right. That's what the letter dated -- Kuzmier says, addressed to Doris Sassower.

Q. But that is obviously in error because they obviously had in their hand the affidavit or affirmation of Doris Sassower dated June 2, 1976?
A. Well, apparently --

Q. Yes or no.
A. It was returned, apparently.

Q. It was returned June 10th?
A. By Mr. Wolin.

Q. On June 10th?
A. That's right.

Q. On June 9th he had it in his possession?
A. I don't know that. I don't know that. I would assume that he did. But I don't know that.
THE REFEREE: The memo seems to suggest.
THE WITNESS: Yes, I would assume that. But I personally don't know that." (Oct. 22, 1981, SM 85-97).

4. Missing also were the minutes of June 8, 1976. This vital record, Surrogate Signorelli testified existed. He and his subordinates repeatedly promised the tribunal and the Grievance Committee he would produce it. He never did!

The following is his testimony in this respect:

"Q. Sir, what was the purpose of appearing in Surrogate's Court on June 8, 1976?
A. June 8, '76? Is there a transcript of that date?
MR. GRAYSON: I do not have a transcript of that date.
...
Q. Were there any minutes taken of the calendar call, stenographic?
A. There is a Court Reporter present.
...
Q. ... Was she taking stenographic minutes?
A. I assume that, I think it was a 'he'. I assume that he would record the proceedings, yes.
...

Q. Could you make those minutes available to us insofar as they regard the Kelly estate?
A. All right. What dates do you want?

Q. June 8th and June 22nd.
MR. GRAYSON: Is that agreeable with you, Mr. Grayson.
MR. GRAYSON: Sure. No problem." (Oct. 22, 1981, SM 81-82)

June 22, 1976

Five days before the adjourned return date, my husband, by Certified Mail (#231355), sent his own affirmation to Surrogate's Court (with an affidavit of service), describing his paralysis, and with it, returned my affirmation of June 2, 1976. My husband's affirmation reads as follows:

> This affirmation is in support of an application to adjourn the above matter scheduled for June 22, 1976, at 9:30 a.m. until a date subsequent to July 15, 1976.
>
> As appears in the annexed affirmation of DORIS L. SASSOWER, Esq., dated June 2, 1976, I was taken ill with a polyneurosis which caused paralysis of my hands and legs..
>
> That although my physicians have advised me that I am making fine progress, my motor nerves controlling my legs and hips are completely non-functional. Consequently, notwithstanding physical therapy and exercise, my muscles in that area are 'wasting away' and until those nerves rejuvenate, I am becoming more immobile as time progresses.
>
> Additionally, the involvement of my sensory nerves causes me great pain particularly after I overexert myself.

Under these circumstances, I will not be physically able to attend this Court on the aforementioned date unless these nerves suddenly become functional.

I do believe that after a scheduled testing and examination on July 2, 1976, I will be in a better position to advise this Court more accurately as to my prognosis, but at the present time from all that I have read, seen, and been told, I believe and hope that by the middle of July, I should be well enough to attend this Court.

Insofar as the scheduled appearance on June 8, 1976, the annexed affirmation was mailed to this Court on June 2, 1976 and on June 7th, 1976, the office of Schacter, Abuza, & Goldfarb, Esqs., were advised that such application for adjournment was made.

The said affirmation was returned by the Clerk of the Court on June 10, 1976, and I regret any inconvenience caused because it was not brought to the attention of the Court on June 8, 1976.

I hope that by the adjourned date that jurisdiction will be complete and after an Order is entered on this accounting, I expect to expedite the Final Accounting and bring this matter to a close.

WHEREFORE, affirmant prays that this matter be adjourned until after July 15, 1976."

2. The Report of Judge Melia of August 27, 1981 states (Report p. 17):

" ... a letter dated June 23, 1976 was sent by court personnel to the respondent [Doris L. Sassower. (Ex. 24b.)

...

The body of the letter reads:

'On June 9, 1976 you and the petitioner were directed to be in Court on the return date of June 22 in regard to the above matter.

On the calendar call of June 22 there were no appearances and the matter was adjourned to July 6, 1976 at 9:30 A.M.

