UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GEORGE SASSOWER, individually and as trustee etc.,

Plaintiff,

-against-

VINCENT G. BERGER, JR.; et el.,

Defendants.

----------x

File # 86Civ3797 [JM]
ORAL ARGUMENT REQUESTED

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affirmation of GEORGE SASSOWER, Esq., duly sworn to on the 10th day of March, 1987, and all proceedings and papers herein, the undersigned will move this Court before Hon. JACOB MISHLER, United States District Judge, at the United States Courthouse, Uniondale Avenue and Hempstead Turnpike, Uniondale, New York, 11554, on the 27th day of March, 1987, 9:30 o'clock in the forenoon of that day, or such other day and time the Court believes appropriate, for an Order to (1) remove this proceeding to a venue outside the Second Circuit; (2a) to vacate the conviction against your affirmant, dated March 8, 1978 based upon the uncontroverted evidence that the accusation was perjurious and knowingly false; alternatively, (2b) to compel the defendant, Presiding Justice MILTON MOLLEN and/or Hon. ROBERT J. SISE to designate a jurist to expedite affirmant's motion which was returnable December 22, 1986; (3) to set this matter down for a

hearing to determine whether affirmant's disbarment was, in whole or in part, in retaliation for his resort, once again, to the federal forum for relief, and otherwise "blowing the whistle" on judicial misconduct; (4) together with such other, further, and/or different relief as to this Court may seem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE, that opposing papers, if any, are to be served in accordance with the Rules of this Court.

Dated: March 10, 1987

Yours, etc.,

GEORGE SASSOWER, Esq.
Attorney for plaintiffs
51 Davis Avenue,
White Plains, N.Y. 10605
(914) 949-2169

To: Hon. Robert Abrams
Reisman, Peirez, Reisman & Calica, Esqs.,
Cahn, Wishod, Wishod & Lamb, Esqs.

UNITED STATES DISTRICT COURT
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GEORGE SASSOWER, Esq., an attorney, admitted to practice law in the federal courts, does hereby affirm the following statement to be true under penalty of perjury:

1a. Even the blind can every easily recognize that in the present pending proceedings in the Appellate Division, Second Judicial Department ["App. Div. 2d"], the firms of REISMAN, PEIREZ, REISMAN & CALICA, Esqs., CAHN, WISHOD, WISHOD & LAMB, Esqs., and/or their clients, and/or Surrogate ERNEST L. SIGNORELLI, intend once again, to "fix" that Court and know, that His Honor, United States Judge JACOB MISHLER, will do absolutely nothing to insure that affirmant's federal constitutional rights are protected.

b. It is manifestly clear that judges protect each other, before they will protect and defend the Constitution of the United States or basic legal and/or civilized values, at least in the case at bar.

c. Incorporated by reference in this motion is (1) affirmant's complaint dated November 6, 1986; (2) affirmant's motion papers of November 10, 1986; and (3) miscellaneous correspondence.

d. Particular note is made at this point of the inactivity by Your Honor with respect to affirmant's letter of January 30, 1987, which reads as follows:

> "1a. I respectfully request that Your Honor recuse himself in the above matter, and if Your Honor believes a formal affidavit is necessary, I will submit same.
>
> b. Years ago, when I moved for such relief, Your Honor stated I should have simply made the request.
>
> c. I am blowing the whistle 'hard and loud', as is my professional obligation (Disciplinary Rule 1-103), but leave it to 'others' to determine against whom and to what extent blame should attach.
>
> c. Some of the 'others' will advise me what matters I should leave unsaid in any 'recusal affidavit', if one be necessary.
>
> 2a. In almost thirty-eight (38) years of practice, I never found a single judge to be as 'dumb' as he made himself appear when judicial and/or official corruption was involved!
>
> b. Documents which were as patently false, spurious, and contrived as a $2.73 bill, were accepted by the judiciary as if they were brought down from Mt. Sinai by Moses!
>
> c. Your Honor and other jurists must clearly recognize, but generally do not, that officials, as exemplified by the 'Signorelli, sua sponte diatribe', have the power to fabricate and generate their own self-serving documents to meet the situation at hand!

3a. Your Honor, I went from Normandy to Germany in an almost one year period in 1944-1945, and this type of 'see no, hear no, evil' ignorance was not accepted by me, nor anyone else, at that time!

b. I see no reason that such pretended ignorance, should be accepted in the situation at bar!

c. Your Honor and other members of the judiciary did not have to read between the lines as to the happenings in Suffolk County, for I laid it out directly and emphatically on the line, and I am reasonably certain that others did likewise, as the news reports this week seem to indicate!

The judiciary, state and federal, did nothing, unless prompted first by media attention!

4a. I am still disturbed by the fact that two (2) Suffolk County Deputy Sheriffs had the audacity to 'beat me up', while handcuffed, in Westchester County.

b. I am much more disturbed that judges, who are supposed to know the importance of a writ of habeas corpus, were not concerned by the fact that Ms. Sassower and our daughter were incarcerated, when they served a writ which ordered my immediate release.

Not only was I not released, as ordered, but those who served such writ were themselves, incarcerated!

Everyone seemed shocked at such misconduct, except members of the judiciary who had to pass on same.

c. The universal lack of judicial outrage by such incarcerations were obviously related to the fact that important members of the judiciary were involved in the situation.

Was I, Ms. Sassower, or our incarcerated daughter, supposed to blithely accept the excuse tendered to the Appellate Division, for such misconduct, to wit., that the jurist who executed such Writ was 'ignorant'!

d. Who gave the authorities in Suffolk County the right to evaluate the literacy qualifications of Supreme Court jurists in another judicial district?

Am I supposed to blithely accept the proposition that only orders and directions of 'literate' jurists are to be obeyed?

e. I respectfully submit that equally specious assertions were tendered to, and accepted by, Your Honor.

f. In short, I believe it would not satisfy the 'appearance of justice' if on one day, I make complaint about Your Honor's conduct to investigatory authorities and the media; and the next day, Your Honor serve in a judicial capacity, in matters involving the same transaction (Aetna v. Lavoie, U.S. , 106 S.Ct. 1580, 89 L.Ed2d 823).

5a. This is my country, and I simply will not accept such conduct by anyone, nor the attempts to conceal same, including by members of the judiciary.

b. If the judiciary will not clean its own house (cf. Code of Judicial Conduct, Canon 3B3), it should not complain about others attempting to rectify the situation.

c. If I do not do it, who will?

6a. Surrogate Ernest L. Signorelli, the Suffolk Police Department, and Sheriff's Office, engage in their criminally corrupt and barbaric tactics because they know the judiciary will make every attempt to conceal their misadventures -- that much seems clear!

b. My duty to clients and judicial trusts is crystal clear, if members of the judiciary or their 'freinds' desire to encroach upon those made subject to my trust, I intend to stand fast, irrespective of the consequences!"

e. This motion is made without prejudice to any plenary proceedings that affirmant intends to undertake.

2a. This affirmation is made in support of a motion to (1) remove this proceeding to a venue outside the Second Circuit; (2a) to vacate the conviction against your affirmant, dated March 8, 1978 -- or nine (9) years ago -- based upon the uncontroverted evidence that the accusation was perjurious and knowingly false; alternatively, (2b) to compel the defendant, Presiding Justice MILTON MOLLEN and/or Hon. ROBERT J. SISE to designate a jurist to expedite affirmant's "no opposition" motion which was returnable December 22, 1986; (3) to set this matter down for a hearing to determine whether affirmant's disbarment was, in whole or in part, in retaliation for his resort, once again, to the federal forum for relief, and otherwise "blowing the whistle" on judicial misconduct; with interim relief, by separate application.

b. Affirmant's disbarment on February 23, 1987 (NYLJ Feb. 27, 1987) charged with, inter alia, three (3) convictions for non-summary criminal contempt, each one without a trial, was simple pretext, since every lawyer, newspaperperson, barber, and garbage collector knows that for every crime protected by the XIV Amendment, absent a plea of guilty, one cannot be convicted, sentenced, and incarcerated without benefit of a trial or hearing!

c. The judiciary simply to not have the jurisdictional power to convict, sentence, and incarcerate, without benefit of trial.

To state the proposition otherwise, as a matter of ministerial compulsion, involving no judicial discretion whatsoever, absent a plea of guilty, all American jurists and courts must afford the accused a trial when the charge is non-summary criminal contempt.

d. In such disbarment proceeding, the aforementioned trialess convictions were then escalated by "App. Div.2d", and declared, by self-proclamation, to be "serious crimes", and affirmant was not permitted to controvert the conviction, legally or factually.

e. In addition thereto, affirmant was not permitted to show that he was being made the subject of "invidious and selective discrimination"; that the proceedings were retaliatory in nature; all his served subpoena's were quashed; he was prohibited from serving any subpoenas, without permission, invariably denied; relevant cross-examination was curtailed, as was direct evidence if chief (Middlesex v. Garden State, 457 U.S. 423).

f. Instructively, the fourth, no trial non-summary criminal contempt conviction was dropped as part of the disciplinary proceedings when Hon. DAVID N. EDELSTEIN, sustained affirmant's 28 U.S.C. §2254 writ, holding that a trial was a federal constitutional necessity for a valid conviction (Sassower v. Sheriff, F.Supp. [NYLJ 12/9/86]), but the Appellate Division did not apply such holding to the other convictions.

g. To say more about this sham disciplinary proceeding would be supererogatory!

h. Is this Court willing to state that such manifestly unconstitutional disciplinary procedures were not the result, in part at least, to affirmant's allegations in federal court, and elsewhere, regarding judicial corruption in this matter?

i. The federal courts for federal relief, is simply a trap, when with impunity, the state judiciary are permitted to retaliate in their own forums for proceeding in the federal forum!

3a. On November 10, 1986, your affirmant moved this court for an Order:

> "(1) compelling the defendants to bring to an expeditious conclusion, on the merits, under a constitutional scheme, a ten (10) year old non-summary criminal contempt proceeding, wherein the charge is that he 'wilfully failed to turn over the books and records of the Estate of Eugene Paul Kelly'; (2) compelling the state judicial powers to take such administrative steps as may be necessary to prohibit the unbridled control of non-summary criminal contempt proceedings by civil adversaries in all such proceedings; and (3) insuring that plaintiff is not made the subject of retaliatory action by state officials, judicial or otherwise, for resorting to the federal forum for relief; (4) together with such other, further, and/or different relief as to this Court may seem just and proper in the premises.

b. The opening portions of the complaint summarizes the criminal aspects of this matter, as follows:

> "2a. For almost ten (10) years, the petitioner and his family, have been harassed in bad faith by most of the defendants, the primary vehicle being three (3) non-summary criminal contempt proceedings issued from Surrogate's Court, Suffolk County, against the plaintiff, privately initiated, prosecuted, and controlled, as the lawful prosecuting authorities have refused to initiate or prosecute any criminal proceedings against the said plaintiff.
>
> b. These non-summary criminal contempt proceedings, were all initiated and prosecuted on the knowingly false and perjurious assertions by VINCENT G. BERGER, JR., Esq. ['Berger'], the campaign manager of Surrogate ERNEST L. SIGNORELLI ['Signorelli'], and his client, ANTHONY MASTROIANNI ['Mastroianni'], the Public Administrator, who is appointed by the Surrogate, accusing plaintiff of having 'wilfully refused to turn over the books and records of the ESTATE OF EUGENE PAUL KELLY ['Estate']', pursuant to a, 'without notice', Signorelli ukase in March 1977, purportedly removing him as such executor.

c. Based upon admissions and confessions of the defendants, Signorelli, Mastroianni, and Berger, after about twenty (20) full days of hearings, in late 1981, wherein plaintiff was resoundingly vindicated, it was determined that immediately after plaintiff's notice to appeal to the Appellate Division, Second Judicial Department was dismissed, and leave to appeal from such 'without notice' ukase denied, by that Court, and before the first contempt proceeding was initiated against him, plaintiff did, in fact, turn over all such books and records to Berger and Mastroianni.

d. Recently, in hearings held before the defendant, Hon. BURTON S. JOSEPH, who upon objection, ruled himself not bound by the 1981-1882 hearings and determination, confirmed by the Appellate Division, First Department, independently also found that plaintiff had turned over all of the Estate books and records before the first contempt proceeding.

e. Furthermore, by happenstance, during such recent hearings, it was discovered that since 1977 Mastroianni and Berger had in their actual possession the books and records of ALBERT BARANOWSKY ['Baranowsky'], the accountant for EUGENE PAUL KELLY during his lifetime, who had died prior to the 1981 hearings. These Baranowsky books and records were never in the possession or control of the plaintiff, and their possession by Mastroianni and Berger had heretofore been deliberately concealed from all courts and judges, except Signorelli, and perhaps the defendant, Hon. HARRY SEIDELL ['Seidell'].

f. The findings in the extensive 1981 hearings, were also to the effect that despite the failure of Berger and Mastroianni to have the Baranowsky books and records, it did not prevent them from administering the Estate to its conclusion, a fact which they did not dispute at that time, or anytime thereafter.

g. Independently, Hon. BURTON S. JOSEPH came to the same conclusion, augmented and irresistibly compelled by the happenstance discovery that Berger and Mastroianni, since 1977, had in their possession and control the Baranowsky books and papers and other disclosures, not heretofore known.

h. Nevertheless, these criminal contempt proceedings, by these 'self styled public prosecutors', and those associated with them, still continue unabated, on collateral issues, to wit., whether plaintiff intentionally waived his constitutional right of confrontation by being actually engaged in the midst of trial, in another court, where the 1978 perjurious accusation was and is that plaintiff 'wilfully failed to turn over the Estate books and records'!

i. The entire harassing scenario, irresistibly compels the conclusion, never otherwise denied in recent years, that all these criminal contempt proceedings, and the related habeas corpus and disciplinary proceedings, are nothing but bad faith harassment, by nisi prius and the Appellate Division, Second Judicial Department ['App. Div. 2d'], not and never intended to adjudicate plaintiff's guilt, vel non, but to compel him to succumb; to keep silent about judicial misconduct; and/or to portray him as a pariah, not worthy of belief, so as to attenuate any public disclosures he made or might may desire to make."

c. Not only did respondents Presiding Justice MILTON MOLLEN, Associate Justices ISAAC RUBIN, MOSES M. WEINSTEIN, and others know that the conviction was based on perjurious charges, but that affirmant was actually engaged in the middle of a trial, in Supreme Court, Bronx County, anything said in Sassower v. Finnerty (96 A.D.2d 585, 465 N.Y.S.2d 543) to the contrary notwithstanding.

d. Affirmant's brief to the Appellate Division, as set forth in the complaint, reads, in part, as follows:

"'2. Could appellant be constitutionally and legally tried, convicted and sentenced for criminal contempt, all in his absence, the first time the matter was on for a hearing, and while he was legally engaged in the midst of a trial in a higher court?

