

GEORGE SASSOWER

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October 5, 1984

Honorable Jacob Mishler
United States District Judge
United States District Court,
Eastern District of New York
Uniondale Avenue and Hempstead Turnpike,
Uniondale, Long Island, N.Y. 11554

Re: Sassower v. Signorelli et el.
84 Civ. 2989 [JM]
(and related actions.)

Honorable Sir:

1a. Under separate cover I am mailing directly to Your Honor "courtesy copies" of Notices of Motion under File Numbers 77 Civ 1447 and 78 Civ 124; and a Notice of Motion for summary judgment, supporting papers, including a Proposed Amended Answer, in a related action, presently pending before Hon. GERARD L. GOETTEL, in the Southern District.

b. Filed copies with proof of service will be filed with the Clerk of the Court in Brooklyn, the first business day after this date.

2a. Also enclosed is a Draft and Tentative Extract of the Testimony of former Assistant Suffolk County Attorney, Erick F. Larsen, Esq., held pursuant to a State Order on September 18, 1984 [the day following a conference with Your Honor], the transcript of which I only received last week.

b. In the aforementioned "Draft", I believe I have included everything in Mr. Larsen's testimony related our conference with Your Honor in March of 1978.

Nevertheless, before submitting same for filing, I wish to give the Suffolk County Attorney, an opportunity to suggest any material that I may have inadvertently excluded, for inclusion therein, before preparing and filing a "Final Extract".

Hon. Jacob Mishler

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October 5, 1984

3. This coming Sunday, I will send to Your Honor my version of the events at such conference, along with some other papers on the present submission, which I shall also file with the Clerk of the Court, mailing to Your Honor a courtesy copy.

4a. My present desires, subject to discussion with my adversary, is to submit my version of the March 1978 conference with Your Honor, with the final Larsen version, and request a conference with Your Honor.

b. At such requested conference, I expect to respectfully request a statement from Your Honor (and possibly from His Honor's former law secretary) regarding the March 1978 conference, which I would like to submit as part of my motion for summary judgment, now pending before Hon. Gerard L. Goettel.

c. I have taken the liberty of emphasizing some portions of Mr. Larsen's testimony, which I believe is of great significance in this matter.

d. Obviously, alternate procedures that might be suggested or directed by Your Honor would be welcomed and obeyed.

Most respectfully,

GEORGE SASSOWER

GS/h

cc: Hon. Robert Abrams
Att: Dewey Lee, Esq.
Reisman, Peirez & Reisman, Esqs.
Att: Robert M. Calica, Esq.
Clerk, U.S. District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
GEORGE SASSOWER,

Plaintiff,

-against-

Docket No.
84 Civ.2989
(JM)

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,
JOHN P. FINNERTY, ALAN CROCE, ANTHONY
GRYZMALSKI, HARRY SEIDELL, and THE COUNTY
OF SUFFOLK,

Defendants.
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DRAFT AND TENTATIVE EXHIBIT
EXTRACT OF TESTIMONY -- ERICK F. LARSEN, ESQ.

"MR. CALICA: I am authorized to waive the attorney-client privilege with reference to this deposition on behalf of Defendant's Mastroianni, Finnerty, Croce and Grzymalski." (SM6)

"Q Do you remember the first major event that occurred involving George Sassower that you were involved in? ...

A The first recollection that I have of any matter involving George Sassower was a Federal action in which an outside firm had been retained to defend. I believe that was pending before Judge Mishler." (SM7)

"Q Did you keep any records, notes, time sheets, make reports while you were an employee of the Suffolk County Attorney?

A Absolutely.

Q Do you have those available with you?

A No. ... I do not. I turned over my files, when I say, 'my files', I mean the files that I generated on Sassower matters throughout my tenure as an Assistant County Attorney, to the Office of the County Attorney. It is my understanding that those files have at least in part been turned over to present defense counsel, Mr. Calica.

...
Q But you did keep records as you went along as to what you did?

