*To be argued by:*
*GEORGE SASSOWER*

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**Supreme Court of the State of New York**
**Appellate Division—First Department**

GEORGE SASSOWER,
*Plaintiff-Appellant-Respondent,*

-against-

ANTHONY MASTROIANNI, JOHN P. FINNERTY, ALAN CROCE, and ANTHONY GRYMALSKI,
*Defendants-Respondents-Appellants,*

-and-

ERNEST L. SIGNORELLI, HARRY E. SEIDELL, NEW YORK NEWS, INC. and VIRGINIA MATHIAS,
*Defendants-Respondents.*

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# BRIEF OF PLAINTIFF-APPELLANT-RESPONDENT

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# I N D E X

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# BRIEF OF PLAINTIFF-APPELLANT-RESPONDENT

## PRELIMINARY STATEMENT

## STONEWALLED - THE CODE OF SILENCE

1. Plaintiff's nine cause of action covering a substantial spectrum of of the law of intentional and constitutional torts is now in its seventh year without any pre-trial procedures of the parties, excepting the News, having taking place, in either this or related actions, in the State or Federal Court.

2. Plaintiff fully subscribes to Special Term's statement that "[t]his is ancient litigation and it should be sped to an end" [21]. Nevertheless, if this Court is also in agreement, it is respectfully submitted, it is for this Court to find the means.

3. Appeals presently pend in the Appellate Division in First, Second, and Fourth Departments, summarized, insofar as they might affect this appeal, as follows:

FOURTH DEPARTMENT:

1a. Plaintiff served interrogatories upon defendants, John P. Finnerty, Alan Croce, Anthony Grymalski, and Anthony Mastroianni [hereinafter "S.C. defendants"], on July 30, 1982.

When the S.C. defendants did not answer or move, plaintiff, on August 21, 1982, moved for sanctions.

Special Term, Suffolk County (per De Luca, J.) "denied" plaintiff's motion, on November 5, 1982, with the wholly contrived statement that "answers thereto having been served prior to the submission to this motion."

The Suffolk County Attorney did not deny the opinion factually false, nevertheless, reargument was denied, on January 20, 1983.

An immediate appeal was perfected to the Appellate Division, Second Department, which thereafter, sua sponte, transferred the appeal to the Fourth Department.

As a result of a misrepresentation by the Suffolk County Attorney regarding an Order of the Appellate Division, Second Department, and a loss of original papers during transit between the Second Department and Fourth Department, the calendaring of such appeal has been held in abeyance.

On February 27, 1984, the parties were notified by telephone that the appeal would be placed on the March 1984 calendar, for argument, on an expedited basis.

b. The balance of the appeal deals with the sufficiency of the some of the affirmative defenses of defendant-respondent, New York News [hereinafter "News"]. This issue is not perceived to be relevant to the issues on plaintiff's appeal or the S.C. cross-appeals in this Court.

2. Plaintiff's also appealed, from another S.C. Order, which struck interrogatories posed to the "News", and plaintiff also very expeditiously perfected his appeal to the Second Department.

The News cross-appealed and received a stay regarding certain interrogatories which nisi prius held the News had to respond. The News' claimed, in securing its stay from the Appellate Division, Second Department, that these particular interrogatories which it was required to answer violated Civil Rights Law §79-h and the attorney-client privilege [65].

Met with plaintiff's expeditious appeal, rather than perfect its cross-appeal, the News responded to the interrogatories, waiving, by its answers, the §79-h and CPLR §4503(a) privilege, or so plaintiff claims.

SECOND DEPARTMENT:

1. Sub judice, is an appeal by Ernest L. Signorelli, which denied his CPLR 3212 motion, in an action brought by plaintiff's wife and daughter, Doris L. Sassower and Carey A. Sassower, based upon an interrelated situation, hereinafter described.

2. Sub judice, also is plaintiff's and his wife's appeal against Ernest L. Signorelli, based upon wrongful conduct thereafter arising, including the intentional destruction or concealment of more than twenty (20) exculpatory documents from the files in his Court, which misled the Grievance Committee, to the injury of plaintiff and his wife.

3. The S.C. defendants are not part of Signorelli's appeal, which afforded him a CPLR §5519(a)[1] stay on disclosure [the Appellate Division refused to vacate same]. Consequently the S.C. defendants are in default, now for more than one (1) year, in failing to respond to plaintiffs' Notice to Admit served therein.

4. Temporarily dormant, is plaintiff's action against the New York Law Journal (Supreme, Westchester), by reason of the overpublication of the Signorelli "sua sponte" disciplinary diatribe against plaintiff, which decided nothing, nor was it intended to decide anything.

A corresponding action by Doris L. Sassower is part of the action, presently pending, sub judice, in the Appellate Division, wherein Signorelli is the appellant..

COURT OF APPEALS:

Pending is plaintiff's motion for leave to appeal, from Signorelli's omnibus CPLR 3211(a)[5][7] motion (Geo. Sassower v. Signorelli, 98 A.D.2d 585, 465 N.Y.S.2d 543 [2d Dept.].

The decision of the Appellate Division was rendered on July 25, 1983, and bridges the proceedings which are the subject of the present appeals to this Court.

The decision of the Appellate Division, Second Department dealt with plaintiff's 1978 complaint and Signorelli's CPLR 3211(a) motion.

Most of the last five (5) years prior to such decision, Signorelli's motion was sub judice at Special Term, Suffolk County and in the Appellate Division.

NEW YORK COUNTY, SPECIAL TERM:

1a. Sub judice, (Hon. Martin B. Stecher), is plaintiff's motion to amend one cause of action of his complaint against Signorelli, so as to allege that Signorelli "procured the publication by affirmative acts", in order to conform to the newly established pleading requirement of the Second Department (supra, at 587, 547), a pleading doctrine which finds no supporting authority in any case or any text anywhere, before or after "notice" became about the only essential ingredient to a pleading (CPLR §3013).

b. In "running roughshod over" basic CPLR 3211(a) principles to its desired conclusion, the Second Department ignored the fact that the private publication of the Signorelli defamation to the reporter was actionalble defamation, and what the Court called a "publication" was really a "republication".

c. Significantly, while, sub judice, at the Second Department, an examination before trial took place of the reporter [stringer], Art Penny, on notice to all attorneys, and he testified that the [re]publication by the News was the result of active solicitation of persons (whose identity he would not give) to come to Surrogate's Court for a "hot story", on a day that no proceedings were taken place involving plaintiff, and given a private and exclusive press interview by Columnist Signorelli in his Chambers, obviously intended to, and did, deprive plaintiff of a fair trial in another (Supreme) court.