The Court below held in the affirmative.

3. Was appellant's legal engagement in a higher court a conscious, voluntary, and deliberate waiver of his constitutional and legal right to be present at trial, conviction and sentence for criminal contempt, as a matter of law, so as to dispense completely with a habeas corpus hearing?

Special Term held in the affirmative.

5. Was appellant supposed to risk contempt in Supreme Court, Bronx County by abandoning a pending trial in its midst and prejudice appellant's cause in order to appear in Surrogate's Court? [emphasis supplied]

The Court below impliedly held in the affirmative.'

Page 3 of that same Brief (Statement), reads as follows:

'Appellant entered a plea of 'not guilty' and requested a plenary trial. ... On March 7, 1978, the first time this matter was on the calendar for a hearing, appellant was in the midst of a trial in Supreme Court, Bronx County before Mr. JOSEPH DiFEDE (Green v. Green). By affidavit, appellant advised the Surrogate's Court of the actual engagement."

With everyone, without exception, conceding that plaintiff was engaged as aforementioned, or not having any evidence to the contrary, both at nisi prius or the Appellate Division, and with the Appellate Division having actual knowledge, that plaintiff turned over these books and records about nine months before such contempt proceeding, the irresistible conclusion is that the Appellate Division, was and is also intending to harass, and to disparage plaintiff's credibility, by its published disposition and opinion.

If the Appellate Division had any doubt about plaintiff's actual engagement, albeit its undisputed nature, a telephone call or communication to Mr. Justice DiFede or the Administrative Judge could have simply resolved the issue, rather than remand it for a hearing (Johnson v. Zerbst, 304 U.S. 458, 464; People v. Parker, 57 N.Y.2d 136, 454 N.Y.S.2d 967; People v. Trendell, 61 N.Y.2d 728, 472 N.Y.S.2d 616).

> Thus, now, eight years later, the judiciary and officials in the Second Judicial Department, are still avoiding any trial of the contempt proceeding, on the merits, based upon this 1978 manifestly perjurious accusation! It is a trial which plaintiff now desires, and one which must be conducted according to law, including a 'trial by jury', since for plaintiff it has collateral consequences as a 'serious crime'; this trial must have a constitutionally acceptable prosecutor; exculpatory disclosures, and plaintiff's full panoply of legal rights."

4a. Presently pending before the "App. Div. 2d" is affirmant's motion to confirm the Report of Hon. BURTON JOSEPH, dated, November 6, 1986, wherein His Honor pursuant to a frivolous, bad faith, and harassing remand in Sassower v. Finnerty (96 A.D.2d 585, 465 N.Y.S.2d 543 [2d Dept.]) concluded:

> "... George Sassower, Esq., was engaged on trial in the Bronx County Supreme Court on the day he failed to appear for the contempt hearing in question. This Court further finds that the Appellant, George Sassower, Esq's. failure to appear on March 7, 1978, the date set for the contempt hearing did not constitute a voluntary waiver of his right to be present and offer evidence in his defense."

b. The remand itself was a harassing tactic by the "App. Div. 2d", as affirmant has repeatedly asserted, that "App. Div. 2d" actually and at all times knew at the time that affirmant was engaged in Supreme Court, Bronx County in the midst of a trial when the proceedings were scheduled to commence in Suffolk County.

c. Furthermore, and decisive "App. Div. 2d" actually knew that the underlying charge was false and perjurious, since about two (2) years previously, Hon. ALPHONSE J. MELIA had rendered his confirmed report, based almost exclusively on the confessions of affirmant's adversaries that affirmant had turned over the books, records, and documentation on the Kelly Estate before the first contempt proceeding (Brady v. Maryland 373 U.S. 83).

d. Thus the App. Div. 2d desired affirmant to subject himself to a determination as to whether he voluntarily waived his constitutional right to be present, which even had he done so, would have been irrelevant since the basis charge against affirmant was false and perjurious (Brady v. Maryland, supra), and should have been vacated on that ground.

e. In order to perpetuate such harassment, Presiding Justice MILTON MOLLEN has stonewalled the assignment of a jurist to determine affirmant's no opposition motion returnable December 22, 1986, whose supporting affirmation reads as follows:

> "1a. This affirmation is made in support of a motion to vacate the Order of Criminal Contempt and Warrant of Commitment, dated March 8, 1978, based upon the perjurious allegations and/or testimony by Public Administrator ANTHONY MASTROIANNI ['Mastroianni'], and the failure to disclose vindicating information (Brady v. Maryland, supra; Criminal Procedure Law §440.10).

b. Presently pending in the Appellate Division, Second Judicial Department, is affirmant's motion to confirm the Report of Hon. BURTON S. JOSEPH, which found that affirmant's absence on March 7, 1978 did not constitute a waiver of his constitutional right to be present on such date in Surrogate's Court, Suffolk County.

c. Irrespective of the outcome of such application presently pending in the Appellate Division, the perjurious nature of Mastroianni's accusatory affidavit, and the failure to disclose certain exculpatory information, must in any event be addressed.

2a. This criminal contempt conviction, in the third criminal contempt proceeding brought by Mastroianni and his attorney VINCENT G. BERGER, JR., Esq. ['Berger'], was the second conviction of your affirmant.

b. All of the three (3) criminal contempt proceedings were based upon the same false allegations and assertions.

c. This third contempt proceeding had as an additional constitutional infirmity the fact that neither Berger nor Mastroianni disclosed that they had in their possession the books and records of ALBERT BARANOWSKY ['Baranowsky'], the accountant of EUGENE PAUL KELLY ['Kelly'].

3a. The first criminal conviction was rendered by Surrogate ERNEST L. SIGNORELLI ['Signorelli'] on June 22, 1977, (1) without any accusation; (2) without any notice of a hearing or trial; (3) an in absentia trial; (4) an in absentia conviction; and (5) an in absentia sentence. This outrage was nullified pursuant to affirmant's Writ of Habeas Corpus.

b. The second contempt proceeding was granted by Acting Surrogate OSCAR MUROV on August 17, 1977, but it was vacated on September 1, 1977, before a warrant was issued.

4. The present proceeding reveals the patent unconstitutionality of permitting private adversarial counsel in serving as lead counsel in a criminal contempt proceeding (Polo Fashions v. Stock Buyers, 760 F.2d 698 [6th Cir.], amicus invited, U.S. , 106 S.Ct. 565, 88 L.Ed2d 550), and having a jurist adjudicating contempt proceedings when he has an interest therein (Offutt v. United States, 348 U.S. 11, 14; In re Murchison, 349 U.S. 133, 136; Bloom v. Illinois, 391 U.S. 194, 202; Mayberry v. Pa., 400 U.S. 455, 465; Johnson v. Miss., 403 U.S. 212, 216).

5a. The allegation that affirmant had been removed as executor in March of 1976 is 5% fact, and 95% fiction. Indeed, as late as March 14, 1977 Certified Letters Testamentary were issued to affirmant (Exhibit 'A'). It is an issue that has never been heretofore adjudicated, and therefore a triable issue, even in a criminal contempt proceeding (United States v. Ryan, 402 U.S. 530).

b. The legality of Mastroianni's appointment, wherein Signorelli ignored the designation of DORIS L. SASSOWER, Esq., as alternate executrix, was ignored, has also never been ripe for adjudication and review (United States v. Ryan, supra).

c. Berger was the political campaign manager for Signorelli, and there was an obvious interest in rewarding Berger in this designation.

6a. Additionally, once appointed, there was also a common interest by Signorelli, Berger, and Mastroianni, in concealing Signorelli's egregious 'blunders'.

b. Signorelli had removed affirmant in March of 1977, on the eve of the closing of the vacant house owned by Kelly, and cancelled such sale, as unauthorized.

c. Signorelli had, on the record, specifically authorized affirmant to enter into such contract of sale prior thereto.

d. Once such contract had been cancelled, Signorelli, Berger, and Mastroianni, could not find another buyer for such vacant house. Indeed, about twenty-one (21) months after Signorelli had cancelled affirmant's contract, the vacant house was finally conveyed to the same purchaser, for the same price.

e. The expenses for maintaining a vacant house for an additional twenty-one (21) months, in addition to the loss of interest on the purchase price, was to be borne by the Estate, according to the Mastroianni accountings.

f. Obviously, affirmant had to be silenced!

7a. The dual desire to (1) conceal, and (2) to plunder becomes obvious in the invoice of Airborne Investigation and Protective Service, Inc., a friend to the Signorelli entourage, to Mastroianni for $1,495 (Exhibit 'B'), purportedly to serve affirmant with this third criminal contempt proceeding, which in fact was never served by Airborne.

b. Had same been transmitted by Berger and Mastroianni to the Sheriff of Westchester County, the cost for serving same, would probably have been about $15, and same would have been served.

c. Instead, Airborne, simply harassed affirmant and his family, without the intent to serve said papers!

8a. The thrust of Mastroianni's and Berger's assertions, in all of the contempt proceeding against affirmant, was that they could not properly function or account because of affirmant's failure to turn over the books and records of the Kelly Estate.

b. The conclusions of Hon. ALOYSIUS J. MELIA, in 1981-1982, confirmed by the Appellate Division, First Department, and Hon. BURTON S. JOSEPH, in 1986, are to the contrary.

9a. Mastroianni's 1981 pertinent direct testimony before Hon. ALOYSIUS J. MELIA, reveals the aforementioned conviction to have been entered based on perjurious assertions (p. 68-80 [December 2, 1981]):

"Q. I show you a batch of pages. Could you identify them, please.

A. Yes, it's an accounting, a petition for an accounting that I signed as a temporary administrator.

Q. When was that filed with the court?

A. In April.

Q. Of what year?

A. 1980

Q. And this accounting begins with what date?

A. It would be when I was appointed, March 29, 1977.

...

THE REFEREE: All right. Do you want to get back to that question, whether or not this is proposed to be -- well, a final accounting? You said it had to be supplemented?

THE WITNESS: Yes, it may be, in his terms, it may be considered a final accounting, but it's going to have to be -- we have to supplement that, even that way, we have to supplement it.

THE REFEREE: You mean update it?

THE WITNESS: Update it.

THE REFEREE: But at the time it was presented, was it your intent that it was a final accounting?

THE WITNESS: We still wanted to make sure that we had all the assets, your Honor, and until we had, we're sure that we did, we couldn't really finalize it. That's just an accounting of what monies I took in.

THE REFEREE: And this is your first accounting in three years; right?

THE WITNESS: That's correct.

THE REFEREE: All right. Now, did Mr. Abuza or anyone else give you an order to show cause against you in this period to time to require an accounting?

THE WITNESS: No, your Honor, not that I recall.

MR. GRAYSON: Your Honor, we allege that the respondent failed to turn over all the books and property.

THE REFEREE: Yes.

MR. GRAYSON: And continued to fail to do so. If in fact he did, then there would be no prejudice to the public administrator in his duties, and I'm trying to find out if in fact the public administrator believes that he still lacks certain documents which would help him wrap up the estate.

THE REFEREE: Well, are you aware of any documents that you do not have?

THE WITNESS: No, I am not, your Honor, I don't know.

THE REFEREE: You are not aware of any missing documents?

THE WITNESS: I have no idea if there are or aren't, your Honor. I do not know.

THE REFEREE: You haven't been given a lead by any of the heirs or members of the family?