You and the petitioner are directed to be present at that time and upon failure of both of you to appear the matter will be referred to the Appellate Division, and this Court will in addition take such action as may be deemed necessary in the premises.'"

3. There is no question but that on June 22, 1976, Surrogate's Court had my husband's affirmation dated June 17, 1976.

This was conclusively shown by the testimony of Surrogate Signorelli and by the transcript, ante litem motam, on July 6, 1976.

Q. I show you a copy of my affirmation of June 17, 1976 which has been marked here as Exhibit Z in evidence, which was also sent to your court by certified mail, and ask you if you saw this document or was aware of its contents prior to June 22, 1976?
A. Incidentally, this affirmation indicates that Doris Sassower's affirmation was mailed to the court on June 2nd and returned by the Clerk on June 10th. So apparently that notice that I read to you is applicable."
(Oct. 22, 1981, SM 95)

Nevertheless, the two affirmations which set forth my husband's illness were also destroyed or secreted by Surrogate Signorelli and/or his Court, and all evidence of such telephone conversations obliterated.

The person(s) who destroyed, secreted, and obliterated such evidence overlooked the fact that (1) the two affirmations setting forth my husband's illness were sent by Certified Mail, (2) the letter from Surrogate's Court dated June 10, 1976, acknowledged the receipt of my affirmation of June 2, 1976, and (3) that there was a transcribed session on July 6, 1976, which revealed that Surrogate's Court had these affirmations in hand and the Law Assistant admitted that he had spoken to my husband twice about my inability to appear.

Surrogate Signorelli's prepared chronology for his testimony at my husband's hearings did not include the July 6, 1976 session in Surrogate's Court (Oct. 22, 1981, SM 100). When it became apparent to the Surrogate that the stenographic transcript of his own Court of that day revealed that exculpatory documents had been destroyed or were being suppressed, he was stunned and foolishly questioned its authenticity by saying "What's this, a certified transcript?" (SM 104).

The Surrogate found himself "hoisted by his own petard", since the following colloquy immediately ensued:

> "THE REFEREE: Mr. Grayson [the Grievance Committee's Attorney].
> MR. GRAYSON: Apparently that's the copy we received from your [Surrogate Signorelli's] office.
> THE WITNESS: You received it from my office?
> MR. GRAYSON: From the Surrogate's Court, apparently, before I became involved.
> THE WITNESS: I don't see it certified."

Since the Grievance Committee did not become involved in this matter until March of 1978 (and Mr. Grayson's involvement long after that date), we can fix the date of destruction of the Surrogate's Court copy of this transcript, from this portion of the testimony, as being no earlier than twenty (20) months after the events of that day, or this and other transcripts and documents are being intentionally suppressed by Surrogate Signorelli and/or Surrogate's Court.

Significantly, Surrogate Signorelli also failed to produce the court transcript of June 22, 1976, and other transcripts and documents, although they were repeatedly requested by the Grievance Committee (at my husband's insistence), and although Surrogate Signorelli personally made a commitment to the Referee on October 22, 1981 to produce such material.

The conclusion became inescapable! The attorneys for the Grievance Committee finally realized they had been duped by Surrogate Signorelli.

5. The transcript of the proceedings of July 6, 1976 in Surrogate's Court reveals the following colloquy between my husband, Judge Signorelli, Charles Z. Abuza, Esq., and Peter Sereduke, Esq. (a law assistant).

> "THE COURT: ...refer this matter to the Appellate Division, and I am going to do that. And, I direct the Court Reporter to complete the Minutes - the entire transcript - and send it to the Appellate Division.
>
> I don't know what it takes to get either you or your wife in court, but I intend to find out.
>
> MR. SASSOWER: This matter was on four or five weeks ago .... At that time I became very seriously ill; I was hospitalized and I was put into intensive care. The fact is, this is the first time that I am supposedly working since my illness. The next time it was on, I was still ill.
>
> Now, as far as Mrs. Sassower is concerned, not only has she been doing her work, but she is taking care of my matters to the best of her ability; in fact, I fear for her health at this time.
>
> As far as the two prior appearances, your Honor, the Court was notified on both occasions, both as to the illness and the inability to appear. They were advised by phone calls; they were advised by affidavits. My adversary was advised. I advised Miss Dubois, and she knew of my illness and my inability to be here. And, under those circumstances, and considering that in 25

years of practicing law, I don't think I have taken off more than one day - one or two days for illness. I have tried cases when I had 105 temperature. I think, your Honor, that it is a little unfair, under the circumstances, for your Honor to take that position.