2a. On another motion, sub judice, before Hon. Martin B. Stecher (simultaneously submitted), is the S.C. Attorney's motion.

b. After Hon. Arnold L. Fein denied the Suffolk County Attorney's application for an interim stay on January 30, 1984, which required two (2) of his clients to submit to an examination before trial, the Suffolk County Attorney, the following day, moved for partial summary judgment, without revealing a prior similar motion [316-320], contending that same triggered a CPLR 3214(b) automatic stay.

c. Obviously, when and if such motion is denied, as it should be, the Suffolk County Attorney will file a Notice of Appeal, thus triggering a CPLR §5519(a)[1] automatic stay!

d. Thus, although it has been one year since plaintiff noticed the S.C. defendants for an examination before trial, and eleven months since the S.C. Attorney agreed, in writing, to have such examination take place in New York County, the county of trial, such examination has not taken place. The courts, for the S.C. Attorney, is as easily manipulative as a Yo-Yo!

U.S. DISTRICT COURT, SO. DIST. OF N.Y.:

On the suspense calendar, by reason of pending state actions, is plaintiff's action against the S.C. defendant, Anthony Gryzmalski and another Suffolk County Deputy Sheriff (78 Civ. 4989 [GLG]), an action wherein summary judgment was denied to the S.C. Deputy Sheriffs defendants.

This decision was also not disclosed by the S.C. Attorney on his recent motion for partial summary judgment, patently made to evade the aforementioned holding of Mr. Justice Fein, and thus frustrate, once more, pre-trial disclosure.

## QUESTIONS PRESENTED

1. Should the asserted privileges contained in Civil Rights Law §79-h and CPLR §4503(a) by the witness, Art Penny, a former "stringer" for the News, be sustained, when (a) the publication discloses the sources of the defamation; (b) the employer has waived such privilege; and (3) the privilege is invoked to protect the former employer, whose attorneys "solicited" Penny, as a purported client?

Special Term held in the affirmative [11].

2. Should the law firm of Patterson, Belknap, Webb & Tyler, Esqs. [present attorneys for News], be disqualified from representing the witness, Art Penny?

Special Term held in the negative [11].

3. Should plaintiff have been permitted to have pre-trial disclosure of (a) Patterson, Belknap, Webb & Tyler, Esqs.; (b) Townley & Updike, Esqs.; (c) Ernest L. Signorelli; (d) Vincent G. Berger, Jr.; (e) Erick F. Larsen, Esq.; (f) Harry Schlegel; (g) Presiding Justice Milton Mollen; (h) [former] Associate Justice Frank A. Gulotta; (i) Hon. Anthony J. Ferraro; and (j) Hon. Irving N. Selkin, on his motion made prior to July 25, 1983 [the date of the Second Department opinion]?

Except for Harry Schlegel, former News editor for News, Special Term held in the negative.

4. Should such examination now be permitted?

The matter was not presented to Special Term.

5. Is plaintiff entitled to discovery and inspection to which the S.C. defendants did not make a timely protective motion?

Special Term did not answer this question.

6. Should substantial costs be imposed on the S.C. Attorney and his clients for their stonewalling tactics in this matter?

Special Term held in the negative.

PROCEDURAL STATEMENT

1. On February 3, 1983, this action was removed from Suffolk County to New York County by Order of Special Term in the former county [201].

2a. On March 15, 1983, plaintiff served a Notice to depose the S.C. defendants in New York County, by notice to all attorneys [75-76].

b. No protective order was sought by anyone.

c. The Assistant S.C. Attorney, who had been handling this matter almost since inception, requested and received from plaintiff an adjournment to April 18, 1983.

d. The agreement was confirmed the following day by the Assistant S.C. Attorney by letter, which specifically confirmed that such examination was to be held in "Supreme Court, New York County" [77].

e. Plaintiff confirmed the understanding, with his own letter, which reveals, ante litem motom, the good professional relationship that existed between them [79-80]. Such "good" relationship is thereafter specifically alleged [38].

f. Plaintiff wrote the Assistant S.C. Attorney nine days before the agreed adjourned examination date for the purpose of entering into various procedures to simplify such scheduled examinations. This included answering plaintiff's interrogatories, which Judge DeLuca stated had been, but were not, served, and stipulating that the admissions made in the Doris L. Sassower action apply to the case at bar [81].

g. At 7:20 p.m., the business day before the agreed date for such examination before trial, after plaintiff had made the necessary arrangements for such examinations, he received a telephone call from the Assistant S.C. Attorney that [38]:

> "he had been directed by Suffolk County Officials, including the Suffolk County Attorney himself, to chart a course of delay and obstruction."

h. Dated that same day is the hastily prepared S.C. Attorney's Notice of Motion and Plaintiff's Notice of Examination before Trial [71-76] -- Nothing more!

No supporting affidavit! No statement or copy of the stipulation agreeing to the examinations to be held on April 18, 1983 at Supreme Court, New York County!

The return date was 31 days after the date of the motion!

The S.C. Attorney's Notice of Motion requested that plaintiff's simple Notice of Examination before Trial, as low keyed as could possibly be drawn [75-76], was suddenly [72]:

> "burdensome, vexatious, and interposed solely for the purpose of harassment and constitutes an abuse of process".

Other dilatory relief was requested including that the examinations take place in Riverhead, Suffolk County [72].

In order that there be no misunderstanding, the S.C. Attorney's Notice of Motion stated [73]:

> "[that the depositions] currently scheduled to be held on Monday, April 18, 1983, ARE HEREBY SUSPENDED pending determination of this application by the Court. " [as in the original]

i. Immediately upon receipt of the aforementioned, plaintiff moved [31-34] attempting to obtain a "single comprehensive order" for pre-trial disclosure, rather than have the subject dealt with on an ad hoc basis [34].

Plaintiff's opening paragraph in his supporting affidavit, which sought also to accelerate the return date of the S.C. Attorney's motion is significant [35]:

> "The Suffolk County Attorney's Office makes no secret of his intentions with respect to his motion dated Friday, April 15, 1983, returnable May 16th, 1983 -- 31 days later.
>
> The Suffolk County Attorney's Office knows that its aforesaid meritless motion must be denied, as a matter of law.
>
> Nevertheless, the Suffolk County Attorney intends to file a Notice of Appeal, secure a CPLR §5519(a) stay, and then procrastinate on perfecting its appeal."

3a. The motions were submitted to Hon. Bruce McM. Wright and the attorneys, still maintaining a good professional relationship, always agreed, inter alia, that all subsequent motions on pre-trial discovery be submitted to His Honor.

b. The sole exception was the Order, dated January 24, 1984 [27], when the [new] Assistant Suffolk County Attorney advised Mr. Justice Ira Gammerman that the S.C. defendants would not obey, no matter what the date, any order which set down the matter for pre-trial depositions.

Although His Honor was warranted in striking the answers of the particular S.C. defendants, he merely entered a conditional order [27].

c. Thereupon, the S.C. Attorney went to this Court in order to receive an interim stay, without showing any appealable or reviewable issue, but instead levelled another irrelevant ad hominem attack on plaintiff.

