

GEORGE SASSOWER

ATTORNEY AT LAW

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September 19, 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 al.
84 Civ. 2989 [JM]

Honorable Sir:

1. In view of the testimony given last evening, September 18, 1984, by Erick Larsen, Esq., I respectfully request Your Honor modify his scheduling directive on the motions in the above matter.

Robert M. Callica, Esq., present counsel to the Suffolk County Attorney, at the conclusion of such examination before trial of Mr. Larsen last evening, stated that he would have no objection to this application.

I have not, as yet, spoken to the Assistant Attorney General with respect to same.

2. The Assistant Attorney General made a Rule 12(b)6 motion and the Suffolk County Attorney expects to also move this Court. I intend to cross-move.

Obviously, such interrelated motions and cross-motions should be simultaneously heard and determined.

3. As part of his testimony, last evening, former Assistant Suffolk County Attorney, Erick Larsen, Esq., related what he believed was an "off the record" conversation with Your Honor, which I assume was in my presence, although I do not recall asking the question specifically.

The thrust, if not the specific words of Mr. Larsen, was that Your Honor, in such "off the record" discussion approved the legal validity of a warrant of committment and told him to "go ahead" with its enforcement.

4. Briefly, the undisputed, factual surroundings, are as follows:

The first warrant of committment for criminal contempt was issued (1) without an accusation, (2) without notification of any trial or hearing, (3) a trial, (4) conviction, and (5) sentencing, all in absentia.

A state writ of habeas corpus was eventually sustained on such "mock" conviction, after Your Honor refused to "officially" intervene.

This was the factual setting before Your Honor my first action commenced in federal court.

5. Thereafter, another criminal contempt proceeding was instituted wherein I was accused and notified of a hearing.

The first time the matter was on the calendar to be heard, I was in the midst of a trial before Hon. Joseph DiFede in Supreme Court, Bronx County, and advised the Surrogate's Court, by affidavit, of such engagement.

Under the aforementioned undisputed facts, I contended that a trial, hearing, and sentence of incarceration, again, all in absentia, while elsewhere engaged in the middle of a trial, was constitutionally and legally infirm.

It is my contention that Your Honor again refused to federally interfere "officially" in this state criminal contempt proceeding.

It is my further contention that Your Honor most emphatically, in crystal clear language, told Mr. Larsen, that despite the denial of federal relief at that point, it was Your Honor's opinion that such criminal proceedings was invalid, under the above factual situation.

It is my further contention that when the Suffolk County Attorney and his clients refused to cancel the warrant, as suggested by Your Honor. I wrote:

"If you desire to proceed, you 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."

There is no question that the above offer was related to the first arrest, when I was denied all habeas corpus rights, and other basic constitutional rights, until incarcerated.

My concern was that I be able to secure the signing of a writ of habeas corpus outside of Suffolk County, immediately upon arrest.

The above offer was refused and instead the Suffolk County Sheriff made numerous and expensive forays into Westchester, New York, and Kings County in an attempt to arrest me, and denigrate and harass me and my family, which they did.

One must remember, that these numerous and expensive forays were all made despite the fact that I was at all times, ready and willing to surrender myself voluntarily at the convenience of the Suffolk County officials.

As part of the attempts to apprehend me, on June 1, 1978, Ms. Susan Gilbraltor telephoned the Suffolk County Sheriff's Office, as the Sheriff's records indicate.

On June 10, 1978, I was apprehended; an altercation took place when I attempted to obtain the aid of local police; I was incarcerated; my wife and child were themselves incarcerated when they served a writ of habeas corpus ordering my immediate release; etc.

6. A great deal of the above events took place after Your Honor's prior decisions.

The point I wish to make is that the defendants, from Mr. Larsen's testimony, apparently contend and will contend that they relied on Your Honor's opinions, "off", as well as, "on the record".

Whatever notes Your Honor may have made of the "off the record" statements, obviously, I do not know.

How much Your Honor might recall after reading the short transcripts, or reviewing the original papers, again, I obviously, do not know.

In any event, in view of the motions and cross-motion, I believe the transcript of Mr. Larsen's (uncompleted) testimony should be set forth, in haec verba, and not the attorneys recollection of same from their private notes.

The transcript should be ready in about two weeks.

7. Insofar as the underlying charges, they were confessed and admitted to be sham and contrived!

In every underlying aspect of this matter, I was resoundingly and dramatically vindicated.

8. I further intend to show Your Honor, by admissions and confessions that the material relied upon by Your Honor, in the prior proceedings was false, if not outright perjurious.

The affect of same, as well as other material subject to a collateral estoppel plea in my favor, after "full and fair opportunity", will, of course, be legal matters for the Court to determine.

9. May, I, after speaking to the Attorney General and obtaining his views, telephone chambers, in order to determine Your Honors decision with respect to this application?

As previously stated, the Suffolk County Attorney does not object to this application.

10. I am enclosing another copy of the March 24, 1978 letter, for Your Honor's convenience. In the transcripts, it is sometimes referred to as the "nuts" letter (see p. 2f).

11. I wish to again state, that I did not make any application for Your Honor's recusal!

At this juncture, my preference, is that Your Honor "sit" and "determine".