Now, I have tried to be brief. I can give you medical affidavits. I can give you hospital bills. I certainly did not choose illness, and it was a dreadful experience for me; and, in fact, I am still not recovered. And, if I do fully recover it will be sometime before that takes place.

THE COURT: Where is your wife this morning?

MR. SASSOWER: Your Honor, when I left this morning, I had intended to take the train out here, because I didn't trust myself with the car. The only way I could get here by train and be in court on time, was to take a train out of Westchester County at 12:30 a.m.; that was the only way to be here on time. So, I took a chance, and I probably endangered my own life as well as other people, and drove a car.

I don't know - I know she has to be in Supreme Court, New York - whether it was today or tomorrow, I don't know. But to be honest with you, your Honor, when I read the letter, I did not, and I don't think she interpreted that letter that way, that both of us had to be here." (pp. 2-6).

"MR. SASSOWER: ... I think, the letter should have referred to the fact, to be fair about it, that the Court had in its possession at the time an affidavit of illness. Now, this was not contumacious, you Honor, ... The last time this was on the Calendar - I spoke to Mr. Sereduke the day before he had my affidavit in his hand, and he advised me that your Honor was not available; he couldn't discuss it with me. I believe I spoke to him twice that day -the day before, and I spoke to him the

morning after. Now, I might be in error as to one telephone call, but I know I spoke to him once or twice the day before the return date. He had my affidavit, and I spoke to him the day after. ... " (pp. 7-8)

"THE COURT: With respect to the letter, sir, I am going to submit this matter to the Appellate Division. If you feel I am unfair, let the Appellate Division decide who is being unfair here. Mr. Court Reporter, I direct you to type up the transcript.
MR. SASSOWER: Your Honor, in all fairness, would you, as part of this Record, mark or deem marked the affidavits that I submitted to this Court on the two prior occasions?

THE COURT: Whatever the Appellate Division requires of this Court, in connection with this matter, will be forwarded to the Appellate Division." (p. 10)

"MR. ABUZA: The reason I was here [on June 22, 1976], despite receiving Mr. Sassower's affidavit, was because Mr. Sereduke told me to be here.
MR. SEREDUKE: That is correct.

MR. SASSOWER: Mr. Sereduke, you knew I wasn't going to be here at this time.
MR. SEREDUKE: You said you weren't going to come, and I told you that you were directed to come; that is what I told you.

MR. SASSOWER: Since I am on the Record, the day before this was on - and my recollection may be incorrect as well as yours - I spoke to you once or twice the day before.
MR. SEREDUKE: Twice by telephone.

MR. SASSOWER: And, you had my affidavit.
MR. SEREDUKE: Yes, I did.

MR. SASSOWER: You knew I wasn't going to be here because of my illness.
MR. SEREDUKE: You told me that.

MR. SASSOWER: You mentioned - I am not trying to interrogate you, I am trying to refresh my recollection - that you would take it up with the Surrogate.

MR. SEREDUKE: You were directed to be here on that date. And, what I did, I left it up to you and said, 'You have been so warned.'" (pp. 37-39).

July 6, 1976

1. This Report of Judge Melia continues as follows (p. 17-18):

" Mr. Kuzmier was also present in Court on July 6, 1976. Neither the respondent [Doris L. Sassower] nor her husband appeared.

2. The Report of Judge Melia of August 27, 1981 states (p. 19-20):

" Mr. Kuzmier testified that he has no knowledge of such a call. Further, he says that such a call in ordinary course, would be brought to the attention of the Court on the call of the calendar. This did not occur.

He states that he never saw the affirmation (Ex. 21,. [Ex. AA in these proceedings]) before he testified here, although it was in the Court's file.

He testified that in 1976 ... [t]he practice was for such information to be given to himself or the then Chief Clerk. He finds no indication of such a call having been received.

