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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

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In the Matter of George Sassower, :
an attorney and counselor-at-law, :

GRIEVANCE COMMITTEE FOR THE SECOND :
AND ELEVENTH JUDICIAL DISTRICTS, :
Petitioner, :

GEORGE SASSOWER, :

Respondent. :

-----x

Brooklyn, New York
January 30, 1986

B e f o r e :

HON. M. MICHAEL POTOKER,

Referee

A p p e a r a n c e s :

ROBERT H. STRAUS, ESQ.
Chief Counsel, Grievance Committee

BERNARD T. McCABE
Certified Shorthand Reporter

PENGAD CO., BAYONNE, N.J. 07002 FORM 2046

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2 MR. SASSOWER: First, may I note that I came
3 in at two-twenty. If there is any repercussions for my
4 being late, I was in Supreme New York. I ran to make
5 this appointment which, unfortunately, I didn't make it,
6 at least time-wise.

7 MR. STRAUS: Judge Potoker, I assume you want
8 to make a statement, an introductory statement on the
9 record as to why we are here and what has been arranged.

10 THE REFEREE: I have the file, and I have
11 perused the file as to the charges against Mr. Sassower.

12 I believe, number 1, what we should do is
13 attempt to narrow the issues and set a date for the formal
14 hearing.

15 MR. STRAUS: That was my understanding as well.

16 If it is agreeable to Judge Potoker, what I
17 would like to do is to go through the Charges and the
18 Answers as we have them, and to discuss the proof that
19 will be offered, and what issues are actually involved.

20 If that is agreeable to you and Mr. Sassower,
21 I will proceed.

22 THE REFEREE: I have no objection.

23 MR. SASSOWER: I would think that before we
24 do that, in view of a statement which I prepared about five
25 o'clock this morning, it may render immaterial anything, or

1
2 some of the things that you may say, because I am conced-
3 ing your ability to do certain things.

4 MR. STRAUS: Suppose we do it in the context
5 of the charges rather than a statement referring to every-
6 thing. Perhaps, for example, if we dealt first with
7 Charge 1. If Mr. Sassower has no objection, I would
8 go through the pleadings. You have an answer in in re-
9 sponse to the pleadings. And, then, perhaps if there is
10 anything which is appropriate for you to say as to what
11 we are going to do at the hearing, that might be a good
12 time to do it.

13 MR. SASSOWER: I will wait until you finish.
14 Then I will make my statement and make comment. I mean,
15 you do whatever you want. I don't want to try your case.

16 THE REFEREE: We are not trying the case now.
17 We are just trying to set up some ground rules.

18 MR. SASSOWER: Well, I would say, offhand,
19 your Honor, I will do everything possible to shorten the
20 case. I will not leave any evidence available to me un-
21 turned.

22 I would think that his Honor has read the
23 charges, has read the answers, or can better read them
24 by himself rather than, you know, you making a comment at
25 this time.

MR. STRAUS: I don't intend to make any comments, Mr. Sassower. I intend to indicate to Judge Potoker and to you as to what our proof is as to each of the charges, and whether or not --

THE REFEREE: Let's do it that way.

MR. STRAUS: If I may, with respect to Charge 1, we have included as part of the petition a copy of the Order of Judge Gammerman. And I note that Mr. Sassower has denied that Judge Gammerman -- at least, his answer denies that paragraph.

Our proof as to Charge 1 would be -- let me finish.

MR. SASSOWER: O. K.

MR. STRAUS: Our proof as to this would be simply to offer a copy of the Order of Judge Gammerman in evidence; a copy of the Order of Judge Klein in evidence; and a copy of the affirmance of the conviction in evidence. That is all we intend to do with respect to that Charge.

What the issues are with respect to that Charge is something which are not clear to me in view of the nature of our evidence.

MR. SASSOWER: Go ahead.

MR. STRAUS: That is all I have to say with

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2 respect to Charge 1.

3 MR. SASSOWER: I would like you to make a
4 complete statement, and then I can deal with many of
5 your charges.

6 MR. STRAUS: I prefer to deal with it a charge
7 at a time. What is Judge Potoker's decision as to my
8 doing it a charge at a time or all at once? The question
9 which I raise is --

10 THE REFEREE: Mr. Straus has already indicated,
11 in support of Charge 1, they are going to offer copies
12 of the Orders of Judge Gammerman, Judge Klein, and the
13 affirmance of the Appellate Division.

14 MR. SASSOWER: O.K.

15 THE REFEREE: What is your position?

16 MR. SASSOWER: My position is this: -- and I
17 have gone through this issue before. It was very, very
18 thoroughly briefed. He was a good Judge.