THE WITNESS: About --

THE REFEREE: No, about things that you don't know about?

THE WITNESS: No.

THE REFEREE: No.

Q. And what is the status of this estate at the time?

A. The status is that I'm still temporary administrator and we still would like to have it finalized.

THE REFEREE: Now, this accounting is before the court since April?

THE WITNESS: Yes.

THE REFEREE: of '80?

THE WITNESS: Yes.

THE REFEREE: Well, what's happened?

THE WITNESS: You Honor, I believe -- I don't what the terminology would be, whether it was withdrawn or held in abeyance until I believe they were trying to get Mr. Sassower to see if he had anything also so that we could put in our account that we received it.

....

THE REFEREE: Have you asked Mr. Sassower, since April, 1980 whether he has anything that you required?

THE WITNESS: I have not.

THE REFEREE: About anything that --

THE WITNESS: I have not.

THE REFEREE: Then I don't understand what you're waiting for.

...

Q. Again, can you state specifically what need to be done before this estate can be settled?

A. We have to make sure that we have all the assets and whether I could --

Q. So that disbursements can be made from the estate and the paperwork can be finished, the probate can be wrapped up?

A. We would like to have as much -- all the information on the estate that we possibly can.

Q. How do you go about getting that information?

A. From Mr. Sassower.

THE REFEREE: Again, I ask the question: since you filed this, you haven't been in touch with Mr. Sassower?

THE WITNESS: I have not, no.

Q. To your knowledge, has your attorney been touch with him since April, 1980?

A. I don't know.

THE REFEREE: From 19 -- was it 1977 that you say that you received this material from Mr. Berger which allegedly came from Mr. Sassower? Was it 1977?

THE WITNESS: That's correct, '77.

THE REFEREE: Now, this accounting that you filed in 1980, in addition to whatever supposedly came from Mr. Sassower in '77, did you accumulate any other documents between '77 and '80 on which to predicate your accounting?

THE WITNESS: Yes.

THE REFEREE: What kind of documents?

THE WITNESS: Sale of property.

THE REFEREE: Well, the house was sold?

THE WITNESS: The house was sold.

THE REFEREE: Yes. Anything else?

THE WITNESS: About the bank accounts that we checked on, the monies that we received, and I believe that's it.'

10. The Report of Hon. ALOYSIUS J. MELIA, dated February 4, 1982 states (p. 63):

'The Public Administrator also testified that after June 15, 1977 he made no further efforts to obtain other documents. Neither he nor his counsel, Mr. Berger, made an inventory of documents or papers received from respondent [affirmant] that day. He is not aware of any missing or outstanding papers. He never contacted Baranowsky, the deceased's accountant. The papers that the respondent [affirmant] turned over in June 1981 appear to be duplicate of those transmitted on June 15, 1977 or otherwise worthless."

11a. The August 1, 1986 decision of Acting Surrogate BURTON S. JOSEPH states (p. 4):

> 'The evidence failed to establish that Mr. Sassower did not turn over any documents which justifiably prevented the Public Administrator from closing out the Estate in 1980.'

b. Such conclusion, by His Honor, was based on the repeated concessions of RICHARD C. CAHN, Esq., Mastroianni's present counsel, that the present accounting was simply a copy of the 1979-1980 accounting prepared by Berger.

c. Consequently, as far as Berger and Mastroianni were concerned, prior to June 22, 1977, they had all of the Estate books and records which were in affirmant's possession.

12a. In addition to having all of the Estate books and records which were in the possession of affirmant, when this contempt proceeding was before the Court on March 7, 1978, they had 'all' of Baranowsky's records, with respect to this matter.

b. Until, the trial before Hon. BURTON S. JOSEPH, Mastroianni and Berger concealed the fact that they had in their possession the Baranowsky books and records.

c. At such recent trial, a letter, written by Berger, was discovered. It reads partially as follows (Exhibit 'C'):

> 'We have already contacted Mr. Baranowsky in 1977 who turned over to us <u>all</u> records in his possession" [emphasis supplied]'

WHEREFORE, it is respectfully prayed that the within motion be granted in all respects, including the vacatur of the conviction against your affirmant dated March 8, 1978, together with any other, further, and/or different relief as to this Court may seem just and proper in the premises."

5a. On May 19, 1986, affirmant moved at state nisi prius:

> "for an Order transferring this matter to another judicial district; sustaining petitioner's Writ of Habeas Corpus by vacating the Order dated March 8, 1978 and the Warrant issued pursuant thereto; together with any other, further, and/or different relief as to this Court may seem just and proper in the premises."

b. Affirmant's supporting affirmation reads partially as follows:

> "This affirmation is in support of a motion to vacate the Order of Surrogate's Court, Suffolk County, dated March 8, 1978 (Exhibit 'A'), and the Warrant of Committment (Exhibit 'B'), based upon the non-disclosure of exculpatory, indeed vindicating, material, by the 'self-styled' public prosecutor, ANTHONY MASTROIANNI ['Mastroianni'], and his then attorney, VINCENT G. BERGER, JR., Esq. ['Berger'] (United States v. Agurs, 427 U.S. 97; Brady v. Maryland, supra).
>
> 2a. The Order of Criminal Contempt (Exhibit 'A'), and Warrant issued pursuant thereto (Exhibit 'B'), were entered and issued, as part of an underlying civil proceeding, against your affirmant at the formal instance and request of an adversary, prosecuted by him and his then private attorney, in violation of constitutional due process.
>
> b. The time has come, as this affirmation dramatically reveals, for the courts of this state to clearly recognize that non-summary criminal contempt, a crime in every fundamental respect (Gompers v. United States (233 U.S. 604, 610), federally protected (Bloom v. Illinois, 391 U.S. 194), cannot be initiated, prosecuted, and controlled by adversarial counsel (Polo Fashions v. Stock Buyers, supra).
>
> c. The aforementioned Order states that this criminal conviction was based on affirmant's 'wilful failure and refusal to comply with [a] lawful order' (Exhibit 'A'). In slightly different language the Warrant mirrors such recital (Exhibit 'B').

3a. About ten (10) days ago, affirmant came into possession of a letter written by Berger on March 9th, 1978, which reads, in part, as follows (Exhibit 'C'):

> 'We have already contacted Mr. Baronowsky in 1977 who turned over to us all records in his possession.' [emphasis supplied]

b. There followed, during the succeeding trial days, a number of concessions, to the effect that Mastroianni could have, in 1977-1978, filed an accounting, essentially the same as he now is attempting to settle -- about nine (9) years later!

c. There is no way, one can even closely estimate the hundreds of thousands of dollars of public and private funds that were needlessly expended, because the aforementioned fact regarding the Baranowsky papers were not timely disclosed!

d. The failure of Mastroianni, Berger, and others was not only a fraud upon your affirmant, but in addition thereto, his family, the Disciplinary Committee, and the courts!

e. Captain Queeg (The Caine Mutiny) may have been searching for a 'phantom' key, Mastroianni and Berger were pretending they were searching for papers and information already in their possession, while engaged in nothing less than terrorism!

3a. Although the confirmed findings of Hon. ALOYSIUS J. MELIA (Exhibit 'D') resoundingly vindicated your affirmant on all counts, including on the counts that he 'wilfully failed and refused to turn over the books and records of the Kelly estate' and that he damaged the estate by his failures, the entire proceeding would have never been prosecuted had it been known that Mastroianni and Berger had in their possession the Baranowsky records, who had died in the interim!

b. Unquestionably, had affirmant been prosecuted in the aforementioned criminal contempt proceedings by any ethical public prosecutor, instead of an adversary, the whereabouts of the Baranowsky books and papers would have been disclosed (United States v. Agurs, supra; Berger v. United States, 295 U.S. 78), and then and there this legal charade would have been aborted!

c. Thus, not only did Mastroianni and Berger unrelentingly pursue your affirmant after 1977 with orders, directives, and criminal contempt proceedings, but also they pursued DORIS L. SASSOWER, Esq., with subpoenas for information and documentation which they themselves had in their possession, and which was not in the possession of your affirmant nor Ms. Sassower!

As Judge Melia's confirmed report reveals, based essentially on the confessions of the accusors, affirmant turned over to Mastroianni and Berger all the papers or documents in his possession prior thereto.

d. The aforementioned letter (Exhibit 'C') came to light only because Mastroianni and Berger, with unabashed gall, are trying to charge the Estate of Eugene Paul Kelly and your affirmant with the cost of their Captain Ahab styled, Khadaffy orientated, pursuit!

(1) Thus for example, on May 7, 1979 Mastroianni paid from the estate a process server the sum of $168.70 for serving DORIS L. SASSOWER, Esq., with a subpoena duces tecum to appear in Riverhead, with papers he already had in his possession.

(2) For investigative services of your affirmant in November and December of 1977, the estate was billed the sum of $1,495.50 (Exhibit 'E')!

(3) The aforementioned was in addition to the numerous forays made by the Suffolk County Sheriff's Office to Westchester, New York, and Kings County intended to harass your affirmant and his family.

4. It is clear that the charges to the District Attorney of Westchester County, Suffolk County, the Bar Association, the public exposure to the media, were part and parcel of a comouflaged attempt to conceal the activities, actions, and blunders of Surrogate ERNEST L. SIGNORELLI of Suffolk County!

a. Mr. Mastroianni, the Public Administrator, is an appointee of Surrogate Signorelli, and seemed more interested in protecting Surrogate Signorelli, then the estate!

b. Mr. Berger, Mr. Mastroianni's counsel, was Surrogate Signorelli's political campaign manager, was of like mind!

c. IRWIN KLEIN, Esq. ['Klein'], who succeeded Mr. Berger, was Surrogate Signorelli's private attorney in his matrimonial action, and successfully opposed affirmant's motion in the Appellate Division to 'expeditiously terminate' the estate proceedings (Exhibit 'F'), for which he desires $12,500!

d. In short -- there is a complete loss of due process and a travesty of justice when criminal proceedings are placed in the control of private adversarial counsel to effectuate a private purpose!

5a. Even the issued warrant (Exhibit 'B') was a legal and constitutional farce (People v. Parker, supra), since it was clear that affirmant was actually engaged in the middle of a trial in Bronx County (Exhibit 'G') when it was issued.

b. On this subject, the testimony of former Assistant Suffolk County Attorney, Erick F. Larsen, Esq., taken on September 18, 1984, is instructive (SM18-19):

> 'Q [Mr. Sassower] ... Did you know what my contention was as to where I was at the date of the (contempt) 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."

c. Unquestionably, being engaged in the middle of a trial in a higher or coordinate court, does not constitute a waiver of deponent's constitutional right of confrontation during a criminal proceeding, particularly the first time it is actually on the calendar for trial (Amendment VI, XIV of the United States Constitution; Article 1 § 6 of the New York State Constitution), a right recognized in biblical times (The Acts of the Apostles, 25/16).

Absent a constitutional waiver, in absentia criminal proceedings, are patently void!

6a. Affirmant had been 'directed' 'on the record' to enter into a contract of sale of a house by Surrogate Signorelli.

b. Just prior to closing, with certified copies of letters testamentary in hand (Exhibit 'H'), Surrogate Signorelli aborted the contract as unauthorized.

c. It was not until one and one-half years later, that Mastroianni conveyed such vacant house, and then only to the same person for the same price, with the estate bearing all the interim needless expenses!

d. In an attempt to conceal this fiasco, Surrogate Signorelli, without (1) any accusatory instrument; (2) tried; (3) convicted; and (4) sentenced affirmant to be incarcerated, all in absentia.

The Ku Klux Klan, in their white sheets, gave their untried victims a drumhead trial before executing sentence (Briscoe v. LaHue, 460 U.S. 325, 340), a procedure that Surrogate Signorelli, in his black robe, believed was supererogatory!

e. Affirmant, completely unaware of such mock proceeding was arrested in Westchester County the next day by the Sheriff of Suffolk County and dragooned to Suffolk County, having been denied all fundamental rights in the process, including the right to present a writ of habeas corpus.

f. Outrage followed outrage, all of which would not have happened had Mastroianni and Berger revealed their possession of the Baranowsky papers.

7a. A prior motion based on the same legal grounds, but basically on different evidence, was made in September 1985.

b. This resulted in an Order dated April 10, 1986 (Exhibit 'I') wherein Acting Surrogate BURTON S. JOSEPH set down the matter for a hearing in order to determine whether affirmant's absence on the date set for trial constituted a constitutional waiver.

c. Such hearings were aborted at the outset, when it was recognized that His Honor had been designated an Acting Surrogate, but not an Acting Supreme Court Justice.

8. Since this matter involves 'criminal contempt' where 'appearance of justice' rather than 'actual bias' or 'interest', has long been the constitutional and legal criteria (Aetna v. Lavoie, supra; In re Murchison, supra), this motion should first be transferred to another judicial district before determination on the merits.