When, Mr. Justice Fein, denied the S.C. Attorney's application, severely excoriating him for his ad hominem attack [which is mentioned only because it has continued, unabated since that time], the S.C. Attorney moved for partial summary judgment without making mention of the prior dispositions on the subject.

d. The full bench of this Court denied all applications.

4. While the initial motions were pending, plaintiff served a Notice of Discover and Inspection on the S.C. Attorney to which he did not make a timely motion for a protective order, again in the hope of obtaining a comprehensive order for pre-trial disclosure.

5. Plaintiff hopes that this Court will recognize the necessity of cutting the Gordian Knot, and made a comprehensive disposition regarding pre-trial procedures herein.

6. Plaintiff's request to have all pending appeals transferred to the same department, was denied by the Second Department.

7. Judicial economy also mandates that CPLR §5517 be invoked by this Court.

THE FACTS

1. Except for the constitutional office of President of the United States, the rights, privileges, and immunities, are a functional concept, not always identical with title, they are, therefore, functionally stated herein.

The protean nature of the conduct described, compels such designations.

2. Although this action is still at the pleading stage, because of disclosures in related proceedings, much of the underlying facts are now beyond dispute.

These allegations, many of which are now subject to issue preclusion, are set forth herein only insofar as they may be pertinent to the plaintiff's appeal [3-4] and the cross-appeals by the S.C. Attorney [5-8].

These facts, that plaintiff contends have been fully established, are not the result of some weighing of the evidence by a judicial officer, or the findings after a short summary hearing, but based upon the confessions and admissions by the culprits after, for them, was a full and fair hearing, or unimpeachable documentary evidence.

* * *

3a. In March of 1977, Ernest L. Signorelli, Surrogate of Suffolk County, sua sponte, stated that plaintiff had been removed as executor of an estate, one year prior thereto, and cancelled a real estate contract he had entered into on behalf of the estate he was administering, as unauthorized.

b. Admitted by everyone, during the year prior to this declaration of removal, including Surrogate Signorelli and his Court, was that everyone had recognized plaintiff to be the sole executor of this modest size estate, judicially and extra-judicially.

c. Authorization, in fact a direction, that plaintiff enter into such contract of sale on behalf of the estate was specifically pronounced by Surrogate Signorelli, on the record, when plaintiff's antagonist refused to consent to same.

Very shortly before this Signorelli statement concerning plaintiff's removal a year prior thereto, for the transfer of title pursuant to such contract, plaintiff was issued by the Clerk's Office of Surrogate's Court, certified copies of existing letters testamentary, confirming plaintiff's position as executor.

d. As part of this sua sponte declaration of removal a year prior thereto, the contract of sale was declared null and void, as having been executed by plaintiff without authorization, and he was directed to turn over the books and papers of the estate he was administering to the Public Administrator, the S.C. defendant, Anthony Mastroianni.

e. Years later, both Mastroianni and his attorney, were to judicially confess that plaintiff, in fact turned over these books and papers to them, prior to any contempt proceedings, which first took place on June 22, 1977.

f. Space limitation and inability of reproduce the documents herein necessitates that such admissions and confessions be set forth, as contained in the Report of Hon. Aloysius J. Melia of February 4, 1982, confirmed by this Court:

> "The Public Administrator was not named to replace the respondent until 1 year later, on March 25, 1977. (Ex. 24)
>
> In the intervening year, court transcripts of proceedings before the Surrogate, amply demonstrate that participants in the proceedings considered the respondent to still be the executor. ...
>
> Indeed, in this period, on October 21, 1976, on the record, the Surrogate ordered the respondent to sell the house. He could only do so as executor. (Ex. BP) [Emphasis supplied]
>
> The respondent prepared and entered into a contract to sell on December 2, 1976. The Surrogate then aborted the deal.
>
> More than a year later, after paying additional taxes, and Public Administrator sold the same house to the same party for the same price.

> On July 6, 1976, papers were prepared by the respondent in the court room, by court personnel, and signed by the Surrogate. These papers purportedly still recognized the respondent as executor (Ex. CD) (Ex. AR)" [Report p. 60-61]

h. In the News' published article, which Art Penny states he received from Columnist Signorelli at a private interview, it states [145]:

> "... Sassower after his removal as executor tried to sell Kelly's house at .... last Dec. 2. The courts halted the sale."

Signorelli and his entourage had simply inverted the truth from a sale made by plaintiff at Signorelli's direction, which he incredibly aborted, as part of a nunc pro tunc removal to a sale after removal!

Obviously once the public administrator could not sell this non-income producing property for better terms and returned to the purchaser that plaintiff had secured in order to reincarnate the aborted contract, plaintiff had to be silenced at all cost!

4a. On June 22, 1977 [Wednesday], (a) without any accusatory document; (b) without notification of any trial or hearing; all in absentia, plaintiff was (c) tried; (d) convicted; and (e) sentenced plaintiff to thirty (30) days incarceration in the Suffolk County Jail for criminal contempt, in his immediate presence, by Accusor, Prosecutor, Witness, and Judge Ernest L. Signorelli. [41-43]

The alleged crime was that plaintiff had failed and refused to turn over the books and records of the estate, which thereafter was confessed to be false.

Plaintiff was completely unaware of these proceedings, and in fact was almost one hundred (100) miles away, during this contrived "in his immediate presence" conviction.

Judge Melia's Report reads as follows:

> "By an order, dated April 28, 1977, the respondent [plaintiff] was ordered to turn over to the Public Administrator all books, papers and other property of the estate ... .
>
> ...The conclusion was reached [on June 15, 1977] that the respondent [plaintiff] would go to the basement, where th Public Administrator's office was located, and turn over documents for photocopying. This was to be done by Mr. Berger [attorney for the Public Administrator].

Berger and respondent [plaintiff] proceeded to the basement and the task was commenced. This went on from some time in the morning until some time in the afternoon. So far, all parties agree. ... [emphasis supplied]

On [June 22, 1977 and] March 8, 1978 the respondent [plaintiff] was held in contempt for failure to turn over the required records.

While the Surrogate and Mr. Berger allege that the order to turn over all documents has not been complied with, there is no evidence to support that belief, unless you credit those transmitted in June 1981 [when the duplicate copies were turned over]." (Report p. 61-63).

The Report further reads, as follows:

"The Public Administrator testified at page 93 and 94 of the Minutes of November 4, 1981 as follows:

> 'The Referee: -- Is there anything that you know of that Mr. Sassower has that prevents you from fulfilling your duties?
>
> The Witness: I have no idea.
>
> The Referee: You don't know of anything?
>
> The Witness: No.
>
> The Referee: Are we agreed that when Mr. Sassower sent Mr. Mastroianni, about six months ago, only duplicates of what you got in '77?
>
> The Witness: They were duplicates of what I have, your Honor.