A Absolutely. I treated this case no different than any other case. It was my practice to keep records of telephone conversations, events, court appearances, legal research, what have you." (SM8-9)

Q Were you in Court prior to the writing of that letter [Sassower to Pachman, March 24, 1979 -- the "nuts" letter], Judge Mishler's Court?

A I believe that I was." (SM11)

Q You recollect, at one time, being in Court as to the validity of such Warrant of Commitment?

A Yes, I recall being in Court on numerous occasions in connection with the validity of that Warrant.

Q I am asking about Judge Mishler.

A I don't have a specific recollection of a particular date or time, but I do recall, and I believe on the basis of my recollection, that I did appear before Judge Mishler in connection with the validity of that Warrant and also in connection with whether or not that Warrant could be executed or whether or not the client should be stayed from executing on the Warrant.

Q Do you recall what was said, either on the record or off the record, in the courtroom or in the vicinity of the Courtroom, of Judge Mishler?

A By yourself?

Q By anybody.

...

A I have no specific recollection. I have no specific recollection as the particular reason why I was in Court except that it concerned a Sassower proceeding. ...

Q Just tell us what you recall as to what happened in or about the Courtroom or Courthouse on that day.

A ... The only thing that I recall, about that particular day, was waiting, I think, to the best of my belief, I think I was waiting in the library someplace. I recall your looking for a particular case. I believe, at this time, that the name of the case that you were looking for was in re: Oliver, which according to this March 24, '78 exhibit, that is still before me, is cited at 333 U.S. 257. I recall that, your wanting me to look at that case and to analyze that case and to advise my clients on the basis of that case that either their current conduct or their proposed conduct was improper. However, I specifically recall that I did not read that full case nor did I analyze it or extract its holding, at that time. Quite frankly, I was merely trying to be as cooperative and accommodating to you as possible. The only reason that I think that I recall that incident and why it sticks in my mind, is because it was constantly thrown up in papers that I have analyzed or that I saw throughout the future of this litigation after that time. That is the reason that I have a mental picture of being in this library with you and that case being the subject of discussion. I have no idea who else was in the library, at this time.

Q Do you recall that the circumstances surrounding this Warrant of Commitment was that I was tried in absentia, convicted in absentia, or at least that was my contention?

A I know very well that was your contention.

Q Did you know that was my contention before we went to the Courtroom?

A On that day?

Q Yes.

A I really don't know. You see the first and second Warrants of Commitment, and the proceeding which led up to them, at this time, and throughout this litigation, have always been merging in my mind. It is very difficult for me not having in any way been involved in those proceedings to readily distinguish between the two. I was under the impression throughout the time that I was involved in Sassower proceedings that you contended that you were cited, tried and convicted in absentia on both of those proceedings.

Q Did you have any evidence, as you recall, when we went to Judge Mishler to the contrary, as best that you can recall?

...

A ...I know it was your contention and I believe it to be the case, although I have no personal knowledge, that you were not present personally throughout the proceedings in the Surrogates Court and I also know that it is your contention that you were tried in absentia. That did concern me, priding myself on being a Civil Rights Attorney and a lover of the Constitution, as I know you are. ... I veritably believed, based on all the documents that I saw and obtained and also from information given to me by my clients, I believe that you were given ample notice of the proceedings, the nature of the proceeding and the potential sanction, that you fully understood those and that there was no impediment to a trial or conviction or sentence in absentia. ...

Q We are talking about being in Court in 1978. Did you know what my contention was as to where I was at the date of the trial?

A I know that you contended you were actually engaged in a matter in a Supreme Court.

Q Did you check with the Court or in any other way check as to whether that contention was correct or incorrect?

A To the best of my recollection, I do not recall ever conducting an independent investigation as part of my defense efforts to determine whether or not you were actually engaged in Court. I presumed that to be the case. I presumed throughout the pendency of this litigation, that you were actually engaged on this day I acted on the basis of your having been engaged.