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

c. On September 11, 1986 your affirmant wrote to Mr. Justice BURTON JOSEPH, as follows:

> "3. I understand Your Honor has been given my May 19, 1986 [Brady v. Maryland, supra] motion for determination. Exhibit 'G' [Docket Book of Supreme Court, Bronx County] shows where I was on the day in question, and before one of my favorite judges, now retired, who still can't figure out how I could be arrested for not appearing in Suffolk County, but neither can a lot of other people!
>
> Since the Suffolk County Attorney knew where I was, had he been candid about the matter with the Appellate Division, or had the Appellate Division made a simple telephone call, this would waste of time would not be necessary!
>
> 4. Your Honor is a practical person! Why have a hearing as to where I was, and let us try the contempt motion on the merits! Bleak House is nice reading, but I have had my fill playing one of the characters, and I guess I am not the only one who is tired being made part of this charade!
>
> Let the Suffolk County Attorney give me my United States v. Agurs (supra) information, and let us proceed to the merits! Must I be made the subject of another possible contempt proceeding after my writ is sustained, when Signorelli blows his fuse again!
>
> 5. May I also remind Your Honor, that more than one hundred and fifty years ago years ago:
>
> > '... James Buchanan brought in a bill which became the Act of March 2, 1831. He had charge of the prosecution of Judge Peck and during the trial had told the Senate: 'I will venture to predict, that whatever may be the decision of the Senate upon this impeachment, Judge Peck has been the last man in the United States to exercise this power, and Mr. Lawless has been its last victim.' " (Nye v. United States, 313 U.S. 33, 46).
>
> Boy! Was he wrong!"

6a. Nevertheless, Mr. Justice BURTON S. JOSEPH, decided to follow the literal mandate of the Appellate Division. Although affirmant deplores, the Court's failure to cut the Gordian Knot, no bad faith was ever asserted, nor is now asserted, against His Honor.

b. By letter request, Mr. Justice JOSEPH had requested DORIS L. SASSOWER, Esq., to attend, and His Honor called her as the Court's witness.

c. Affirmant's Trial Memorandum, of September 24, 1986, for the hearing set for the following day, reads as follows:

"STATEMENT

1. Presented to this Court are two (2) matters:

a. A hearing ordered by the Appellate Division, Second Department on July 23, 1983 (Sassower v. Finnerty, 96 A.D.2d 585, 465 N.Y.S.2d 543), on petitioner's original Writ of Habeas Corpus ad subjiciendum, to determine whether petitioner's absence (585, 546):

> 'constituted a voluntary waiver of his [petitioner's] right to be present and proffer evidence in his defense.'

b. Petitioner's renewed or successive application for a Writ of Habeas Corpus ad subjiciendum, presented as a matter 'of right' (People ex rel. Smith v. LaValee, 29 A.D.2d 248, 287 N.Y.S.2d 601 [4th Dept.]), by way of a Notice of Motion dated, May 19, 1986.

PRELIMINARY STATEMENT

1. A determination of the narrow issue for which a remand was ordered by the Appellate Division would, because of the intervening revelations, settle absolutely nothing!

a. If His Honor sustains petitioner's writ, as seems compelled by (1) the documentary evidence; and (2) the holdings in People v. Parker (supra) and People v. Trendell (supra), the complainant would be free to reinstitute such criminal contempt proceeding for the fourth time.

b. On the other hand, if the Court does not sustain petitioner's Writ, petitioner would be free to vacate such conviction, under his constitutional and statutory post-conviction remedies (see Brady v. Maryland, supra), and relief on such basis would be irresistibly compelling.

2. Consequently, judicial economy mandates that petitioner's motion of May 19, 1986, be addressed, and if necessary, testimony be taken with respect to same.

POINT I
THE MANDATE OF PEOPLE AGAINST PARKER (SUPRA) COMPELS A HOLDING THAT PETITIONER'S ORIGINAL WRIT BE SUSTAINED.

1. The holding in People v. Parker (supra), applied to non-feloneous crimes in (People v. Trendell, supra), is that (140-142; 969-970):

> 'the right to be present at a criminal trial may be waived, the right is of a fundamental constitutional nature and therefore the validity of any waiver including one which could be implied, must be tested according to constitutional standards. Thus, in People v. Epps, 37 N.Y.2d 343, at p. 350, we noted that the key issue was whether this defendant knowingly, voluntarily and intelligently relinquished his known right (Johnson v. Zerbst, supra).

> In order to effect a voluntary, knowing and intelligent waiver, the defendant must, at a minimum, be informed in some manner of the nature of the right to be present at trial and the consequences of failing to appear for trial (cases cited). This, of course, in turn requires that defendant simply be aware that the trial will proceed even though he or she fails to appear. [emphasis supplied]
>
> In most cases the simple expedient of adjournment pending execution of a bench warrant could provide an alternative to trial in absentia unless, of course, the prosecution can demonstrate that such a course of action would totally futile." [emphasis supplied]

2. Unquestionably, the self-styled public prosecutors cannot show a constitutional waiver at bar, in view of petitioner's affirmation of May 19, 1986, and the documents attached thereto.

POINT II

THE HOUR HAS COME TO UP-DATE AND CONSTITUTIONALIZE THE LAW OF CRIMINAL CONTEMPT

1a. The Court cannot ignore that had these three (3) criminal contempt proceedings been prosecuted by a ethical public prosecutor (cf. County Law §700), rather than by "self-styled public prosecutors" (see Polo Fashions v. Stock Buyers, supra), the government would have saved hundreds of thousands of dollars, in addition to the costs incurred by the private litigants!

b. A public prosecutor, is mandated to disclose exculpatory information (United States v. Agurs, supra; Berger v. United States, supra), and he would have disclosed in 1977, what was thereafter disclosed in 1986 -- or nine (9) years later!

c. Indeed, the evidence is that the public prosecutors, both in Suffolk and Westchester Counties, refused to institute criminal proceedings, and they were therefore improperly undertaken by adversarial counsel.

2a. Even where federal standards for criminal prosecutions are not involved, the decisions in the courts of this state, do not tolerate this type of prosecution by adversarial counsel.

b. In People v. Sickle (13 N.Y.2d 61, 242 N.Y.S.2d 34), in holding that a conviction should not be reversed (62, 35):

> 'solely because the lay complaining witness was allowed to conduct the prosecution [in City Court in Middletown] [emphasis supplied]'

The court was quick to add (at 62-63, 35):

> 'However ... the District Attorney, as the elected representative of the people and charged with this responsibility, must carry the responsibility and must set up a system whereby he knows of all the criminal prosecutions in his county and either appears therein in person or by assistant or consents to appearance on his behalf by other public officers or private attorneys.' [emphasis supplied]

The concurring opinion stated (65, 37):

> 'We consider that a complaining witness has prima facie the right to conduct such a prosecution if the District Attorney does not do so, but must abide by the same rules of fairness and of law which would bind a public law officer if he were present.' [emphasis supplied]

In Reed v. Sacco (49 A.D.2d 471, 375 N.Y.S.2d 371 [2d Dept.]), Mr. Justice HOPKINS, speaking for the Court stated with respect to a criminal prosecution in Town Court of Newburgh, (at 475, 376):

> 'Our primary concern, rather, is whether in his zeal for his client the plaintiff's attorney infringed the defendant's right to a fair trial in the criminal proceedings.'

c. This is not a 'petty' crime or offense, similar to those tried in City Court of Middletown (People v. Sickle, supra) or the Town Court of Newburgh (Reed v. Sacco, supra), but a 'serious' crime, where for an attorney the death penalty may be the possible punishment (Judiciary Law §90[2f], 22 NYCRR §691.7[b])!

d. Where the crimes are 'serious' or the collateral consequences (Sibron v. New York, 392 U.S. 40, 50-58; Carafas v. LaValee, 391 U.S. 234, 237-238; People v. Mills, 103 A.D.2d 379, 388-389, 480 N.Y.S.2d 493, 499 [2d Dept.]) are 'serious', the VI and XIV Amendments trigger the right to a jury trial (United States v. Craner, 652 F.2d 23 [9th Cir.]; State v. O'Brien, 704 P2d 905 [Haw], affirming 704 P2d 883; Fisher v. State, 305 Md. 357, 504 A2d 626; cf. Morganthau v. Erlbaum, 59 N.Y.2d 143, 464 N.Y.S.2d 392, cert. den. 494 U.S. 993).

3a. The criminal treatment of criminal contempt, long pre-dated Gompers v. United States (supra) (see Boyd v. United States, 116 U.S. 616), wherein Mr. Justice HOLMES, speaking for the Court stated:

> 'These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech'.

By 1968, the Court in Bloom v. Illinois (supra, at 207) the Court was able to say:

> 'In modern times, procedures in criminal contempt cases have come to mirror those used in ordinary criminal cases."

4. Since criminal are now under the protective umbrella of the federal constitution (Bloom v. Illinois, supra), federal law must be considered, and probably, in essential respects, deemed controlling (Polo Fashions v. Stock Buyers, supra; U.S. ex rel. Vuitton v. Klayminc, 780 F2d 179 [2d Cir.]).

POINT III

'THE APPEARANCE OF JUSTICE' MUST BE SATISFIED

1. For reasons clearly stated by the United States Supreme Court, in contempt proceedings, the standard for judicial qualification has been the 'appearance of justice' (Offutt v. United States, supra; In re Murchison, supra; Bloom v. Illinois, supra; Mayberry v. Pa., supra; Johnson v. Miss., supra).

2a. Where habeas corpus ad subjiciendum is involved, only the questions of jurisdiction, and the constitutional rights of the accused, are involved.

b. Saint and sinner are both equally entitled to be protected by the law!

3a. Nevertheless, the Appellate Division, Second Department in Sassower v. Signorelli (65 A.D.2d 756, 409 N.Y.S.2d 762), while noting that further contempt proceedings were pending, set forth as fact what was clearly 'contrived fiction', and prejudiced all subsequent forums thereby!

b. The only issue presented to the Appellate Division was whether petitioner could be validly incarcerated when there was (1) no accusation; (2) no notice; (3) a trial, in absentia; (4) a conviction, in absentia; (5) and a sentencing, in absentia -- nothing more!

c. The merits of the controversy were not in issue!

d. The published decision precluded any non-jury proceeding which was thereafter undertaken!

4a. Again, in Sassower v. Finnerty (supra), the Appellate Division, in a habeas corpus ad subjiciendum proceeding made reference to the underlying 'fiction' as if they were 'facts', although future contempt proceedings were reasonably forseeable.

b. The self-style public prosecutors went public on their false assertions, while petitioner invoked his constitutional right to remain silent!

c. Again, if this matter had been handled by an ethical public prosecutor, these distortions would not have been placed in the public domain, and accepted by the Appellate Division as undeniable fact.

d. No nisi prius jurist, or disciplinary referee, should be confronted with a situation wherein he must state that an appellate court spoke erroneously or proceeded as some 'loose torpedo', unconcerned with 'criminal rights' of the accused of a constitutional magnitude!

5a. In short, the pervasive and prejudicial publicity, propogated by the Appellate Division makes any non-jury contempt proceeding a quasi-circus (Sheppard v. Maxwell, 384 U.S. 333), and cannot possibly satisfy the 'appearance of justice' (see Aetna v. Lavoie, U.S. , 106 S.Ct. 1580, 89 L.Ed2d 823)

b. The 'badge of infamy' (Wisconsin v. Constantineau, 400 U.S. 433) having wrongly been placed on petitioner, an attempt should be made at its eradication by a dramatic and resounding 'independent' judicial decision, which will set forth the true facts as honestly viewed by an independent and honest jurist, after plenary hearings!

CONCLUSION
PETITIONER'S WRIT SHOULD BE SUSTAINED AND HIS MOTION GRANTED, WITH COSTS

8a. At the hearing set for September 25, 1986, everyone appeared, including DORIS L. SASSOWER, Esq., except RICHARD C. CAHN, Esq., the attorney for the Public Administrator.

b. Mr. Cahn simply forgot!

c. Thus while affirmant was convicted, sentenced, and incarcerated for being elsewhere engaged in the middle of a trial, Mr. Justice BURTON S. JOSEPH took the testimony of DORIS L. SASSOWER, Esq. and was cross-examined by ROBERT CALICA, Esq., the Attorney for the Suffolk County Sheriff's Office.

d. After completion of the testimony of Ms. Sassower, who testified about affirmant's engagement and about her telephone call to Surrogate's Court concerning same, the matter was adjourned by the Court over petitioner's protests.