Cross examination developed that none of the three calendars in evidence bear any notation on any case concerning a telephone call (Exhs. 23a, b, c.)".

3. It seems clear, even to the attorneys for the Grievance Committee, that the Surrogate's Court sifted and stripped their files, destroying or suppressing our affirmations relative to my husband's illness and the stenographic minutes of them, as well as other data, which might have been helpful to me and my husband.

The Grievance Committee was misled first by Charles Z. Abuza, Esq. and then by Surrogate Signorelli and his Court.

The attorneys for the Grievance Committee were understandably shaken, shocked, and chagrined when they recognized that notwithstanding certifications issued and representations made by Surrogate's Court and forewarnings, the information forwarded to them had been patently pruned.

B. To appreciate the venal character of Ernest L. Signorelli, some background must be recited as to some background.

Not only did Ernest L. Signorelli threaten to report me and my husband to the Appellate Division for not appearing at some unimportant pro forma conference while my husband was paralyzed and I was engaged in three other court appearance, but he repeatedly and deliberately deliberately scheduled Surrogate Court

appearances when my husband was engaged in higher courts. He scheduled an examination before trial when my husband advised him that he had to appear in the Court of Appeals, several times scheduled appearances when he was informed that my husband had to be at the Appellate Division, and scheduled appearances knowing he was scheduled to be on trial in the Supreme Court.

This practice reached the point of spiteful capriciousness when my husband's adversary wanted an adjournment and my husband was told there was three dates available for such adjournment which had been requested by his adversary. As to one date, my husband reported he was free and available; as to the second date, my husband reported that he was scheduled to be legally engaged in another court, but the case would probably be settled beforehand, so that such date was possibly acceptable; as to the third date my husband reported that he had to argue a matter in the Appellate Division, Second Department in the morning, then he was scheduled to hold a short examination before trial in New York County, and after that he had to proceed to Westchester County for an examination before trial in a case where his client was coming in from Florida.

The date Signorelli chose was, predictably, the third one.

Signorelli's published sua sponte attack against my husband and myself states:

> " On January 25th, 1978, all parties appeared for trial. ... Prior to recessing for the day, the court directed Sassower to return the following morning at 9:30 to continue the trial, and to resolve the further question of his contemptuous conduct.

The transcript of January 25th, 1978 of proceedings before Judge Signorelli reveals the following (SM 44):

> "THE COURT: ... Tomorrow morning you appear with your counsel, and we will proceed with regard to this point.
> MR. SASSOWER: May I just state this, Your Honor - do I understand --
>
> THE COURT: We are not suspending the hearing or trial.
> MR. SASSOWER: I understand that.
> (Mr. Wruck stood up to address himself to the court.)
> THE COURT: Please, Mr. Wruck, let me finish. I would be glad to hear you afterwards. Proceed.
> MR. SASSOWER: Initially, I am due in the Appellate Division tomorrow morning.
>
> THE COURT: You are before me now, and you are to appear. I am directing you to appear. After we complete what we are working on today -- tomorrow morning at 9:30 with your counsel."

The following day, my husband appeared in the Appellate Division of the Second Judicial Department and argued on behalf of the respondent in the case of Baecher v. Baecher, which he had handled from its inception in 1975, except for the period when he was ill or recovering therefrom.

As the transcript of Surrogate's Court shows, Surrogate Signorelli was informed of this engagement, but deliberately flouted it.

In more than thirty years at the bar, neither I nor my husband have ever had or witnessed an occasion, wherein a trial judge did not honor an appellate engagement, particularly in a non-jury proceeding. Yet, I became aware that Surrogate Signorelli made it his regular practice to schedule my husband's appearances on whatever date my husband had verbalized a conflicting engagement, as the transcript by his own Court Reporter reveals.

Continuing his overt omissions, Surrogate Signorelli states:

> "Petitioner failed to appear in court the following day, and a telephone communication was received by the court from the petitioner's wife, an attorney and his former counsel in this estate. She stated that [George] Sassower could not appear because he was in the Appellate Division on another matter ..."

As heretofore quoted, Judge Signorelli was advised the previous morning that he had an engagement in the Appellate Division, and therefore he should have reasonably assumed that I (as well as he) was bound to honor the higher court's engagement.