> The Referee: They were duplicates, there was nothing new?
>
> The Witness: No, there was nothing new.
>
> The Referee: There was nothing that he had held out that you got six months ago that prevented you from fulfilling your duties; is that true?
>
> The Witness: I don't believe there was anything new in there, yes.'
>
> Vincent Berger, Counsel to the Public Administrator also testified that he was not aware of any material in the respondent's possession that adversely affected the estate's tax position." [Report 65-66].

b. Dispatched by Sheriff Signorelli, two (2) Suffolk County Deputy Sheriffs, early the next morning, Thursday, June 23, 1977, transgressed their bailiwick, went to Westchester County, placed plaintiff under arrest, and took him to Suffolk County [44-46].

c. During the four county journey, the Deputy Sheriffs repeatedly refused to permit plaintiff to present his Writ of Habeas Corpus, which he hastily prepared while getting dressed [45].

d. When the Deputy Sheriffs advised plaintiff that they were taking him to the Courthouse of Warden Signorelli, instead of the Suffolk County Jail, as provided in the Warrant of Commitment, plaintiff insisted that they obey the mandate of the Warrant, since he expressly stated that he stood a better chance of presenting his Writ of Habeas Corpus at such penal institution. Nevertheless, the Deputy Sheriffs took plaintiff to the Surrogate's Courthouse [46].

e. At the Courthouse, the Deputy Sheriffs, upon the instructions of Warden Signorelli, kept plaintiff incommunicado, refused his repeated requests to be allowed to present his Writ of Habeas Corpus to a nearby Justice, and refused him the opportunity to use a pay telephone, about a dozen feet away [44-48].

f. Eventually, Warden Signorelli appeared, now personally refusing plaintiff the opportunity of presenting his Writ of Habeas Corpus; Grand Inquisitor Signorelli refused to recognize plaintiff's Fifth Amendment right to remain silent; and other basic constitutional and civilized rights [47-48].

When plaintiff "stood fast" on his Fifth Amendment rights, he was incarcerated.

g. Thereafter, former Assistant District Attorney, former County Court Judge, Surrogate, and Acting Supreme Court Justice, Ernest L. Signorelli was to testify that he did not "know what the word 'charge' means precisely" [42], and that plaintiff "did not have a right to advance the 5th Amendment and decline to answer [his] questions" [48].

5a. In the Suffolk County Jail, plaintiff, with the aid of a Priest and a Legal Aid representative, was able to have his Writ signed by a Suffolk County Supreme Court Justice and released on bail.

The Writ was made returnable on Monday, June 27, 1977.

b. In the interim, a colleague of plaintiff, learning of plaintiff's predicament, not knowing that plaintiff had succeeded in having his Writ presented, proceeded to the Appellate Division, Second Department, with his own prepared Writ.

c. Reportedly, a conversation took place between Presiding Justice Frank A. Gulotta and/or Irving N. Selkin, Chief Clerk of the Appellate Division with Ernest L. Signorelli.

Based upon such conversation, plaintiff was <u>denied</u> bail.

Obviously, Mr. Justice Gulotta was not told the procedural truth by Informer Signorelli regarding this "mock" criminal contempt proceeding and incarceration, otherwise, bail would surely not have been denied [48-49].

This obvious truth needs little to convince the members of this or any other appellate court, but before a jury, evidence in probative form must be presented.

d. Since plaintiff and his colleague were unaware of the others actions, each presented Writ stated that there were no prior applications made.

6a. On Friday, June 24, 1977, no proceedings were taking place either in Surrogate's Court or Supreme Court, Suffolk County.

b. While plaintiff's appeal was sub judice in the Appellate Division, Second Department he examined before trial the witness, Art Penny, the "stringer" for the News, pursuant to Court Order, on notice to all attorneys.

c. Art Penny, now with the District Attorney's Office in Suffolk County, testified that on that Friday morning he received several telephone calls from persons he knew, but refused to identify, to come to Surrogate's Court for a "hot story", went there, and was given an exclusive private interview in the chambers or outer office of Columnist Signorelli, which he forwarded to the News [49].

d. The story resulting from such exclusive private interview was published in the News on Monday, June 27, 1977 [145], the morning that plaintiff's habeas corpus proceeding was about to commence in the Supreme Court.

e. By name and statements, the article named Columnist Signorelli, the Columnist, S.C. defendant, and Public Administrator, Anthony Mastroianni, and other unnamed, but identifiable persons, as the sources for the published story [145].

7a. Although obviously "shot-full-of-error", of a constitutional magnitude, the habeas corpus hearing did not take 10 seconds, as plaintiff expected, but dragged on for days, until a federal judge issued a "gun-to-the-head" statement, causing the hearings to terminate, and the writ sustained [52-53].

b. Despite, the patent fundamental errors, Litigant Signorelli, employing the "clout" of his office, compelled the Office of the Attorney General, to file a Notice of Appeal, which it did.

c. In addition to the fundamental constitutional errors, as heretofore noted, plaintiff, as thereafter confessed by Mastroianni and his attorney, Vincent Berger, the former campaign manager of Candidate Signorelli, plaintiff had in fact turned over the books, records, papers, and assets of the estate before the "mock" trial ever took place.

d. The entire affair was an outrageous and incomprehensible charade, unless you subscribe to the view that plaintiff knew or had something which Signorelli wanted or wanted concealed!

8a. As part and parcel of this entire attempt to conceal the misconduct on the part of these Suffolk County Officials, when it was obvious that plaintiff was going to resist proceedings under "The Signorelli Code of Star Chamber Procedures", Complainant Signorelli, through Vincent Berger, filed a complaint with the Grievance Committee of the Ninth Judicial District against plaintiff.

b. Plaintiff, most satisfactorily answered the complaint, which compelled a reply and explanation from the complainant, which obviously they could not, and did not, give.

They obviously, for example, could not explain the certified copy of letters testamentary, which Signorelli and his "thugs", in a closed room, demanded that plaintiff return to them, not knowing that plaintiff had made copies, which he had safely left behind.

c. This Grievance Committee complaint was thus waiting for a routine "burial", when a follow-up event thereafter took place.

9. A second and subsequent criminal contempt proceeding took place, also published in the News [146], with its named sources of information, which was thereafter dismissed for a procedural deficiency.

10a. There followed a period of harassment by Mobster Signorelli and his sycophants against plaintiff, his family, and others, compelling plaintiff to again resort to federal court for relief [54].

b. Through his attorney, an Assistant Attorney General, Signorelli was told to either (a) change his ways; (b) recuse himself; (c) or federal intervention would be considered [54].

Telephoned from federal judicial chambers by his attorney, Signorelli, the message from Signorelli to the federal court was that he would recuse himself, although he stated there was no "present action before [him]" [54-55].