Whether, I will call Your Honor as a witness in a related action, before examining the former Suffolk County Attorney, Howard Pachman, Esq. and Mr. Nugent, I have not and will not consider.

Whether, the Suffolk County Attorney will request Your Honor's testimony, obviously, I do not know.

The point is that, in requesting a conference with Your Honor, by purpose was not to contend that there existed "legal bias" or "prejudice", but to advise Your Honor of possible "transactional involvement", so that Your Honor could determine the proper course to take in this matter.

To repeat, my personal preference, at this time, if at all relevant, is that Your Honor, not recuse himself.

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

Law Office
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March 24, 1978

Howard E. Pachman, Esq.
County Attorney : Suffolk County
Veteran's Memorial Highway
Hauppauge, New York, 1178

Dear Mr. Pachman,

Thank you for your kind consideration in mailing me a copy of a letter that you mailed to the Sheriff of your County dated March 22, 1978, which came in an envelope bearing date of the 23rd inst., and received today.

Thank you for ruining a perfectly pleasant week-end!

Since your office has a copy of the Order of Commitment which on its fact states that such Order of Criminal Contempt was made after testimony was taken in my absence, you know for a fact that such Order and Warrant are jurisdictionally defective.

That was the specific holding of Mr. Justice GEORGE F.X. McINERNEY by his decision, of July 28, 1977 and even were it not good law (which it is) you are bound by the Order entered thereon until reversed.

Your assistant, Erick F. Larsen, Esq., was shown the case of In re Oliver (333 U.S. 257) and has been given every courtesy by me in order to aid him in coming to a legally proper decision. I must confess some annoyance, that with all the courtesy that I have shown him in this respect he has not advised me of any applicable case sustaining the procedures of the Surrogate's Court in the instant situation, except one, which he later agreed was non-applicable.

I must assume that he found no case upholding the validity of such Order of Commitment.

In any event you must realize that you have absolutely no immunity in a criminal prosecution for violating my civil rights.

I further draw your attention to the statement in

Bradley v. Fisher (80 U.S. 335), wherein the Court stated:

"when the want of jurisdiction
is known ... no excuse is
permissible (p.352).

You may guide yourself accordingly in view of your potential civil and criminal liability and hope that in the event you still pursue your intended illegal course that you will advise your Sheriff that after my arrest he observe my civil rights to a punctilio, particularly my right to obtain a Writ of Habeas Corpus.

I did read this week the opinion of the Circuit Court of Appeals in Zarcone v. Perry, and wonder how long your citizenry will tolerate public expenditure of monies because of the gross constitutional violations of some of your judges (whether the monies come from the county or indirectly by way of insurance premiums makes no difference). Of course punitive damages comes out of the individuals own pocket I understand, which was also sustained by that Court.

In view of the aforementioned, I believe you should reconsider your course and follow the Constitutions of the United States and State of New York, thereby not only safeguarding my rights, but also minimizing the liability that would otherwise attach to the wrongful judicial conduct which itself will be judged at a later date.

Your letter makes reference to another letter of March 9, 1978, (which I do not have) but it seems that you have turned over the enforcement vel non of the criminal law to Mr. Anthony Mastroianni and Vincent G. Berger, Esq., which is rather interesting, particularly since they and your office have been using the enforcement of a criminal conviction in the desire to negotiate with me, a matter which should be examined by your District Attorney.

In the Winter of 1944 I was in the Ardennes of Belgium, and if I may adopt the response of the 101st to the offer to surrender, it is "nuts".

Less than one mile from where I was arrested last June there is a sign indicating the birthplace of "The Bill of Rights". I have no intention of making it the burial ground of those very rights.

I assume that you have also advised the Sheriff of his potential personal liability, which he should know from the Zarcone verdict.

If you desire to proceed, you or the Sheriff may

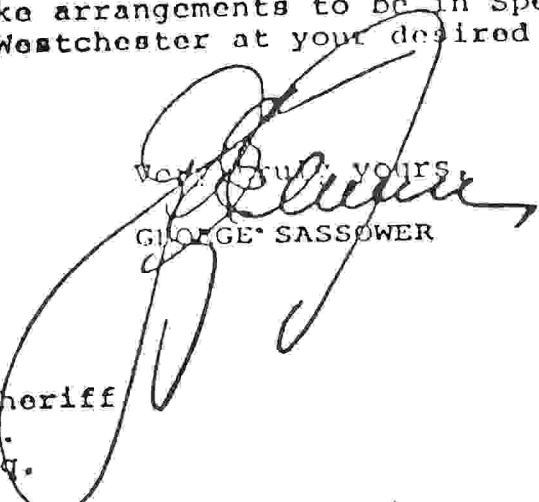
Howard E. Pachman, Esq.

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March 24, 1978.

telephone and I will make arrangements to be in Special Term
in New York, Bronx, or Westchester at your desired time of
arrest.

Very truly yours,


GEORGE SASSOWER

GS/bh

cc: Hon. Jacob Mishler
John P. Finnerty, Sheriff
Emanuel M. Kay, Esq.
Erick F. Larsen, Esq.