The assertion of what I stated is made to appear as if it were spoken to him directly when in fact I spoke to Mr. Berger outside the presence or hearing of the Surrogate.

The transcript the next day reveals the following statement by Mr. Berger [attorney for the Public Administrator and former campaign manager for Ernest L. Signorelli] (SM 257-262):

> " About a quarter to twelve last night, she [Doris L. Sassower] again contacted me and indicated that her husband had contacted her - George Sassower - and he had told her he would not appear this day because he had an engagement in the Appellate Division. I am not aware whether she knew which Appellate Division Mr. Sassower had an engagement in, or what judges he would be before, or what case he was going to be on. We didn't discuss that; but she gave me this information ...
>
> Just about fifteen minutes ago, I attempted to reach her again - for the record, it is approximately eleven o'clock - but because of the telephone lines being out of order, I was unable to get through. However, the Public Administrator's office is still attempting to reach Mrs. Sassower, and I told them to let me know in the court room as soon as she is reached.

> THE COURT: When I arrived at the court house this morning, it had been indicated to me that Mr. Sassower would not appear, notwithstanding the fact that yesterday I directed him to be present in court this morning ... . I was told that he had told someone he had an engagement in the Appellate Division [the Court transcript reveals that my husband told it to Judge Signorelli himself in open court the previous day] ... I don't know why Mr. Sassower is not present in this court this morning. He has offered the court no legal excuse for his not being present.
>
> THE COURT: Gentlemen, I have been advised that Mr. Sassower is in the process of arguing an appeal in the Appellate Division of the Second Judicial Department in the case of Baecher v. Baecher, wherein his wife, Doris Sassower, appears as attorney of record."

Judge Signorelli states in his false published indictment of me:

> "She [Doris L. Sassower] stated that [George] Sassower could not appear because he was in the Appellate Division on another matter, but refused to identify the case or the particular department of the Appellate Division. ... [I]t was finally determined that Mr. Sassower was arguing a case in the Second Department that morning, and the counsel of record in the case was petitioner's wife [Doris L. Sassower]."

1. The published statement by Judge Signorelli that I "refused to identify the case or the particular department of the Appellate Division" is just another blatant falsehood as revealed, ante litem motam, by the Surrogate Court transcript itself.

As shown hereinabove, my conversations was with Mr. Berger only, not with the Surrogate, and Mr. Berger stated, ante litem motam, that my wife gave him the information he requested. At no time did he state that she "refused" to identify the case. On the contrary he stated that he and my wife "didn't discuss that".

Legally significant is the the published statement itself identifies me as "former" counsel, and consequently expressed acknowledgment of his lack of personal jurisdiction over me at the time.

2. The record of the the Appellate Division (58 A.D.2d 821, 396 N.Y.S.2d 447, leave den. 43 N.Y.2d 645, 402 N.Y.S.2d 1026; 61 A.D.2d 1021, 403 N.Y.S.2d 82; 70 A.D.2d 871, 417 N.Y.S.2d 212; 78 A.D.2d 894, 433 N.Y.S.2d 220; 80 A.D.2d 629, 436 N.Y.S.2d 325) and other various courts will reveal that my husband handled almost every aspect of the Baecher v. Baecher matters, including the trials before Mr. Justice John C. Marbach, Mr. Justice Quinn, Mr. Justice James H. Cowhey, and Mr. Justice Walsh. The only time he did not handle this matter was when he was ill and or recovering therefrom.

I am not requesting this Court to judge the conduct of Ernest L. Signorelli, it clearly has no jurisdiction, as Ernest L. Signorelli had no jurisdiction to judge my and my husband's professional conduct.

I do request "fearless decision-making" in determining whether there is any immunity, which is itself the purpose of the immunity (Gregoire v. Biddle, 177 F2d. 579, cert. den. 339 U.S. 949, 70 S.Ct. 803, 94 L.Ed. 1363).

WHEREFORE, it is respectfully prayed that this motion be granted in all respects.

DORIS L. SASSOWER

Sworn to before me this
20th day of July, 1982

MURIEL GOLDBERG
Notary Public, State of New York
No. 60-4515474 Westchester County
Commission Expires March 30, 19 83.