11a. There was nothing pending before Surrogate Signorelli to decide at the time, nevertheless, a few weeks later, Columnist Signorelli issued his overpublished sua sponte ethical "diatribe" against plaintiff and his wife [who long before had herself substituted as plaintiff's attorney in the matter].

b. This "diatribe" [disciplinary complaint] was issued when there was nothing for Columnist Signorelli to decide, nor did it decide anything [122-123](see Matter of Haas, 33 A.D.2d 1, 304 N.Y.S.2d 930 [4th Dept.], app. dis. 26 N.Y.2d 646, 307 N.Y.S.2d 671; Matter of Wilhelm, 88 A.D.2d 6, 14-15, 452 N.Y.S.2d 963 [4th Dept., per Simons, J.]) [55].

c. In each and every respect the overpublished "diatribe" makes statements which were thereafter confessed to be, proven, and are, either outright lies, half-truths, and/or deceptive and misleading, as an analysis filed in this Court reveals it to be [56-57].

Thus, while you can convince of a single error with relative ease, to convince anyone that it is all a farrago of lies, half-truths, and deceptive statements, becomes very difficult.

d. This "diatribe" recounts matters concerning plaintiff and his wife, in and and out of Surrogate's Court; argues Litigant Signorelli's position in the first criminal contempt proceeding, to wit, habeas corpus for plaintiff was not a proper remedy, and therefore the Writ was improperly issued; states that the Writ was sustained "on technical grounds"; argues his position other courts, in actions with plaintiff.

Just as an example, of what Signorelli published under the label of "decision":

> It is the contention of the undersigned [Signorelli] that the said Supreme Court Justice preempted the function of the Appellate Division in choosing to act as an appellate court and reviewing the [contempt] order of the Surrogate, a judge of coordinate

jurisdiction. Since a proper and complete record has been, in fact, compiled in the Surrogate's Court, the contemnor's sole recourse was to seek review of the contempt order by the Appellate Division."

e. This "diatribe" concludes with the statement:

"I am accordingly directing the Chief Clerk to forward a copy ... to the Presiding Justice of the Appellate Division, Second Judicial Department, for such disciplinary action as he may deem appropriate with regard to the conduct of George Sassower and Doris Sassower."

f. This "diatribe" [disciplinary complaint], is published with knowledge that it would be published, in haec verba, in the New York Law Journal, which it was [122-123], and sent or delivered to many other persons, including defendant, Hon. Harry Seidell, who is to sit in judgment of plaintiff in the new contempt proceeding, and to Hon. Milton Mollen, Presiding Justice of the Appellate Division, Second Judicial Department.

g. Witness Signorelli was to thereafter testify that he generally was familiar with Judiciary Law §90[10] at the time.

h. Presiding Justice, Milton Mollen, now Signorelli's messenger boy, sends a gracious "thank you" acknowledgment of the receipt of this "diatribe", with a copy of such letter to the Grievance Committee of the Ninth Judicial District.

Obviously, the Second Department abdicated its exclusive jurisdiction with regard to disciplinary matters, and particular the publication of such complaints.

i. The disciplinary complaint ["diatribe"], now carries the imprimatur of the "citadel" [in the minds of those young, idealistic, employees of the Grievance Committee], who now set out on one of their most expensive and intensive investigations in its history. Just about everything and anything the plaintiff or his wife ever did, becomes the subject of their investigation.

j. This becomes particularly significant in view of the charges later brought against plaintiff, as commented upon by Hon. Alphonse J. Melia [Report, p. 2]:

> "none of these charges involve acts of moral turpitude. There is no claim that the respondent [plaintiff] siphoned off a client's assets nor was guilty of overreaching, nor any similar impropriety."

Nevertheless, the innocent letter by the Presiding Justice to the Complainant Signorelli, a copy of which was mailed to the Grievance Committee, became a mandate to prosecute with an intensity of a "jihad", which it did.

12a. The first time the (third) criminal contempt proceedings appeared on the calendar of Surrogate's Court, now before Acting Surrogate Harry Seidell, plaintiff was in the midst of a trial in Supreme Court, Bronx County before Hon. Joseph DiFede.

b. When the trial in Bronx County, was not concluded that day, but carried over to the following day, plaintiff mailed to Surrogate's Court an affidavit of actual engagement.

c. In plaintiff's absence in Surrogate's Court, because of his presence in Bronx Supreme Court, once more plaintiff is (a) tried; (b) convicted; and (c) sentenced to be incarcerated in the Suffolk County Jail for thirty (30) days once more , all in absentia.

13a. When plaintiff learned of this latest event in Suffolk County, and the fact that another order and warrant had been issued the day following the in absentia proceedings, he returned to federal court.

b. There, after appearing before a federal judge, His Honor's law secretary, took Assistant Suffolk County Attorney, Erick F. Larsen, Esq., to the Court's law library, showed him a Supreme Court of the United States decision on the subject, and strongly suggested that his office act accordingly.

c. Allegedly, on request of the now recused Signorelli, the Suffolk County Attorney refused to withdraw the Warrant.

d. Plaintiff, by letter then wrote the Suffolk County Attorney (58):

> "If you desire to proceed [to execute the warrant], you or the Sheriff may telephone and I will make arrangements to be in Special Term in New York, Bronx, or Westchester County at <u>your</u> desired time of arrest."

e. The offer was refused, and instead, over the next several months, the Sheriff's Office of Suffolk County made "numerous and unsuccessful [and expensive] forays into New York City and Westchester County" [59] in an attempt to seize plaintiff.

On June 24, 1982, the Assistant Suffolk County Attorney, admitted to the Appellate Division, Second Department, that the Sheriff's Office had even planned to surround the federal courthouse, and "John Dillinger" fashion, "capture" plaintiff as he was leaving.

f. On Friday, June 9, 1978 the Sheriff received motion papers which sought to restrain him from leaving Suffolk County in order to arrest plaintiff and to restrain them and his deputies from preventing plaintiff from seeking a Writ of Habeas Corpus in the County of arrest.

14a. On Saturday morning, June 10, 1978, plaintiff, while alone, was seized in Westchester County, handcuffed by two (2) Deputy Sheriff's from Suffolk County.

b. On route to Suffolk County, when plaintiff attempted to obtain the attention of local police, an altercation took place.

c. The Deputy Sheriffs contend that while handcuffed, plaintiff, then 53, inflicted injuries on S.C. defendant, Deputy Sheriff, Anthony ("Arnold Schwarzenegger") Gryzmalski, sending him to the hospital and causing him to lose eleven (11) days from work.

d. Thereafter, allegedly at the instigation of Signorelli, plaintiff was charged with felonious assault upon a police officer. At a preliminary hearing, in Westchester County, the charge was dismissed, grounded on the fact that the Deputy Sheriffs from Suffolk County were not entitled to police or peace officer status in Westchester County.

Thus included in plaintiff's complaint is his malicious prosecution action, as one of its causes.