Q When you were in Judge Mishler's Courtroom . . . you had known that there was a prior proceeding against George Sassower where Judge Signorelli held him in criminal contempt?

A Yes.

Q You knew there was a Writ of Habeas Corpus that had been issued?

A Yes.

Q You knew that Judge McInerney had sustained the Writ of Habeas Corpus, at the point that you went to Judge Mishler's chambers?

...

A I do believe, to the best of my recollection, that the actual Warrant of Commitment issued by Judge Seidell, did issue, was on a date subsequent to Judge McInerney sustaining the Writ of Habeas Corpus which applied to Judge Signorelli's prior finding of contempt." (SM12-20)

"Q Do you recall, that as a general statement, that the purpose of our visit to Federal Court was one, to determine the legality of the Warrant of Commitment and two, whether the Federal Court should interfere . . . ?

A I recall an application, I believe by Order to Show Cause, at some time, before Judge Mishler to stay execution of a Warrant of Commitment.

Q Would you say that the general topic of discussion would be, one, that it was invalid, two, whether the Federal Court should interfere with the State Court proceeding; if you recall?

A I do recall that upon at least one occasion I appeared before Judge Mishler in response to a formal paper by you contending -- in which it was contended, that the Federal Court should enjoin my client from executing the Warrant of Commitment because it was invalid, yes." (SM26)

"Q What did you tell him [Howard Pachman, Suffolk County Attorney], as best that you can recall.

A You have to remember, I am at a real disadvantage because I have not seen the transcripts before Judge Mishler, but as I recall it; to the best of my recollection and belief, we were called into Court on short notice on an Order to Show Cause to stay the execution of a Warrant of Commitment, in your case. That it was presented to Judge Mishler and that Judge Mishler quite clearly ruled that he had no intentions, whatsoever, of enjoining execution of the Writ. As I recall, the Sheriff's Department had been engaged in attempting to execute the Writ, at the time, and to the best of my belief, we had requested that they hold off on that one. We received the application to stay the execution. Once having been heard by Judge Mishler, the Sheriff had sought out counsel, the Office of the County Attorney's counsel, with respect to what he did. Under State Law he was obligated to use his best efforts to execute the facially valid Warrant and upon the advice of counsel -- he, at that time, was a Defendant in at least one proceeding, had been instructed to hold off pending the proceeding before Judge Mishler for the stay. I believe, also, that I prepared papers in opposition to the stay and that my arguments were accepted by the Court. That basically he [Judge Mishler] gave us the okay to go ahead and use our best efforts to execute. When I say, 'use our best efforts,' I am referring to my clients." (SM28-30)

"Q Was there a contention by George Sassower that the Suffolk County [Sheriff] had no jurisdiction to effectuate an arrest by itself in Westchester County?

...

A I do recall that being a contention of yourself throughout these proceedings, from virtually the inception to date. ... I have a Second Circuit Court of Appeals brief on the issue which sustained Judge Mishler's position that the Sheriff had not only jurisdiction, but the duty to execute outside of Suffolk County and in Westchester County on that particular Warrant of Commitment." (SM30-32)

"Q You are saying that Judge Mishler, by decision, said that the Suffolk County [Sheriff] can go outside of Suffolk County in this particular case?

A The Suffolk County Sheriff can go outside. ... No, I am not saying that. I am saying that the Second Circuit presently said that. That is to the best of my recollection. ... it appears that they did not actually decide the question ...

Q Before this happened [Circuit Court of Appeals determination], did you look up the law to find out whether they could execute the Warrant outside of Suffolk County, yes or no? Since it was my contention, as you say, from the inception.

A I would like to explain my answer. I conducted extensive research throughout the proceedings, from the inception to the time I was discharged, concerning contempt proceedings and warrants. We are all lawyers, we can understand, but I don't know who is going to read this transcript, but I would like to clarify. This area of the law is far from clear in my mind, even though I conducted that sort of research and it was very difficult to get a handle on especially in light of the other commitments that I had, at the time, as an Assistant County Attorney. In short, the answer to your question is yes.