9a. Again, in view of such testimony, two (2) days later, on September 27, 1986, affirmant moved again for summary relief, wherein the supporting affirmation read as follows:

> "1a. This affirmation is in support of a motion pursuant to CPLR 3212[b] [e] and [g], with respect to the issue which the Appellate Division remanded in Sassower v. Finnerty (96 A.D.2d 585, 465 N.Y.S.2d 543).
>
> b. According to the mandate of the Appellate Division, Hon. BURTON S. JOSEPH is supposed to determine whether petitioner's absence (585, 546):
>
> > 'constituted a voluntary waiver of his [petitioner's] right to be present and proffer evidence in his defense.'
>
> c. Affirmant contends that there does, nor did there ever, exist any triable issue of fact!
>
> d. The short amount of testimony received by His Honor on September 25, 1986, from the Court's witness, DORIS L. SASSOWER, Esq., revealed this issue to be a spurious and contrived, simply because those who have assumed the roles of public prosecutors, have failed and refused to abide by their ethical obligations for such role.
>
> e. Affirmant's Exhibit 'G', in affirmant's motion of May 19, 1986, reveals that affirmant was in Supreme Court, Bronx County on March 6-7, 1978!
>
> 2a. As affirmant's Memorandum points out, both under federal and state law, those who assume the role of public prosecutors must be guided by Berger v. United States (supra).

b. The quoted testimony in affirmant's affirmation of May 19, 1986, p. 8-9, reveals that affirmant's adversaries knew where affirmant was on March 7, 1978, and it is they who should have and must reveal to the courts, including His Honor, such information, with open candor!

c. Since on this subject the matter is to be returned to the Appellate Division, this affirmation will not be the last word on what is nothing less than a sheer waste of time, except to those who operate on a per diem basis!

3a. The law is clear, federal and state, that the burden is on the prosecution to set forth evidence wherein a court might properly conclude that an accused voluntarily waived his constitutional right to be present.

b. As applied to the facts at bar, the 'self-style public prosecutors' would have had to show the court that they made some inquiry concerning petitioner's absence on March 7, 1978, and as a result of such inquiry the facts revealed that petitioner waived such constitutional right (People v. Parker, supra; People v. Trendell, supra).

c. The holding in People v. Parker (supra), applied to non-feloneous crimes in (People v. Trendell, supra), is that (140-142; 969-970):

> 'the right to be present at a criminal trial may be waived, the right is of a fundamental constitutional nature and therefore the validity of any waiver including one which could be implied, must be tested according to constitutional standards. Thus, in People v. Epps, supra, at p. 350, we noted that the key issue was whether this defendant knowingly, voluntarily and intelligently relinquished his known right (Johnson v. Zerbst, supra).
>
> In order to effect a voluntary, knowing and intelligent waiver, the defendant must, at a minimum, be informed in some manner of the nature of the right to be present at trial and the consequences of

failing to appear for trial (cases cited). This, of course, in turn requires that defendant simply be aware that the trial will proceed even though he or she fails to appear.' [emphasis supplied]

In most cases the simple expedient of adjournment pending execution of a bench warrant could provide an alternative to trial in absentia unless, of course, the prosecution can demonstrate that such a course of action would totally futile.' [emphasis supplied]

d. Unquestionably, the self-styled public prosecutors cannot show a constitutional waiver at bar, in view of the testimony of DORIS L. SASSOWER, Esq., on September 25, 1986, and the Court's Exhibit "1", which came from the respondent's appendix on appeal.

4. The facts surrounding the non-appearance on March 7, 1978, which was the third contempt proceeding, against affirmant based on essentially the same motion papers, is as follows:

a. The date for the hearing was unilaterally set by affirmant's adversaries and the Surrogate's Court.

b. On the return date, there was a very heavy snowstorm, and the courthouse in Suffolk County was completely closed for at least three (3) days.

c. Affirmant's adversaries and the Court thereupon, on the reopening of the Court, unilaterally and without consulting affirmant, set the matter down for a hearing for March 7, 1978.

d. When affirmant was notified of such hearing date he was already assigned to try Green v. Green in Supreme Court Bronx County, which he was reasonably certain would be completed by the 7th, but was to be engaged in Civil Court, Kings County, on the 7th.

e. Affirmant had hoped that possibly he could settle the case in Civil Court, Kings County, in the morning, and then go to Suffolk County in the afternoon.

f. When on the 5th and 6th of March, 1978, during telephone conversations with the defendant in that Civil Court action he concluded it could not be settled, affirmant prepared an affidavit of engagement for Suffolk County.

g. Unexpectedly, the case in Bronx County held over, simply because the defendant decided he desired to take an appeal, and wanted to set forth a full and complete record. It was an appeal that was later abandoned after a pre-appeal conference held in the Appellate Division, First Dept.

h. When Mr. Justice JOSEPH DiFEDE ascertained from a short conversation with defendant's counsel, at which affirmant was not really present, since it was during a five minute break, His Honor concluded the day's proceedings, to be concluded the following day.

i. Immediately when affirmant learned of such decision, he immediately went to the Main Bronx Post Office, quickly endorsed the bottom of his previously prepared affidavit, and mailed same.

j. Affirmant was assured by a postal official at such office that the letter would be on the next truck leaving for Long Island, which was about 5:00 p.m., and that it would be in Suffolk County within a few hours.

k. DORIS L. SASSOWER, Esq., made a telephone call to Surrogate's Court to advise them of affirmant's engagement, but affirmant never heretofore relied on such fact, since he did not wish to have her waste her time to testify to same.

l. As it was, DORIS L. SASSOWER, Esq., testified only because Hon. BURTON S. JOSEPH requested her presence.

m. The Surrogate's Court, Mr. Berger, Mr. Mastroianni, Mr. Larsen, the Sheriff's Office, all knew where affirmant was on March 7, 1978, and it is about time this nonsense cease.

n. In short, even if the burden was on affirmant, which it clearly is not, without question, affirmant did not 'voluntarily waive' his right to be present at a criminal proceeding!

4. With the District Attorneys of both Westchester and Suffolk Counties refusing to prosecute, the Surrogate officialdom simply hijacked the prosecutorial obligations, and brought three contempt proceedings against affirmant for the purpose of harassment.

5. Affirmant verily believes that there is, and never was any triable issue of fact, that his adversaries have been playing 'fast and loose' with the courts on this issue, and summary relief should be granted.

WHEREFORE, it is respectfully prayed that summary disposition be awarded to petitioner on such factual matter, together with any other, further, and/or different relief as to this Court may seem just and proper in the premises."

b. On October 21, 1986, affirmant wrote to Hon. BURTON S. JOSEPH, as follows:

"1a. The letter received today from Richard C. Cahn, Esq., dated the 20th inst., indictes that Your Honor has complied with my present adversaries desires, denied or held in abeyance my motion for summary relief, and has determined to have the above hearing go forward.

b. I will, consequently, in 'four dimension', 'living color', 'nail the jellyfish to the wall', and produce the full and complete truth, with respect to the issue before Your Honor.

c. There will be no unavoidable 'loose ends', on my part, and with that intent, I enclose some subpoenas for Your Honor's counter-signature.

d. Although presumably, some of these subpoenas do not need Your Honor's counter-signature, to resolve and all doubts on the subject, they are enclosed.

e. Since time is short, Your Honor's immediate attention to counter-signing and returning same is respectfully requested.

2a. Your Honor's attention is drawn to the fact that I am entitled to 'everyone's evidence', and the subpoena merely represents the judicial obligation of all witnesses to come forward (Application of Barbara, 7 A.D.2d 340, 183 N.Y.S.2d 147 [3d Dept.]. In other words, it is their duty, as much as my right!

b. Members of the judiciary, are not excepted from the obligation to testify (Dennis v. Sparks, 449 U.S. 24).

c. Since this habeas corpus proceeding, is criminally related, the right of subpoena has constitutional implications (Amendments VI, XIV U.S. Constitution).

3a. In view of the evidence heard by Your Honor in the Estate matter, or the evidence heard by Judge Melia, there was absolutely no reason for me to have been fearful nor try, nor did I ever try, to avoid a hearing where the accusation was that I 'willfully failed to comply with a lawful order directing [me] to turn over books and records', or similar contrived nonsense!

b. Why have my adversaries, past and present, avoided or tried to avoid a trial on the merits of the accusation?

c. Why in every contempt proceeding, have efforts always been insure by non-presence or the possibilities maximized so that I would not be able to attend such hearings?

d. Why each time I am arrested and hauled into Suffolk County, do they refuse to give me a trial on the merits?

e. In short, contrary to the false and misleading propaganda circulated, it was my adversaries who continuously staged situations to make it appear that my physical non-appearance was deliberate and intentional, with its attendant adverse implications, when it was really they, not me, who consistently avoided a hearing on the subject!

4a. Did Judge Harry Seidell, Surrogate Ernest L. Signorelli, Vincent G. Berger, Jr., Esq., Anthony Mastroianni, and everyone else know that I was engaged before the Order of Contempt was signed? Of course!

b. Did they all know that they could not enter an Order of Conviction under the circumstances? Without question! They had the long opinion of Hon. George F.X. McInerney before them at the time, and in addition thereto, Mr. Berger, according to his time sheets, spent three hours of research on the subject, before submitting an Order and Warrant.

c. The Order and Warrant was immediately submitted, immediately signed, and immediately turned over to the Sheriff for execution!

d. Had I appeared on March 7, 1978, Mr. Berger and Mr. Mastroianni would have certainly found some excuse for not going forward with the hearing, that is also certain.

5a. No one was looking for 'books and records' when the Sheriff of Suffolk County, was making numerous forays into Westchester County and New York City, at astronomical costs to the County!

b. No one was looking for 'books and records', when I was seized, taken to Suffolk County, and incarcerated therein!

c. No one was looking for 'books and records' when they incarcerated by wife and middle child!

d. No one was looking for 'books and records' when they were telling neighbors that I was a 'fugitive from justice', practically destroying my youngest child!

6a. With seven (7) accountings on file in New York County, Berger and Abuza told Judge Seidell that they could not account in Suffolk County, because I did not account in New York County or that books and records were missing!

b. It was Berger, Abuza, Mastroianni, and Signorelli, who did not desire to render an accounting, and needed some public excuse to support that fact!

7a. Since Holmes' dog 'could distinguish between being kicked, and tripped over' (The Common Law, p. 3), so can I, so could Judge Melia, so could the Grievance Committee, and I am absolutely certain so can Your Honor or any fair minded person!

b. Since everyone desires a 'hearing' on this 'so-called' issue, and desires to avoid the ultimate issue, to wit., the issue of whether I was in criminal contempt, I, as a mere actor in this tragic charade, will play my part as best I can, aided by subpoenad testimony.

c. No, I did not 'default', and certainly did not waive my constitutional right to be present on this criminal charge, for it was my adversaries who repeatedly refused to proceed to trial on the issue, when I was present!

d. This was, and still is, 'blackmail' and "extortion", and the 'machinery of justice' is being used by my adversaries, past and present, for that end, with Your Honor and myself, and the Estate, the innocent victims!

8a. I hope that Your Honor will exert his best efforts to have made available the entire court file!

b. Ninety percent (90%) of a court file, is not lost and misplaced by accident, when all that survives is the incriminating documentation.

c. That the Surrogate's Court file was being continuously pruned was evident to Judge Melia, during my wife's hearings, when affidavits of her actual engagement, or my hospitalization, all sent by certified mail, were missing, and instead the Surrogate's Court records revealed an unexplained default.

d. That the Surrogate's Court file was extensively pruned was also evident to Judge Melia, during my hearings, when all exculpatory, although concededly filed, documents were also all missing.

9. Most especially, I do not wish anyone, during or after the hearings to forget, that it was my adversaries who desired same!"

c. On October 25, 1986, your affirmant wrote to Hon. BURTON S. JOSEPH, as follows:

> " 'I have made that absolutely clear to you. That there was no case, no authority, no anything to justify what occurred twice over in Surrogate's Court" (Former Assistant County Attorney, Erick F. Larsen, Esq., Examination Before Trial, Sept. 18, 1984, p. 64, in the presence of Robert M. Calica, Esq.).

Honorable Sir:

1. Today is St. Crispin's Day (Shakespeare's Henry V, Act. IV, Sc. III, l. 67), and in the spirit of the day, I am in a combative mood, although certainly not against Your Honor!

2. An event, which became known to me after October 20, 1986, the date of my last communication with Your Honor, which was a letter request to have some subpoenas countersigned for the above hearing, has compelled me to re-think and revise my intended charted course, in a very dramatic fashion.

3a. As Your Honor is aware from the testimony, affirmations, and briefs before Your Honor, I have strong views on Amendment V of the Constitution of the United States, which are supported by crystal clear statements by the U.S. Supreme Court, Code of Professional Ethics, and about every treatise on the subject.

b. Indeed, eons ago, on the record, I told Surrogate Ernest L. Signorelli that the '5th Amendment represents an attempt by man, in his long hard journey from the cave, to make himself civilized'.

c. I have also stated that there are many fine things that I could say about Honorable Alphonse J. Melia and the Grievance Committee Attorneys in Westchester, but if compelled to make a single choice, I would select that they never asked me, 'why, if I was so clearly innocent did I invoke the 5th Amendment.'? They knew what the 5th was all about, and respected my intent to preserve its force and effect.

Obviously, the 5th Amendment can have little practical significance, unless the innocent, as well as the guilty, invoke its protection. It is only by the innocent invoking the 5th, as a societal obligation, can the public understand that they should not presume guilt when a person chooses to remain silent!

d. If civilized men, in uncivilized wars, can, as they do, bind themselves to agree that a prisoner need only give his 'name, rank, and serial number', and may not be compelled to say more, I have little patience for those who compel a defendant or potential defendant, by whatever means, to say more!