15a. Learning of plaintiff's incarceration in the Suffolk County Jail, plaintiff's wife and daughter, now, Saturday afternoon, located Hon. Thomas J. Ferraro, of the Supreme Court, Westchester County, and obtained a Writ of Habeas Corpus, ordering plaintiff's immediate release, on his own recognizance [203].

b. Travelling to the Suffolk County Jail, they, upon arrival, requested to see their husband/father during, the then, visiting house.

Encountering some delay and resistance, plaintiff's wife then requested to see her client, presenting her professional card.

Again encountering delay and resistance, she then presented the Writ of Habeas Corpus.

The result! -- Plaintiff's wife and daughter were incarcerated without food, water, or bathroom facilities! [60-61]

16a. On June 24, 1982, Assistant Suffolk County Attorney, Erick F. Larsen, Esq., asked to explain at the Appellate Division, Second Department, stated that when he had been informed of the "capture" of plaintiff, he proceeded to the Suffolk County Jail.

b. The almost, in haec verba statement by Assistant Suffolk County Attorney, Erick F. Larsen, Esq., to the Appellate Division, Second Department, on that day was [173]:

> When I [Erick F. Larsen] 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."

c. Thus, Mr. Larsen and the Suffolk County authorities crowned themselves as the ex parte arbiters of the literacy qualities of other judges, and these usurpers assert that only orders from "literate" judges need be obeyed!

d. About midnight, Mr. Justice Anthony J. Ferraro, learning that plaintiff was still incarcerated, telephoned the Suffolk County Jail, and calmly read "the riot act" [63].

They may claim His Honor "illiterate", but they certainly understood His Honor when he told them he expected His Order to be obeyed, since within a few hours plaintiff was released.

17a. Dissatisfied with the reason asserted by the Assistant Suffolk County Attorney's explanation for failing to honor the Writ, and it now clearly appearing that the incarceration of plaintiff's wife and daughter was intended to make them incommunicado [plaintiff had prior thereto not known of Mr. Larsen's presence at the Suffolk County Jail that afternoon and evening], plaintiff set out to investigate.

b. The result of that investigation was that the Suffolk County officials [including Signorelli] needed time in order to have Hon. Thomas F. Ferraro, modify his Writ and thus communicated with, directly or indirectly, with Presiding Justice Milton Mollen for that purpose.

Judge Mollen communicated with Judge Ferraro, suggesting plaintiff's release be held off until Monday [62] [194].

Judge Ferraro, "stood fast" and refused!

It may be true, it may be scuttlebutt! Plaintiff presented the matter to the Second Department, and received no satisfactory response. It can and should be handled at pre-trial, not at trial!

18a. Later that year, Signorelli placed great pressure on the Office of the Attorney General to proceed with the patently meritless appeal which sustained plaintiff's first Writ of Habeas Corpus.

b. Essentially, the only issue presented was whether Habeas Corpus relief was available to an incarcerated person under the aforementioned circumstances (No charge! No notification of a trial or hearing! Trial, Conviction, and Sentence, all in absentia).

c. In affirming, the Appellate Division, Second Judicial Department, reached into the "sewer", located the sua sponte Signorelli "diatribe" [which, obviously, was not part of the Record since it was issued more than six months after the Order appealed from], and "blasted" plaintiff, by copying parts of same, almost in haec verba (Sassower v. Signorelli, 65 A.D.2d 756, 409 N.Y.S.2d 762 [2d Dept.].

d. Any and every attempt to find a remedy against such opinion, e.g., reargument, suits in the federal courts, Article 78 proceedings, and an appeal to the Appellate Division, transferred to the First Department, were all without success.

Since plaintiff was not legally "aggrieved" by the Order, further appeal was precluded.

Attempts to compel an Order to be issued by the Surrogate's Court so that the remarks could be reviewed (CPLR §5501(a)[4], was also denied by the Appellate Division, Second Department.

Thus, the estate lies fallow in Surrogate's Court, with no orders being issued which might allow plaintiff to appeal!

The message is clear! -- When the Appellate Division speaks, it always speaks ex cathedra! Nothing will be permitted to change that desired image in this matter!

e. Repeated challenges to Signorelli to verify such "diatribe" [preferably outside Suffolk County] have been without result!

f. Repeated challenges to his attorney to verify same on "information and belief" also have been without positive result!

g. Nevertheless, since its issuance, one cannot find any motion or appeal, where this "diatribe" is not annexed by his attorney, the Attorney General, even after vindication resulted.

The Attorney General does not see any problem in simultaneously defending (a) the constitutionality of Judiciary Law §90[10], (b) Signorelli's clear violation of same, (c) Signorelli, (d) the Appellate Division, and its exclusive jurisdiction over disciplinary matters, (e) the Grievance Committee, who imposed a mandate of secrecy upon plaintiff, and (f) its office, for republication of same.

h. Thus, in the upside-down world of the Second Department, even after vindication, the disciplinary complaints may be constantly republished with impunity, particularly by the Attorney General's Office and the Suffolk County Attorney -- but the vindicating material, if not the vindication itself must remain confidential!

i. Thus, despite the severe excoriating remarks of Mr. Justice Arnold L. Fein, of this Court, on January 30, 1984, the Suffolk County Attorney's Office continues its course of irrelevant ad hominem remarks and references.

Consequently, plaintiff has been compelled to waive any and all claims to confidentiality, and will resist any attempt to impose sanctions by reason of such publication.

j. At the hearings, Signorelli and his inspired charges went down "like the Titanic", without even an "ice cube" in sight.

19a. The Appellate Division, Second Department has now remanded for hearing, the second in absentia conviction for Special Term to determine whether being engaged in the midst of trial in the Supreme Court of the First Department, is "constituted a voluntary (constitutional) waiver of [plaintiff's] right to be present and proffer evidence" the first time a matter is on for hearing (Sassower v. Finnerty, 98 A.D.2d 585, 465 N.Y.S.2d 543 [2d Dept.])?

When is the Appellate Division, First Department going to "rip a page out of" Ex parte Young (209 U.S.123), and also read "the riot act".

When plaintiff is in the First Department, he expects the protection of that Department!

b. Based upon the disciplinary findings, confirmed by the Appellate Division, plaintiff has moved for a Writ of Prohibition, grounded on "double jeopardy", which he is willing to waive for a re-run of the Signorelli [or other] charges, including all those contained in the "diatribe", at open hearings in New York County. The offer has not been accepted thus far, and a decision on such Writ of Prohibition is presently sub judice.

c. The entire first part of Sassower v. Finnerty, supra, is an clear affront to truth, honest, and integrity -- as the disciplinary hearings revealed by compelled admissions, confessions, and documentation.

One need only compare the Second Department's decision (65 A.D.2d 756, 757, 409 N.Y.S.2d 762, 763) regarding the Writ of Habeas Corpus with the Signorelli "diatribe" and see that it is almost in haec verba. The same goes for other parts of the Appellate Division decision, which it repeats in its July 25, 1983.