...

Q Did you have any memorandum that you drew up and said here is a case or here is an authority?

A I think the best compilation of my research would be set forth in the Second Circuit Brief which is in that language that we just set forth in the record.

Q Do you have a copy of this brief here?

A No, I don't have a copy of the brief. I know it has been served on you. That would be part of the County Attorney's file.

Q You say in that brief, you stated the Suffolk County Sheriff had the right to go outside of Suffolk County?

A Not only the right, but the obligation.

Q You said that?

A Correct.

Q You cited authority, to be best of your recollection?

A Correct." (SM33-37)

"Q Let's go one step further. Referring to the March 24, 1978 letter that I wrote to Howard Pachman with a copy to you, I draw your attention to the last paragraph which is on the bottom of Page 2 and extends over on Page 3, did you discuss that subject with Mr. Pachman?

A That I specifically recall discussing it with Mr. Pachman?

Q When did you discuss it with him, approximately?

A On a number of occasions, especially around the time of the proceedings, to stay the execution of the Warrant of Commitment which was before Judge Mishler.

Q Did you ever discuss that matter with George Sassower himself?

A I believe that I did.

Q Could you tell us, one, as best that you can, when, where and what was said with George Sassower with respect to what he states there that you could arrest him at any one of those three parts?

MR. CALICA: For the record, the parts identified are Special Term Part I in New York County, Bronx County and Westchester County, Supreme Court.

A I recall that prior to the execution of the second Warrant of Commitment, on a number of occasions with Mr. Sassower, concerning execution of the warrant, originally on that subject, Mr. Sassower indicated to me that he would surrender himself at a particular place. He was amenable to surrendering himself at a particular place. This is events that took place. This is events that took place, I believe, more than six years ago. I remember that particular place or places being extended to New York, Bronx or Westchester Counties. I know that this was brought both to the attention, these conversations, the sum and substance of these conversations, were brought to the attention of not only myself but the County Attorney Mr. Pachman and to the Sheriff and other people in the Sheriff's Department, as well as to the attention of Judge Mishler, and it was determined that in light of the history surrounding the Sassower litigation, especially in the Surrogates Court, at least from the documents that we had obtained, that the offers to cooperate in the execution of the Writ were not sincere. That was the collective determination, and that it would be improper for execution to take place under those circumstances. I believe, to the best of my recollection, that there was a counter proposal outstanding at all times prior to the execution of the Writ and that is that either we be directed by a Court -- we, I am talking about the County Attorney, my clients, that we be directed by a Court with respect to those alternate sites of execution or that Mr. Sassower surrender himself at the State Supreme Court in Suffolk County" (SM40-43)

"Q Were you aware of the Sheriff's Office making trips into Westchester County, New York County, Brooklyn, in order to apprehend George Sassower?

A I was generally familiar with the fact that at least after Judge Mishler gave the go ahead for the Writ to be executed, that for a long period time, over a month, deputies of the Sheriff's Department were not continually, but on occasion; on a regular occasion, attempting to execute the mandate corresponding to its terms; correct.

Q Are you telling us, and I expect to quote it to Judge Mishler, that Judge Mishler gave you the go ahead to execute that warrant expressly?

MR. CALICA: Objection as to the form.

Q What did Judge Mishler tell you?

A When, where and under what circumstances, I don't how many years ago it was, to the best of my recollection, in sum and substance what occurred.

[Q] He gave you the go ahead?

A I object to the form. If you want me to answer the question, I will. If you don't, I won't.

Q You tell us what Judge Mishler said to you.