4a. As Your Honor is well aware, I have repeatedly stated that criminal prosecutions can and should only be undertaken by the District Attorneys, who understand and generally obey their obligations not to make public statements about pending proceedings, which indeed should be the obligation of the private attorney when he becomes a "self styled public prosecutor" (Polo Fashions v. Stock Buyers, supra).

b. In any event, subsequent to the 20th inst., I learned that Robert M. Calica, Esq., the private attorney for the Suffolk County Sheriff, had recently spoken to the press, concerning an article that is to be published, which refers to the above matter, and consequently, I am reluctantly constrained, but nevertheless do, hereby waived any and all 5th Amendment rights and privileges.

c. I will now speak, speak loudly and publicly, restrained only by the limits of truthfullness.

My family, has unjustifiably suffered sufficiently, by my adamant and incorrigible insistence, that during judicial proceedings, the media should not be made, by intentional conduct, a simultaneous, and competing, forum by attorneys and litigants!

5a. So that Your Honor, the press, and others may be guided accordingly, I will set forth the background skeleton facts, on which about <u>everyone</u> concedes is the truth, albeit the great attempts that were, and are, made to conceal them from the public arena.

b. The State of New York, the County of Suffolk, and the Judiciary, has expended hundreds of thousands of dollars (in addition to my personal costs and those imposed upon the Kelly estate), in Surrogate Signorelli's sham, Captain Ahab, pursuit of 'phantom' books and records, which were <u>always</u> in his possession or control!

This was the implicit finding in the Report of Judge Melia, as well as Your Honor's!

c. Captain Quegg, in the Caine Mutiny, had an extensive search made for a 'phantom key', to support his theory, during a war, no less, that a quart of strawberries had been consumed, without his authority.

d. Surrogate Ernest L. Signorelli, incarcerated me twice; incarcerated my former wife, Doris L. Sassower, Esq., and greatly led to the destruction of our marriage; incarcerated our middle child, who came down from Harvard for a visit; caused the Sheriff's Office of Suffolk County to make numerous forays into Westchester County and New York City, practically destroying our youngest child by falsely telling neighbors that they were looking for me, 'a fugitive from justice', when I was always ready to surrender; had me charged with assaulting a deputy sheriff, while handcuffed, causing his hospital treatment and extended sick leave [which charges were dismissed]; caused the District Attorneys of Westchester and Suffolk County to investigate and prosecute me [which were rejected as 'fishing expeditions']; caused the commencement of extensive Disciplinary Proceedings

against me and my wife [wherein we were both resoundingly vindicated], all in a fictitious attempt to obtain "phantom" books and records, which the Signorelli entourage had, to repeat, in their possession all the time.

Who knows about the aforementioned barbaric facts, since obviously no judge would every set them forth in any decision or opinion, and certainly Mr. Calica did not divulge them, I am sure, to Newsday!

e. Al of the above, happened before the first contempt proceeding, and after I had turned over all the books and records of the Kelly estate that I had, and concededly at all times, the Signorelli court had all the necessary papers to properly process the Kelly estate.

The fictitious and phantom 'books and records', which I supposedly was holding, was simply fabricated to camouflage the real events at Surrogate Court.

f. My removal, as executor, in March of 1977, as having occurred, a year before, in March of 1976, was clearly shown to have been sham and contrived, by at least 20 documents of the Surrogate's Court, in addition to the sworn confession and admissions of Surrogate Signorelli himself!

g. Surrogate Signorelli, in order to have his former campaign manager, Vincent G. Berger, Jr., Esq., participate in the Kelly estate, not only found some specious excuse to remove me, ex post facto, but in addition thereto, ignored the designation of Doris L. Sassower, Esq., as the alternate executrix.

h. All of the aforementioned, and more, became eminently clear in about 25 days of hearings before Judge Melia, wherein Surrogate Signorelli, Mr. Berger, Public Administrator Anthony Mastroianni, and Chief Clerk of Surrogate's Court all testified.

i. All the information placed in the public arena by Surrogate Signorelli, and his appointees, was totally false, contrived, and misleading!

j. Your Honor's recent opinion of August 1, 1986, does not negate such conclusion. Indeed, it independently confirms same.

6a. Now, almost ten (10) years later, at great governmental expense (in addition to my own), this charade and hoax is being continued by the Appellate Division, Second Department, and the Suffolk County entourage, with Your Honor, like myself, apparently being directed to play the part of simple soldiers in Tennyson's Charge of the Light Brigade, duty bound to follow mistaken, if not, inane directions!

b. Thus, since my adversary has communicated with the press, I will give them the full story of judicial corruption, misconduct, waste, and concealment; and will solicit their attendance at future hearings so that they may hear and see the truth with their own eyes and ears, rather than opinions based on paper submissions!

How would a reporter from Newsday find out if I was on trial on a particular day in Bronx County? She would telephone the court, write the court, or look at the records?

How does the Appellate Division, confirm that same fact, when everyone knows and agrees that I was on trial in Bronx County? By frivolously order hearings before Your Honor, requiring the presence of multiple parties, attorneys, and witnesses!

c. Initially, as the proceedings before Your Honor have demonstrated, and contrary to the impression which Mr. Calica apparently conveyed, the private attorney and litigant simply cannot afford to engage in frivolous litigation.

To the private attorney, law is as much a business, as it is a profession.

d. It is the government, the insurance companies, the large corporations, the large law firms, who can afford to engage in needless litigation. Indeed, as will be demonstrated at bar, while the governmental authorities have probably spent five times as much as I have, it goes unnoticed as to them, but has nevertheless, driven me to the point of bankrupcy!

7a. There are no books, records, or documents that I had, which were not turned over as "directed" before the first contempt proceeding was commenced; and my March 1977 removal, as of 1976, was clearly contrived.

b. These, and much more, were the finding of Hon. Aloysius J. Melia, in an almost one hundred (100) page report, after hearing the sworn testimony, confessions, and admissions of Surrogate Signorelli, and about everyone else associated with him, including examination of hundreds of documents!

Few know of the Melia Report, which Your Honor described as having:

> 'painstakenly considered the various allegations of impropriety, misconduct, and dereliction of duties that Mr. Sassower had been accused of, and said report clearly vindicated Mr. Sassower, it also set forth that the attorney for the inter vivos creditors [Charles Z. Abuza, Esq.], had misled prior courts .."

But everyone knows of the completely false stories that Columnist Signorelli gave to the Daily News, and about his completely false sua sponte diatribe, which he caused to be published in the New York Law Journal, as a 'decision' [which decided nothing] and "order" [which ordered nothing], which is repeatedly republished and copied.

c. Indeed, at the hearings before Your Honor, it was disclosed that Mastroianni had, since 1977, the records of the accountant for Mr. Kelly, a fact that was consciously concealed from Judge Melia and the Grievance Committee by Surrogate Signorelli, Mr. Berger and Mr. Mastroianni.

Had the Grievance Committee or Judge Melia known that Signorelli, Berger, and Mastroianni, had, at all times, the accountant's records, the Melia report would have certainly reverberated with an additional twenty-five (25) pages of sheer outrage!

d. Thus, before the hearings before Judge Melia, the Signorelli entourage, made it seem that they needed, not only the books and records that I purportedly had, but also the records of Kelly's accountant, that I did not, and never did, have!

e. In short, as a result of the hearings before Your Honor, it is now known that the only thing that the Signorelli entourage did not have was the 'deed' to the house [which I did not have either], and on which Your Honor correctly stated (p. 4):

> 'the title company, or County Clerk's Office could have supplied a description of the property or a photostat of the deed itself.'

f. Obviously, the failure to close title to a vacant house, at the cost and expense to the estate, according to the accounting of the Public Administrator, for seventeen (17) months, cannot be attributable to the fact that the original of a recorded deed was not to be found!

8a. The present hearings scheduled to be continued before Your Honor, for the purpose of determining where I was on March 7, 1978, when everyone knows, including the members of the Appellate Division, Surrogate Signorelli, Judge Harry Seidell, Mr. Berger, Mr. Mastroianni, Assistant Suffolk County Attorney, Erick P. Larsen, Esq., Mr. Calica, and Mr. Cahn, that I was on trial before Hon. Joseph DiFede, in Supreme Court, Bronx County, is a sheer waste of time and monies, by everyone, including governmental and judicial, through no fault of Your Honor, who apparently believes himself bound by an Order of the Appellate Division.

b. Since the Attorney for the Suffolk County Attorney has accommodated the press, I shall reveal to the press that the panel members of the Appellate Division, directed such hearing, although they actually knew, I was actually engaged on trial in Supreme Court, Bronx County, and that they felt constrained to conceal official misconduct in Suffolk County, resulting therefrom, including the 'Saturday nite massacre', by this senseless, frivolous inquiry, as to my whereabouts on March 7, 1978.

c. The Clerk's minutes book reveals where I was! In addition to making a telephone call and mailing an affidavit of actual engagement, what more could or should I have done?

d. There was never any intention by anyone in Suffolk County to hold any hearings as to the reason I did not turn over books and records, when in fact, as had been confessed, they were turned over almost one year previously!

e. The Appellate Division, and everyone else, simply had to conceal, inter alia, the events of the 'saturday nite massacre', that much is also clear.

f. I think, in addition to what Mr. Calica has told the press, through contrived factually founded opinions, the press should be told about my being incarcerated that day and most of the nite; the incarceration of Ms. Sassower, without food, water, or toilet facilities, resulting from her serving a writ of habeas corpus, which ordered my release; the incarceration of my middle daughter, under the same barbaric conditions, because she accompanied Ms. Sassower; the hospitalization of Deputy Sheriff Grzymalski, as a result of a street brawl when I attempted to attract the attention of the police; the licking of my own wounds in the cell block; the communication, on information and belief, by Presiding Justice Milton Mollen to Hon. Anthony J. Ferraro, attempting to have His Honor modify the Writ, and everything else that happened that day.

g. I think the press should be shown what happened to the Kelly estate, despite the valid attempts by Your Honor at preservation, when "judicial plunderers" take hold, and especially what happens to attorneys or trustees who make some attempt honor their obligations.

h. I shall also demonstrate that Surrogate Signorelli, Hon. Harry E. Seidell, and Mr. Berger, actually knew before the Contempt Order and Warrant were signed, that I was actually engaged, and actually knew that they had no legal authority to enter that Order and issue such warrant.

i. This Order was entered so that, once again, the Sheriff could be given a Warrant, have me incarcerated again, and compel me to keep silent about the happenings at Surrogate's Court.

9. The following facts, are undisputed, and documented:

a. In October 1976, having found a purchaser for the Kelly house, I asked Surrogate Signorelli for instructions, regarding its sale, so that no dispute would thereafter arise.

b. On the record, Surrogate Signorelli, directed me to enter into such contract, which I did.

c. At the eve of closing, without any warning or notice, Surrogate Signorelli, in a remarkably irrational performance, stated that I had been removed in March 1976, held the contract to have been entered without authority, and cancelled same.

Instructively, no one has ever justified Surrogate Signorelli's conduct in cancelling same.

d. When Surrogate Signorelli, learned that I had in my possession a Certified copy of Letters Testamentary, issued on March 14, 1977 (Exhibit 'A'), or one year after the claimed removal, the Surrogate ordered that I surrender same, apparently without realizing the possibility that I had photostatic copies of same, which I did.

e. Surrogate Signorelli, was 'hoisted by his own petard', after cancelling the contract of sale, since he could find no one who was willing to purchase same at a greater price. Finally, after seventeen (17) months, this vacant house was sold to the same person for the same price!

f. As expressly found by Judge Melia, and impliedly by Your Honor, it was the Kelly estate, who was called upon to pay the cost of this Signorelli demented blunder, as well as the expenses for the attempts made to have me conceal this and other facts.

g. After I had turned over all the Kelly books and records, (1) without any accusation, (2) without notice of any hearing, I was (3) tried, (4) convicted, and (5) sentenced to be incarcerated, for non-summary criminal contempt, for 30 days.

h. Again, without notice or knowledge of what had happened the prior day, during the early hours, Deputy Sheriffs of Suffolk County went to Westchester County, had me arrested, held me incommunicado, refused all requests that I be permitted to present my hastily prepared Writ of Habeas Corpus.

i. At Surrogate's Court, I again, was kept incommunicado, took advantage of my 5th Amendment rights, insisting that I be given a trial or allowed an opportunity to present my Writ to a Supreme Court jurist.