Judge DeLuca compared the News' articles with the Signorelli "diatribe" and found that the "diatribe" was a true and fair report of the News' articles. If that be true, then Signorelli gets his facts from the News' and the Appellate Division gets it from Signorelli!

This apparently is the nature of the judicial process in the last quarter of the twentieth century!

20. Obviously, each time the Attorney General Office and the Suffolk County Attorney's Office republishes the Signorelli "diatribe", dragooned therein are the disciplinary complaints against Doris L. Sassower, which ultimately resulted in her vindication, with "leave to seek sanctions against the Grievance Committee".

21. The facts, as are otherwise, relevant, are individualized, in plaintiff's "Points" hereinafter set forth.

## POINT I

### THE S.C. DEFENDANTS MUST BE DIRECTED TO IMMEDIATELY SUBMIT TO FULL DISCLOSURE, INCLUDING DISCOVERY AND AND INSPECTION, WITH DRACONIAN PENALTIES IMPOSED

1. When attorneys enter into a valid stipulation regarding aspects of pre-trial procedures, it must be honored and enforced (Compagnie v. Citibank, 92 A.D.2d 495, 495-496, 459 N.Y.S.2d 88, 89 [1st Dept.]; Tri-State v. Sinclair, 22 A.D.2d 679, 253 N.Y.S.2d 371 [1st Dept.]; Brand v. Colgate, 21 A.D.2d 670, 671, 250 N.Y.S.2d 1, 2 [1st Dept.].

Plaintiff's Notice provided for New York County, and at "my [Assistant Suffolk County Attorney] request [plaintiff] agreed to adjourn [the] deposition[s] of the Suffolk defendants for two weeks to: Monday, April 18, 1983, at 10:00 A.M., Supreme Court, New York County". [77]

The [former] S.C. Attorney does not deny that he directed the his assistant to "chart a course of delay and obstruction" [38], a course being continued by the present S.C. Attorney.

2. The S.C. Attorney having agreed was not "aggrieved" by Orders which directed his party defendants to submit to an examination before trial in the venue of trial. The S.C. Attorney certainly does not present a "reviewable" issue.

3. When plaintiff agreed to submit to arrest at Special Term, New York, Bronx, or Westchester at a time convenient to these defendants, they refused and instead made numerous and expensive forays into New York and Westchester Counties in order to capture plaintiff when he could not obtain a Writ of Habeas Corpus signed. The S.C. defendants ignored the needless burden placed on their taxpayers by such tactics. But now when they must answer for their conduct they suddenly use the taxpayer as their shield.

Apparently also, the S.C. defendants had plenty of time on their hands when they planned to surround the United States Courthouse in order to "capture" plaintiff. Now, when the "shoe is on the right foot", they have no time to submit to an examinations as to this and other demented plans that they considered.

To say more would be supererogatory.

4. In any event, as party defendants, they should be required to submit immediately, and any and all stays because of a pending motion for partial summary judgment should be vacated.

5a. Unquestionably, ordinarily discovery and inspection follows depositions (Rios v. Donovan, 21 A.D.2d 409, 414, 250 N.Y.S.2d 818, 823 [1st Dept.]. Nevertheless, having failed to timely move, the S.C. Attorney has waived any objection, unless the demand is "palpably improper", which is not being claimed (Blessin v. Greenberg, 89 A.D.2d 862, 453 N.Y.S.2d 249 [2d Dept.]).

b. In any event, as plaintiff stated, a document production prior to oral depositions, would probably save time and expense, since it would target those defendants whose testimony could be taken by interrogatories and those who must be orally deposed. the S.C. Attorney has never controverted the advisability of that procedure in this case.

6. Only the imposition of severe monetary sanctions will bring home to the S.C. Attorney that these needless and wasteful stonewalling "dances" will not be tolerated!

POINT II

PLAINTIFF'S REQUESTED RELIEF BOTTOMED ON THE NEWS' [RE]PUBLICATION SHOULD HAVE BEEN GRANTED IN FULL

1. Answering plaintiff's interrogatories, the News stated its policy was to destroy all supporting material for its published material after the expiration of thirteen (13) months [163-164].

Since such period of time is obviously correlated to CPLR §215[3] one might assume that if a suit is commenced timely, as plaintiff's action was, such supporting material would be preserved! Right!

No, wrong -- the News destroys such material also, at least has done in the present case.

2. Art Penny, the former "stringer" for the News, and now, the press employee for the Suffolk County District Attorney's Office also destroys his notes, memoranda, and research shortly thereafter.

3. At the examination before trial of Art Penny he was "singing like a canary", but after a Patterson attorney spoke to him during lunch the examination proliferates with "I do not remember" [168].

Thus, with the "door shut", by allegedly destroyed supporting material by the News and Penny, and the now "I do not remember" answers being given by Penny, some partly open windows must be found!

Townley & Updike, Esqs.:

1. This law firm were the attorneys for the News at the time of publications of the defamations and at the time suit was commenced.

a. A member of the firm routinely reviewed all matters intended to be published, making the advisable changes, no differently [except for purpose], than any editor employed by the newspaper. Plaintiff contends that information gained by such employee is not privileged, particularly as to the general procedures followed as to verification of information from stringers.

b. Once plaintiff commenced suit, any statement obtained by that firm might be discoverable, or at least to refresh Penny's memory.

c. In Suffolk County, the not unusual practice of holding more than one job, has an interesting "twist" insofar as "The Press" is concerned. Newspaper employees hold, as their second jobs, positions with political figures.

Therefore, the newspaper position serves as the propaganda outlet for the desires of the second employer.

Thus, Harry Schlegel, the former Long Island editor of the News', was simultaneously holding an appointed position with a legislative committee, chaired by a well-known conservative republican, which possibly explains why Hon. John V. Lindsay, was "clobbered" in the News' when he ran for office. [170]

In short -- in Suffolk County, and probably elsewhere, the institution of a free press has disintergrated into a media for republication of charges made by various favored and influential officials -- including the Grand Mufti of Suffolk County -- Ernest L. Signorelli -- The Canons of Judicial Ethics notwithstanding!

It was, according to plaintiff's information, a practice known to the News and sanctioned by it!

The information is pertinent to the defenses of the News, as well as plaintiff's claim for damages.

After the News' publications, plaintiff was no more able to sell a "used law book" than Richard III was able to sell a "used horse", after Shakespeare published his famous play.

Patterson, Belknap, Webb & Tyler:

1a. This firm displaced Townley & Updike, Esqs. and Penny testified that he spoke to that firm several time before he "retained" that firm [167].

b. The Patterson firm might have in their possession notes from Townley & Updike, Esq., which may be discoverable or used to refresh recollection.

c. Furthermore, under the circumstances of the Patterson firm's retainer, they are estopped from using Penny's statements as privileged.