A To the best of my recollection, the sum and substance, the essence of what occurred, was that very artfully, very ably, in extensive papers by Order to Show Cause, George Sassower, on the basis of both State and Federal Law and the United States Constitution, made a very capable argument before Judge Mishler, stating the unthinkable was about to happen, the storm troopers were about to seize hold of him unconstitutionally and improperly and that it was incumbent upon Judge Mishler to prevent this from happening. I recall arguing that this was not the case, that the Judge should not prevent the Warrant from being executed and that we had valuable material, not to execute the Warrant, pending a review by Judge Mishler, and that we intended to execute the

Warrant, but for an Order by Judge Mishler staying us from doing so and Judge Mishler already saying I am not, and it was his holding and Order that he would not stay execution of the second Warrant of Commitment. I also recall, I believe on the basis, to the best of my recollection, that Judge Mishler in that application was not the only one in the Courts, at the time, seeking to stay. As I recall, simultaneously, there was a State Court proceeding seeking to stay execution of that Writ as well. That nothing other than Judge Mishler allowing us to go ahead with it was ever directed to us.

Q Do you distinguish, sir, between Judge Mishler not stay the execution and telling you to go ahead?

A Yes, I do.

Q Did Judge Mishler ever tell you to go ahead with it?

A I can't answer that question yes or no.

Q Did Judge Mishler ever tell you that, in his opinion, that Warrant of Commitment was legal or illegal?

A To the best of my recollection, I go the distinct impression from Judge Mishler that if that was an illegal Warrant, he would, on its face -- he did not conduct a hearing.

Q If it was, on its face, we are talking about the second Warrant, if it was legal on its face, but in fact illegal or unconstitutional because of some underlying infirmity, he would not stay it. Is that what you are saying that Judge Mishler said?

A Would you read that back to me. (The question requested was read back by the reporter.)

A I don't understand the question, but I will repeat what I believe.

Q When he said this, could you tell me what month?

A In that proceeding, on the application by Order to Show Cause to stay execution of the Writ -- of the second writ, then Chief Justice Mishler, who I have the utmost respect for, Chief Judge Mishler, he did two things. One, he made a decision on the record in the case and two, he also discussed off the record and among the attorneys, the character of the case, the flavor of the case, and he made it clear under no uncertain terms, that he did not find much merit in what was occurring in his Courtroom. He was displeased with the fact that these proceedings were before him. I got the distinct impression considering the Judge's experience and expertise, compared to mine at the time, that there was no impediment whatsoever to my clients executing that Warrant and that he was going to do absolutely nothing at any time to interfere in the execution of that Warrant by my clients.

Q This question, sir. On this off the record discussion --

A I don't know whether it was on or off the record. I distinguish it from the holding in the context of the application versus colloquy or dicta by the Court.

Q. You denominated it as off the record, but I just want to refer to it. In his statement, or the impression that Judge Mishler gave you, it was accepted by both sides that Judge Mishler knew that I had been tried, convicted and sentenced in absentia, is that correct?

A Yes, I believe that he was aware of that, of that contention.

Q You didn't deny that contention at that time?

A No.

Q In fact, as far as you knew, that was an absolute fact, as far as you knew?

A Are you talking -- are we talking technically?

Q. From your clients, from your office?

A As far as I was concerned, my legal opinion, based on my research, at that time, and based on the documents that I had seen, George Sassower was at no time in any proceeding that I was involved in or that was the subject of this litigation or any of it, he was never tried in absentia because he had notice. He knew what was going on, he intentionally avoided the inevitable under those circumstances where he is subject to the jurisdiction of the Court, has notice, reasonable notice, to be heard and to do what is necessary as far as -- I am not concerned, that is not trial or conviction in absentia. That is absenting yourself voluntarily and with full knowledge of the consequences from the Courtroom. I don't think it is that easy under our system of law, never did, still don't to divest the Court of its power to confer justice.

Q Mr. Larsen, that was your opinion at the time, correct?

A Yes.

Q But in any event, before Judge Mishler, Judge Mishler had an opinion also. I had an opinion that we discussed, is that correct?