As Surrogate Signorelli admitted before Judge Melia, he did not recognize my 5th Amendment rights, and instead incarcerated me.

j. Released under a Writ of Habeas Corpus, Columnist Signorelli gave a solicited private interview to a Daily News reporter in his Chambers, where I was accused of misappropriating the Estate monies, selling a house without authority, and many other admittedly false accusations.

k. It should have taken no American jurist more than 4 seconds to conclude that the aforementioned conviction was totally invalid, at the hearing of such writ of habeas corpus, and it took the jurist therein no more than 2 seconds to so conclude.

l. Although the jurist was very courteous and performed with great dignity, with members of the paid staff of Surrogate's Court always in attendance, this habeas corpus proceeding went on for about four days, when the federal court, essentially put a welcomed 'gun to His Honor's head', the hearings terminated, and the writ sustained.

m. A second contempt conviction, based on the same allegations, also went down the drain.

l. A third was commenced, again with the same false, perjurious, and contrived allegations about [phantom] 'books and records'. All these contrived proceedings, by Mr. Berger and Mr. Mastroianni, were at the cost and expense of the Kelly Estate

10a. In the meantime, Surrogate Signorelli, wanted the Attorney General's Office to appeal the determination sustaining my first Writ of Habeas Corpus, declaring the conviction null and void.

b. Everyone conceded that such conviction was an a complete nullity, and the Attorney General's Office absolutely refused.

c. Surrogate Signorelli, placed pressure on such Office and at public expense they appealed.

d. Would or could a private attorney, prosecute such a meritless appeal? Would Signorelli ever think of prosecuting such appeal if he had to pay same out of his private funds?

e. Obviously, the Appellate Division concluded the conviction to be totally invalid (Sassower v. Signorelli, 65 A.D.2d 756, 409 N.Y.S.2d 762 [2d Dept.]). Nevertheless, although, as everyone knows, on a writ of habeas corpus the merits are irrelevant, whether the person is a 'saint' or 'sinner' makes no difference, only the legality of incarceration is at issue, the Appellate Division took-of like some wild torpedo.

e. The Appellate Division stated, as fact, inter alia, that I did not turn over the "books and records", and made other factually false and untrue statements, all of which are to be found nowhere in the record on appeal.

f. Unquestionably, comparing such decision and the Signorelli sua sponte diatribe, such 'unadulterated irrelevant garbage' revealed that the diatribe had been hospitably, but unlawfully, received!

11a. Thus, Judge Melia, was placed in the uncomfortable position of finding, as he was compelled to find, in view of the admissions and confessions, that the aforementioned opinion of the Appellate Division, was just 'contrived nonsense', and His Honor so found, without explicitly so stating.

b. Thus, Your Honor, was placed in a similar situation of finding in view of the evidence, that the aforementioned opinion of the Appellate Division, also contained 'contrived nonsense', and Your Honor so found, without explicitly so stating.

c. Again, the opinion of the Appellate Division, has been extensively published, can easily be found, while no one knows of Judge Melia's extensive report or Your Honor's opinion.

12a. Again, there is no question, that the circumstances surrounding the in absentia conviction on March 7, 1977, makes such conviction invalid!

b. A private attorney or private party would merely confirm that such engagement in the Bronx took place, no more!

c. But the judiciary, and the Suffolk entourage, can afford, what I, as a private attorney, cannot, to wit., wasting a great deal of time on such frivolous nonsense.

d. Consequently, I intend to show, the media that it is government, including the judiciary, not I, which is involved in frivolous litigation, in an attempt to conceal judicial misconduct!

13. If anything should be investigated, it should be the fact that the Surrogate's Court file was pruned, so that at the Disciplinary Hearings about 25 exculpatory documents were missing. At the trial before Your Honor, the Index Cards reveals that now about 90% has been pruned out, destroyed and concealed!

14. Again, bringing the media in, was not on my initiative, but once in, they should have the full truth, nothing less.

15a. With due respect to reporters, they do a great deal of reporting, but little thinking.

b. The readers, do almost no thinking!

c. Anyone who thinks about the subject, must recognize, that no individual practicioner or private person can afford becoming engaged in frivolous litigation, and certainly I cannot, but the costs generally imposed is on the little guy!

d. With respect to government attorneys, and big firms, who have all the resources to completely inundate the small guy with paper work, and sometimes do, they never have costs imposed upon them!

e. How can I, who on every trial and hearing have been found completely innocent of any misconduct, although I made certain errors, by hindsight standards, compete with the numerous attorneys in the Attorney General's Office, the Suffolk County Attorney's Office, and the Signorelli court!

f. After 10 years, without a cent of renumeration, every motion and action must count! I cannot, as Mr. Calica tries to argue, involve myself in frivolous litigation.

16. This default, and there is no such thing as a default in criminal proceedings, was intentionally brought about to harass me and my family, so that we succumb to a 'code of silence'!"

d. On October 27, 1986, with copies sent to all interested parties, your affirmant wrote to Ms. Jane Fritsch of Newsday, with respect to her published article:

"1a. The Signorelli entourage <u>never</u> had the intention of holding any contempt hearings on March 7, 1978 or at any other time!

You cannot waive your constitutional right to be present, assuming <u>arguendo</u> that was a fact, when there never was any intention to hold hearings!

b. This I will shown on November 6, 1986, or whatever date the Signorelli entourage appear and testify!

c. Common sense, irresistibly compels such conclusion, as I will here partially demonstrate!

2a. By May 1977, Mr. Berger and Mr. Mastroianni had received all the Kelly papers that I had in my possession, except for some duplicate copies!

b. That was admitted before Hon. George F.X. McInerney in four (4) days of hearings in 1977. The few papers irrelevant papers that Mr. Berger contended were missing, were found to be in his or Mr. Mastroianni's possession during the trial before Hon. Burton S. Joseph.

3a. This was also the finding of Hon. Aloysius J. Melia, in about twenty (20) days of testimony, where I was resoundingly vindicated, and in about four (4) days of testimony wherein Doris L. Sassower, Esq., was not only resoundingly vindicated, and with leave given to her to apply for sanctions against her prosecutors by reason of such meritless and frivolous proceedings against her!

b. The problem was that when I attempted to make same public, there were protests by Mr. Berger and Charles Z. Abuza, Esq., and I was compelled to keep a very low profile with respect to such testimony (Judiciary Law §90[10]).

4a. Again before Hon. Burton S. Joseph, all the testimony, indeed the admissions and concessions, were that I had turned over the Kelly books and records in 1977.

b. Additionally, during the hearings before Hon. Burton S. Joseph, it was learned that Mr. Berger and/or Mr. Mastroianni had in their possession, in 1977, the books and records of Mr. Albert Baranowsky, Mr. Kelly accountant.

5a. Thus in March of 1978, no one in the Signorelli entourage had any desire or wish to hold a contempt hearing and attempt to prove why I had 'willfully refused to turn over [phantom] books and papers'!

b. This scenario had been going on for two (2) years, in this and other related proceedings!

c. When I was there, the matter was adjourned. When I was in the hospital, or paralyzed, or in the Court of Appeals in Albany, or in the Appellate Division, or other court, there was always a default!

d. Once they knew I was elsewhere engaged, from Ms. Sassower's telephone call and my affidavit, they went through this 'mock' unconstitutional hearing in my absence, and never thereafter wanted a trial on the merits of the contempt!

e. Hundreds of thousands of dollars of public governmental monies has been spent on this judicial charade -- and ten (10) years later it is still going on!

6a. Since, the Signorelli entourage knew that I was incorrigible, they now used this pretended default, as the Berger records indicate (obtained during the before Judge Joseph), to harass Ms. Sassower.

b. Ms. Sassower and my children, indeed everything but my dog, were merely made hostages in this outrage on civilized values!

c. Putting my wife and daughter in jail, because, as the Assistant Suffolk County Attorney told the Appellate Division, the Supreme Court jurist who signed the Writ of Habeas Corpus directing my immediate release was 'illiterate' is ludicrous!

d. Orders of judges are obeyed, including those judges who are claimed to be 'illiterate'!

7a. I am fond of Judge Joseph, who I never met before, but His Honor's statement that Mr. Berger or Mr. Mastroianni could reasonably conclude, at the cost and expense to the estate, from my conduct, that I was withholding records is untenable 'banana oil'.

b. There are too many papers and documents in existence to prove the contrary!

c. Indeed, in 1980, Mr. Berger and Mr. Abuza had to contrive as an excuse for not accounting in Surrogate's Court, the fact that I had not accounted in New York County, when in fact seven (7) accountings had been filed! Since I was not notified to be present at the time, such statement to Judge Harry Seidell went undisputed!

8a. Had Mr. Justice Joseph, not, in my opinion, "blundered" by failing to insist that Mr. Abuza "zeolously" protect his clients, I doubt whether His Honor would have come to such conclusion!

b. Mr. Abuza, purportedly represented most of the Kelly beneficiaries, was simply a 'phantom' attorney in such representation! He was not there!

c. I know that a medical operation does not go forward unless all the principal and essential surgeons are present, absent necessity!

d. Why should it be different in a courtroom?

e. Thus, expenses were heaped upon the estate and the Kelly beneficiaries, for this Captain Ahab pursuit of myself and my family, simply because the Kelly clan simply not represented at the trial before Mr. Justice Joseph, except as they were the incidental beneficiaries of my representing myself!

f. Phantom and token representation, simply cannot be permitted to exist!

Mr. Justice Marshal in Bounds v. Smith, 430 U.S. 817, 826) made a correct observation, when he stated:

> 'Even the most dedicated trial judges are bound to overlook meritorious cases [facts and contentions] without the benefit of [zeolous] adversary presentation.'

9a. Personally, the important part of the report of Mr. Justice Melia, is when His Honor stated (p. 2):

> 'It is important to note at the outset that none of these charges involve acts of moral turpitude. There is no claim that respondent [me] siphoned off a client's assets nor was guilty of overreaching, nor any similar impropriety.'

b. I am absolutely certain that if you would ask Judge Joseph, or Mr. Calica, or Mr. Cahn, or anyone else, they would totally agree with that statement.

c. There was no question that I was uncomfortable with the very large tax bit, and tried to have the beneficiaries agree to a different distribution, particularly when the widow had absolutely no monies, and was on public welfare!

d. If my plan worked, there would have been no taxes, or very little. I could not get an agreement, and as was conceded before Judge Melia, no loss occurred because of any delay on my part.

e. Judge Joseph thought I should suffer a little penalty, I totally disagree with His Honor's conclusion, but if that is His Honor's conclusion, right or wrong, I accept it -- I am independently poor!

10a. What I do not accept is treating estates or trusts as 'judicial fortune cookies', designed not to have the assets go to the beneficiaries, but to the 'Signorelli gang' or to advance his desires, at the time, to become a Congressman!

b. Mr. Berger was his campaign manager, who spent all his time, not in advancing the interests of the estate, but in harassing me, labeling me a pariah in the press and elsewhere, so that if I talked, no one would believe me. $1,495 to serve a single process, according to Mr. Berger, which incidentally was never even served!

c. Irwin Klein, Esq., the attorney who succeeded Mr. Berger, was Signorelli's personal attorney in his matrimonial matter! Go down the list of estate expenses, and you can come to your own conclusion!

d. Ask Mr. Cahn, who represented the beneficiaries, and what, if anything, Charles Z. Abuza, Esq., the 'phantom attorney' did as part of such representation?

11a. I am not against attorneys, like anyone else, getting paid, even getting paid for bad results, provided they get paid for their effort.

b. Indeed, I go further, when an attorney represents a client, whether he gets paid or does not, he or she must represent that client with 'zeal'!

c. An attorney, who is appointed by the court to represent a client, without fee, must represent that client with the same enthusiasm as when he represents one who very generously compensates him, otherwise the whole concept of 'equal protection' collapses!

d. Thus the total absence of Mr. Abuza physically, and in every other respect, in my opinion flaws the proceeding!

e. To put it otherwise, an attorney represents a client, is supposed to advance the interests of his client, and not be an amicus [friend] of the Court! In the Signorelli Court, everyone 'scrubs each other's back' at the expense of the estate!

f. Try to defend your client, your estate, your trust, or oath of office, and you may find yourself, your spouse, and family in jail, at Suffolk County expense!

12a. More than 150 years ago:

> '... James Buchanan [thereafter President of the United States] brought in a bill which became the Act of March 2, 1831. He had charge of the prosecution of Judge Peck and during the trial had told the Senate: 'I will venture to predict, that whatever may be the decision of the Senate upon this impeachment, Judge Peck has been the last man in the United States to exercise this power, and Mr. Lawless has been its last victim.' ' (Nye v. United States, 313 U.S. 33, 46).

b. My family, well knows, that Mr. Lawless, who was incarcerated for 24 hours because he published in a newspaper some criticism of Judge Peck, was not the last victim, nor Judge Peck the last tyrant!

c. Come on the 6th, let us hear, what Surrogate Signorelli and his 'mobsters' have to say!

13a. If Mr. Calica or anyone else wishes to try this matter in the press or anyplace else, I am ready!

b. Incidently, my daughter who came for a week-end visit from Harvard, only to find herself incarcerated in Suffolk County, later became a reporter for the New York Times, and neither she, nor I, ever attempted to use that position as a means to have this matter published in the media."

10a. It became obvious, in addition to confidential information received, that affirmant's adversaries having no defense to the vacatur of such conviction, were going to harass affirmant into submission or have the matter fixed.

b. Consequently, the complaint, dated November 6, 1986, in this action was filed.

c. On November 10, 1986, affirmant moved this Court for relief, as aforementioned, the papers on which are incorporated by reference.

d. On November 10, 1986, affirmant wrote to His Honor as follows:

"Honorable Sir:

1a. The within Notice of Motion was prepared and executed before receipt of the Report of Acting Justice Burton S. Joseph, dated November 6, 1986, a copy of which is herewith enclosed.

b. Such determination, in my opinion, reinforces my contention of bad faith harassment, Mr. Justice Joseph specifically excluded in the making of this charge!