2a. The Patterson firm always took the position that they did not represent Penny [166-167].

b. Four days before Penny's Court ordered examination before trial, after plaintiff announced that he would not permit that firm to interpose objections on Penny's behalf, the Patterson firm asked Penny "if he wanted legal counsel", when he replied in the affirmative they chose themselves as legal counsel for him [166-169].

c. Plaintiff contends that this is improper "solicitation" manifestly intended to protect, not Penny, but the News, the payor of such services.

In plaintiff's view the question of "disqualification" or "recusal" is conjunctive with the question of reasonable alternatives. Thus, at bar, the Patterson firm should have either offered to pay for independent counsel or retained independent counsel for him.

d. At bar, such dual retainer produces anomolous results. Thus, the News claims that it could assert a "good faith" defense, while having its employees assert the "shield law", thus evading the option established in Greenberg v. C.B.S. (69 A.D.2d 693, 709, 419 N.Y.S.2d 988, 997) of one or the other.

Apparently the News also claims that while the assertion of a privilege prevents disclosure by employees (Upjohn v. U.S., 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584; Cornell v. Mushlin, 85 A.D.2d 592, 444 N.Y.S.2d 709, 710 [2d Dept.]), the converse is not true, and that the News' waiver does not constitute a waiver by the employees [or former employees] even when the Statute of Limitations has run.

Plaintiff claims the subject is mostly academic since, having disclosed the name of the informants in the published articles, there is no §79-h privilege. Apparently this was the reasoning of Special Term, and defendant waived its rights not to disclose, by responding after it had received a stay from the Second Department.

Unless Penny can show some personal interest for non-disclosure, a §79-h privilege no longer exists at bar, even if it did, at some time exist!

## POINT III

### PRE-TRIAL DISCLOSURE BY ERICK F. LARSEN SHOULD BE PERMITTED

1. Erick F. Larsen, Esq., is no longer with the Suffolk County Attorney's Office, no longer represents the S.C. defendants in this action, and was an actor and essential witness in this matter. He should be subject to pre-trial disclosure as to such activities.

2. The fact that he may assert some attorney-client privilege at such examination does not prevent him from testifying as to non-privileged matters.

3. Thus, for example, he seems to have been one of the generals in charge the evening that the Writ of Habeas Corpus was not obeyed, and plaintiff's wife and daughter were incarcerated.

## POINT IV

### PRE-TRIAL DISCLOSURE SHOULD BE PERMITTED AS TO VINCENT G. BERGER

1. Vincent G. Berger, Jr., former campaign manager for Ernest L. Signorelli, counsel to the Public Administrator, was one of the named spokesmen who made statements to Art Penny [146]. The News' defenses are, to some extent, dependent on whether the statements attributed to the quoted person are correct.

2. Berger was known to Penny and he is one of the persons who is believed to have communicated to Penny to come to the Suffolk County Courthouse for a "hot story".

POINT V

PRE-TRIAL DISCLOSURE SHOULD BE PERMITTED OF THE JUDICIAL WITNESSES

1. A party is entitled to everyone's testimony (U.S. v. Nixon, 418 U.S. 683, 709, 94 S.Ct. 3090, 3108, 41 L.Ed.2d 1039, 1064). Evidentiary privileges, even those of constitutional dimension, are not favored and sometimes must give way to more important interests (Herbert v. Lando, 441 U.S. 153, 175, 99 S.Ct. 1635, 1648, 60 L.Ed. 2d 115. 135). A judge, per se, is not entitled to any special testimonial immunity (Dennis v. Sparks, 449 U.S. 635, 100 S.Ct. 1920, 64 L.Ed.2d 572).

2. There are two categories of judicial members from whom pre-trial disclosure is sought, disclosed and undisclosed participants.

a. Ernest L. Signorelli's, does not now deny that he solicited Art Penny, gave him a private interview, and that he is quoted as the source of the information printed, with his knowledge and consent [145]. There is no reason he may not be deposed or on any other issues wherein he may be involved, immune or not (Dennis v. Sparks, supra). Any privilege this or any other witness may believe they have they may assert.

b. The defenses of the S.C. defendants revolve around Ernest L. Signorelli since they claim they were merely obeying his instructions.

c. Obviously, on relying on the sources of its publications, the News will also be relying on statements that Signorelli said or did not say.

Signorelli may testify that he never made the statements ascribed to him by the News.!

In representing Signorelli, the Attorney General may be representing the desires of his client and his potential reinvolvement may trigger standing on this motion (cf. Cynthia B. v. New Rochelle Hosp., 60 N.Y.2d 452, 470 N.Y.S.2d 122).

As to the other judicial witnesses there is nothing in the record to indicate that these witnesses know about this application and that the Attorney General represents their desired wishes in this matter.

Thus, it may be that the judges involved do not particular care for the rumors and would like the record to indicate their view, plaintiff does not know.

Consequently, before needlessly setting forth their contended involvement, the Attorney General should first set forth that he represents their personal wishes in this matter, and he has not arrogated to himself to set forth a position that they are not aware of in order to aid his client Signorelli.

## CONCLUSION

THE ORDERS APPEALED FROM AND REVIEWED SHOULD BE MODIFIED IN ACCORDANCE WITH PLAINTIFF'S REQUESTS, WITH COSTS.

Dated: February 29, 1984

Respectfully submitted,

GEORGE SASSOWER
Attorney for plaintiff

STATEMENT PURSUANT TO CPLR 5531 (1-2)

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

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GEORGE SASSOWER,

Plaintiff-Appellant-Respondent,

-against-

ANTHONY MASTROIANNI, JOHN P. FINNERTY, ALAN CROCE, and ANTHONY GRYMALSKI,

Defendants-Respondents-Appellants,

-and-

ERNEST L. SIGNORELLI, HARRY E. SEIDELL, NEW YORK NEWS, INC. and VIRGINIA MATHIAS,

Defendants-Respondents.

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1. The Index Number of the court below is 5774-1983.

2. The title of the original parties appears above and there has been no change.

3. The proceeding was commenced in Supreme Court, Westchester County, transferred to Suffolk County and has now been transferred to New York County.

4. Action commenced on June 21, 1978. Complaint was served on or about September 26, 1978. Respondents-Appellants' answer was served on or about January 12, 1978.

5. Action against defendants is for defamation, assault, false imprisonment, and various other torts.

6a. Appeal by plaintiff is from Order dated June 20, 1983 [entered June 27, 1983]; and pursuant to CPLR §5517, the Order dated August 10, 1983 [entered August 22, 1983] and the Order dated and entered February 1, 1984.

b. Appeal by respondents-appellants is specfically from Order dated June 20, 1983 [entered June 27, 1983] and August 10, 1983 [entered August 22, 1983]. Subsequent Orders are (1) dated October 25, 1983 [entered November 3, 1983] and (2) January 24, 1984 [entered February 1, 1984]. (Plaintiff does not concede that the mere recitation of the aforementioned Order, make them appealable or reviewable on behalf of respondents-appellants).

7. The Appeal is on the Full Record.