A Your question implies that you and the Judge were --

Q Did I have an opinion?

A You have always had numerous opinions.

Q Mr. Larsen, was the Judge made aware that at the time of the trial I was on actual trial or that my contention, I was on actual trial in Supreme Court, Bronx County?

A I believe that was made clear to the Judge by you.

Q Based on those facts, did the Judge render to you an impression or an opinion?

MR. CALICA: We know Judge Mishler rendered a written opinion. It is filed in the 1978 Civil Rights action.

A Yes.

Q What impression did you get from his opinion?

A He made a number of -- there were a number of concepts that I discerned from Judge Mishler's conduct and statements and demeanor.

Q Tell us what you saw, what you observed, as best that you can.

A As I stated previously, I don't think the Judge was very happy that the case was in his Courtroom. I think the Judge felt that it should have been a subject of a State Court proceeding rather than a Federal Court proceeding. I think should have been a subject of a State Court proceeding rather than a Federal Court proceeding. I think that the Judge reviewed all of the appropriate submissions and listened to arguments at length and made a determination, objectively that there was no wrongdoing of a caliber which would warrant the exercise of the Court's extraordinary powers to enjoin a State Court Warrant of Commitment, and that if any underlying infirmities did exist with respect to the second Warrant of Commitment, that Mr. Sassower himself and the State Court in particular were more able, ready, willing and able to rectify the situation. For that reason, he refused to enjoin the execution.

Q Did he ever tell you or intimate to you that it was a valid Warrant of Commitment?

A To the best of my recollection, I got the distinct and clear impression that the Warrant of Commitment, the second one was at least partially valid.

Q I didn't ask you that question. Given the facts that were given to Judge Mishler, did Judge Mishler render an impression or opinion to you as to the validity, forgetting interference by a Federal Court?

A ... I don't think that Judge Mishler actually delved into the potential, underlying affirmative -- Judge Mishler and I, quite frankly, I believe were not concerned with the underlying merits of the

proceedings in the Surrogates Court because we had able counsel on the other side who were able to evoke State Court remedies with result to any such alleged informities, and we had a facially valid warrant and a duty to execute.

Q Who made the determination that you had a facially valid warrant?

A That was made by a lot of people. By Judge Seidell, made by, I think Vincent Berger, I think it was made by the Sheriff, the Deputy Sheriffs, the County Attorney, myself and Judge Mishler.

Q Let's talk about the first Warrant of Commitment. Did you prepare an Affidavit to be signed by Alan Croce, agent Alan Croce and Sheriff Finnerty? It was signed on March 16, 1978.

A I have no personal recollection of having prepared this Affidavit for Sheriff Finnerty which is dated the 16th day of March 1978. The document does not refresh my recollection in that regard. However, I believe based upon the style of the language and format of the Affidavit, that I did in fact prepare it and after consultation with my client presented it to him for his signature in the office of the County Attorney. I feel fairly confident on the basis of the language and writing style that it was prepared by me, under those circumstances". (SM50-61).

Q Did you ever have a case during that period of time which in sum and substance stated that, that being engaged in the trial of another case, in the midst of the trial of another case, was a voluntary waiver of a right to be present at a contempt trial, yest or no?

A I am completely taken back by this. ... You are going into an analysis of my formulation of legal opinion. I have made that absolutely clear to you. That there was no case, no authority, no anything to justify what occurred twice over in the Surrogates Court. There was absolutely no authority to prevent, that I was aware of, or

that had been shown to me from any source. There was no authority to prevent my clients from executing either a Warrant of Commitment, to my knowledge, and as a matter of fact, there was a duty for them to do exactly that in Westchester County or any place else in the state that you could be found, and all of this was occurring while you had the resources, the ability and the inclination to seek redress in both the State and Federal Courts, and for the most part this was all occurring with the Federal Judge being called or his chambers being called or him being written to or an application being brought on in Court, and it was also occurring that papers had been filed from the State Courts." (SM63-66)