2a. Everyone involved, including the Appellate Division, the Suffolk County Attorney's Office, and those representing the Public Administrator, actually knew that on March 7, 1978 I was in the midst of a trial in Supreme Court, Bronx County, at the time the committment order was signed, and at all of the times thereafter!

b. Setting this matter down for a 'Pearl Harbor style Inquiry', and insisting that it not be disposed of summarily, was patently frivolous, dilatory, and harassing! In view of the documentary evidence, the request that Doris L. Sassower, Esq., be called, as a Court's witness, to travel to a distant county for that purpose, as still another confirming witness, was senseless.

c. The photograph of Robert M. Calica, Esq., counsel to the Suffolk County Attorney, in Newsday of November 2, 1986, with drawers of files, had numerous statements by me, others, and indeed court documents, confirming such other engagement, but that office, as well as the Public Administrator, insisted on a hearing nevertheless.

d. Were not Mr. Calica and Richard C. Cahn, Esq. [the Attorney for the Public Administrator], not been civil adversarial attorneys, but ethical public prosecutors, they would have affirmatively advised the courts that their files revealed, without contradiction, of such other court engagement, that the Surrogate's Court always knew of such other court engagement, that it knew it could not issue an order of conviction and incarceration based on such compelled absence, that the Public Administrator never intended to go forward if I had appeared, and that this Captain Ahab pursuit of 'phantom' books and records, which the Public Administrator always had in his possession, was an outright fraud, inter alia, upon the Estate's and government's pocketbook!

e. Martin B. Ashare, Esq., the Suffolk County Attorney, should inform the readers of Newsday, how much public funds were expended in such needless hearings, in such fraudulent pursuit of 'phantom' books and records!

3a. Mr. Ashare should inform the readers of Newsday, how much public funds were expended for the seemingly endless 1977 Writ hearings, as to whether the Signorelli (1) no accusatory charge; (2) no notice of any hearing or trial; the in absentia, (3) trial; (4) conviction; and (5) incarceration order, was valid!

b. It should not have taken, nor did it take anyone more than two (2) seconds to conclude that it was not valid, but the Suffolk County Attorney's Office had to have about five (5) days of hearings, to make it seem like some esoteric point of law was involved!

c. Perhaps the public should be informed that according to former Assistant District Attorney, former County Court Judge, and Acting Supreme Court Judge Ernest L. Signorelli, a Writ of Habeas Corpus is not available to one incarcerated by him, under the aforementioned conditions; or that he does not know, according to his sworn testimony, what an [accusatory] 'charge' is 'exactly', nor less than nothing about the 5th Amendment!

4. Mr. Ashare should inform the readers of Newsday, how much public funds were expended by the numerous forays by the Sheriff's Office into Westchester, New York, and Kings Counties in order to apprehend me, 'a fugitive from justice', when it had in hand my written offer to surrender at any time convenient to that office at Supreme Court Westchester, Bronx, or Manhattan!

5. Mr. Ashare should inform the readers of Newsday, about the incarceration of DORIS L. SASSOWER, Esq., and our daughter, simply because they served a Writ of Habeas Corpus, directing my release!

6. How much more monies are now going to be spent, Mr. Ashare, in pursuing these 'phantom' books and records which were in the possession of the Public Administrator since before the first contempt proceeding, in order to conceal the 'plundering', 'blundering', and 'barbaric' practices in the Suffolk Surrogate's Court and by your client?

7a. In any event, when criminal contempt proceedings are pending, I think it is inappropriate for Mr. Ashare, a public official, to inflame and pollute the public arena.

b. In 1977, it was Surrogate Signorelli, Vincent G. Berger, Jr., Esq., and Anthony Mastroianni, soliciting and making private statements to the Daily News for publication!

c. In 1978, it was Surrogate Signorelli, publishing his sua sponte diatribe, which decided and ordered nothing, in the New York Law Journal!

d. Now it is Mr. Ashare, who is following the same course!

e. The only difference between today, and ten (10) years ago, is that I am, unlike before, responding to the media, instead of remaining silent!

8a. Mr. Ashare and his co-confederates do not have to make any frivolous motions. All they need do is have a judge's law secretary, ex parte, telephone a Westchester County Jurist to change the venue from Westchester to Suffolk!

b. I do not believe that the robe is an emolument of office to improperly influence the determinations of other jurists, and must make motions for the relief I seek, even at the risk of concealing judicial corruption that jurist may call the motion frivolous!

c. The business day following, the jury's return of the guilty verdict for Chief Circuit Court Judge Martin T. Manton, the New York Times editorialized:

> 'Nothing could strike a more deadly blow at the foundations of our democracy than the evidence, or the mere suspicion, that ... any litigant has an 'inside track' that all men do not come into court on the basis of equality.' (New York Times, Editorial, Monday, June 5, 1939, p. 16).

d. At least Judge Manton's attorney could have said, his client did not throw District Attorney Thomas E. Dewey and his family in jail, without a trial, for disclosing his corruption!

e. I think if Mr. Ashare desired to make a public statement, that was both correct and fair, he could have adopted the sworn testimony of Assistant County Attorney, Erick F. Larsen, Esq.:

> 'I have made that absolutely clear to you. That there was no case, no authority, no anything to justify what occurred twice over in Surrogate's Court' (Former Assistant County Attorney, Erick F. Larsen, Esq., Examination Before Trial, Sept. 18, 1984, p. 64).

9a. Perhaps, Mr. Ashare, the readers of Newsday should know that when the Public Administrator, a Signorelli appointee, needed an attorney, he retained a Manhattan based matrimonial and criminal attorney, who happened also to be Signorelli's private matrimonial attorney. His claim against the Kelly estate was for $12,500 when all he could show was one affidavit opposing the expeditious termination of the Estate proceeding! Mr. Justice Joseph gave him $1,000 [too much]! Can not, Mr. Ashare, the public assume that this is the way Surrogate Signorelli pays his private obligations?

b. For serving me with an Order to Show Cause, which the process server failed to do, and which the Sheriff of Westchester County would have done for about $15, the Estate was billed $1,495 by a local acquaintance!

c. In 1978, one year after Ms. Sassower was incarcerated for serving a Writ of Habeas Corpus, the Public Administrator, subpoened Ms. Sassower to come to Riverhead to testify as to the whereabouts of books and records which the Public Administrator thereafter admitted he had in his possession since 1977, the Estate paying the local process server $168!

d. Mr. Ashare, tell the readers of Newsday, how Signorelli authorized me to enter into a contract of sale, on the record, then aborted same at the eve of closing as unauthorized, and that it thereafter took the Public Administrator seventeen (17) months to convey title to the same person for the same price. How the Public Administrator tried to impose upon the Estate the cost of maintaining such vacant house for such period of time, and that Mr. Justice Joseph denied the Public Administrator any commissions (which goes to the County) because of same.

Mr. Ashare, weren't the readers of Newsday entitled to know that County funds were denied to it because of such conduct by the Public Administrator, Signorelli's appointee!"

11. The following day, November 11, 1986, affirmant moved to confirm the Report of Hon. BURTON S. JOSEPH, as follows:

"1a. This affirmation is in support of a motion to confirm the Report of Hon. BURTON S. JOSEPH, dated November 6, 1986 (Exhibit 'A'), rendered pursuant to hearing directed in Sassower v. Finnerty (96 A.D.2d 585, 465 N.Y.S.2d 543 [2d Dept.]).

b. His Honor concluded:

> '... George Sassower, Esq., was engaged on trial in the Bronx County Supreme Court on the day he failed to appear for the contempt hearing in question. This Court further finds that the Appellant, George Sassower, Esq's. failure to appear on March 7, 1978, the date set for the contempt hearing did not constitute a voluntary waiver of his right to be present and offer evidence in his defense.'

2a. The unanswered question which His Honor did not answer, although the answer seems irresistible compelling, is whether affirmant's adversaries would have proceeded to trial had affirmant been present on March 7, 1986?

b. If this Court should confirm His Honor's Report that answer should soon be forthcoming.

3. Affirmant suggests that his adversaries cut the Gordian Knot, and on this motion consent to the dismissal of these perjurious accusatory charges, here and now, unless they desire to participate in the 'Great Suffolk County Massacre'!

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

12. On November 27, 1986, your affirmant wrote to the Clerk of the Appellate Division, as follows:

"Dear Mr. Brownstein,

1. I reject, as being unnecessary and dilatory, the suggestions made by my adversaries, that the Report of Hon. BURTON S. JOSEPH, be made the subject of briefing and oral argument.

2a. Mr. Justice BURTON S. JOSEPH found that my being engaged in Supreme Court, Bronx County, in the midst of a trial, did not constitute a waiver of my constitutional right to be present at a criminal proceeding in Surrogate's Court, Suffolk County.

b. I have, over many years, heard many very ingenious arguments, nevertheless I do not believe that any rational argument can be made to counter His Honor's conclusion under the circumstances at bar.

3a. It seems obvious, that my adversaries recognizing that there was absolutely no legal or factual merit for such criminal contempt proceedings in the first place and are intent on delaying the final and inevitable conclusion.

b. Your attention is drawn to the fact that I, anticipating that my adversaries were intent on dilatory tactics, ante litem motom, moved in the federal forum 'to bring to an expeditious conclusion, on the merits, under a constitutional scheme, a ten (10) year old non-summary criminal contempt proceeding'.

4. If my adversaries have any opposition to the Report of Hon. BURTON S. JOSEPH, let them set same forth expeditiously, here and now."

13a. On December 10, 1986, your affirmant wrote to Hon. ROBERT J. SISE, of the Office of Court Administration, and Presiding Justice MILTON MOLLEN, as follows:

"Heretofore, Your Honors designated Hon. Burton S. Joseph, as Acting Surrogate in the above matter, and thereafter, as Acting Supreme Court Justice, in a related proceeding.

A copy of my motion to vacate an Order of Criminal Contempt, returnable December 22, 1986, is enclosed, and I would appreciate if Your Honors would make a designation for the disposition of said motion, since I have some doubts whether the prior designations are in effect for same."

b. On January 6, 1987, your affirmant wrote to Hon. ROBERT J. SISE and Presiding Justice MILTON MOLLEN, the following:

> "1. With respect to my letter to Your Honors dated December 10, 1986, the only opposition to my motion returnable December 22, 1986 was by the firm of Cahn Wishod Wishod & Lamb, Esqs., who believed the motion should be assigned to Hon. Burton S. Joseph, pursuant to Your Honors' prior designations.
>
> 2. I have no objection to such designation to Mr. Justice Joseph, except I believe that since a non-summary criminal contempt proceeding is an independent proceeding (cf. N.Y. Jur 2d, Contempt, §46, p. 280), a new designation should reflect His Honor's authority.

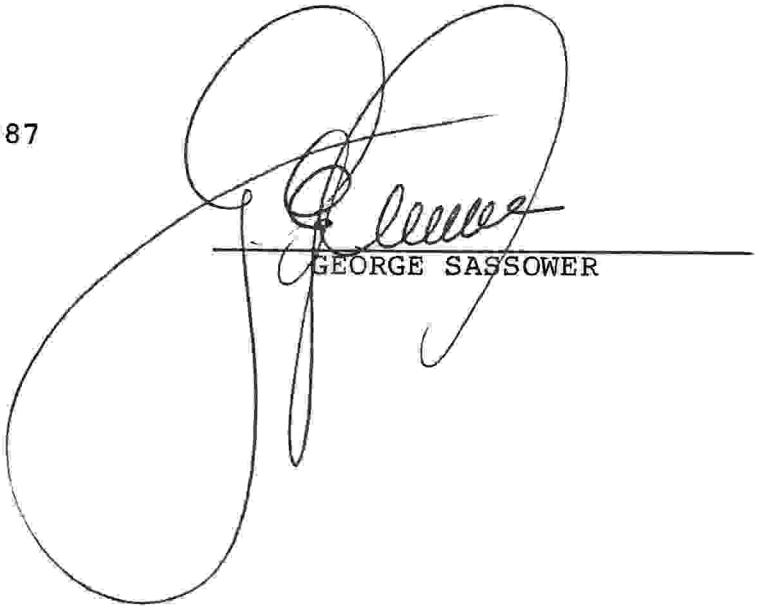
c. Although Mr. Justice BURTON S. JOSEPH recused himself, Justice ROBERT J. SISE has failed to designate another jurist to render a determination of such motion, on information and belief, at the desire of Presiding Justice MILTON MOLLEN, who insists on being Surrogate Signorelli's "errand boy" in harassing affirmant and his family.

14a. Presiding Justice MILTON MOLLEN, Associate Justice ISAAC RUBIN, and Associate Justice MOSES M. WEINSTEIN are on notice that at any contempt hearing, on the merits, they will be called upon to testify.

b. Consequently, they and App. Div. 2d are disqualified since it is to their interest to find a constitutional waiver.

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

Dated: March 10, 1987



GEORGE SASSOWER