19 Let me tell you, first, with respect to all
20 your documents.

21 MR. STRAUS: I can't deal with it on that
22 basis.

23 THE REFEREE: Let's address ourselves as to
24 Charge 1 first.

25 MR. SASSOWER: The issue on an Order -- and I

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2 am taking into consideration the rule of the Appellate
3 Division -- the rule of the Appellate Division, Second
4 Department, as well as the rule in the Appellate Division,
5 First Department, presumes that a full and fair hearing
6 was held on the underlying charge, so that it has pre-
7 clusive effect.

8 Gilbert v. Ranieri, which is the leading case
9 in New York, clearly knocks out --

10 MR. STRAUS: Do you have a citation for that?

11 MR. SASSOWER: Sure. I will give it to you.
12 Just a minute. This was Judge Melia who sustained the
13 last one, Gilbert v. T.L.B.

14 You can submit those documents. I will pre-
15 sent evidence that I was not given a full and fair hearing
16 on that charge. His Honor --

17 THE REFEREE: I want to stop you right now.
18 That's not before me. I have no right to go behind an
19 Order of a Judge --

20 MR. SASSOWER I will give you authority for --

21 THE REFEREE: -- or of the Appellate Division.

22 MR. SASSOWER: I will give you a Court of
23 Appeals case. The Court of Appeals says --

24 MR. STRAUS: I beg to differ with you.

25 MR. SASSOWER: Judge, all I say is this: Let

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me take --

THE REFEREE: What you are doing is, you lost in the Appellate Division and now you are coming to me.

MR. SASSOWER: This is what I did the last time:

THE REFEREE: The fact that you did it the last time doesn't mean that it is right.

MR. SASSOWER: Let me state what I feel is your function. I am trying to save time.

Your function -- and excuse me for being presumptuous -- your function is to tell the Appellate Division, in a report: here we have a conviction which was affirmed by the Appellate Division. On the other hand, the evidence shows one, two, three, four, five. I find that Mr. Sassower was or was not given a full and fair hearing. O.K.?

MR. STRAUS: That's what --

MR. SASSOWER: Wait a minute.

Then the Judge takes his report, gives it to the Appellate Division. They will either say -- I am only saying some possibilities. They will say: he was not given a full and fair hearing. He was given a full and fair hearing. Or, that we don't care whether he was given a full and fair hearing. Our Rule says so-and-

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so.

Now, this is -- you know, we have -- with all due respect, we have a Referee to report.

MR. STRAUS: Yes.

MR. SASSOWER: His Honor must report on the evidence.

All I am saying to you is that -- and I am going to come to it in a moment. If you will call up, or inquire of the Judges involved -- and I am going to tell you, frankly and openly, I know Judge Kupferman for many years; Judge Fein, Judge Kassel very, very well.

I am going to tell you that if you inquired by 'phone of them, or brought them down here, they will say, I am reasonably certain, Sassower was not constitutionally convicted. For other reasons, yes, for other reasons, we affirmed.

It had nothing to do with a hearing, because according to the Constitution of the United States, and the Supreme Court decisions -- and I will give you a line of them --

MR. STRAUS: Mr. Sassower --

MR. SASSOWER: Wait a second. Starting with Bloom --

MR. STRAUS: Will you give me a chance to --

MR. SASSOWER: I will give a statement of law

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to his Honor.

THE REFEREE: I don't think you need respond.
Again, I do not have those powers.

MR. SASSOWER: Judge --

THE REFEREE: I can review a decision of a --

MR. SASSOWER: I am not saying to review it.

THE REFEREE: Especially here, where it was affirmed by the Appellate Division. If you were not constitutionally convicted, you still have a right to go beyond there. You had a right to go into the Federal Courts.

MR. SASSOWER: I am in the Federal Courts right now.

Let me just say this: There is not one case -- by the way, it is pending in the Federal Courts.

THE REFEREE: There is no injunction --

MR. STRAUS: It is not pending. There is no stay of this proceeding, and the conviction has been confirmed. You are not making an accurate statement.

This conviction has been appealed, and it has been affirmed by the very Judges that you now represent would say that it was defective.

MR. SASSOWER: Yes.

MR. STRAUS: I would say it is very clear, from

1
2 the Rules of the Appellate Division, that a certificate
3 of conviction is conclusive evidence of your guilt. And
4 the Rule specifically provides -- let me finish, please --
5 691.7 (c) specifically provides that a certificate of
6 conviction is conclusive evidence of guilt of that crime
7 in a disciplinary proceeding.

8 Furthermore, it states that a Respondent at-
9 torney may not offer evidence inconsistent with the
10 essential elements of that crime.

11 Now, as I read that Rule, and as I asked Judge
12 Potoker to rule, you are not permitted to introduce the
13 type of evidence which you now indicate you seek to in-
14 troduce at this hearing. And that, I understand, is the
15 purpose of this pre-hearing. I believe Judge Potoker has
16 already ruled that you may not introduce the type of evi-
17 dence which you seek to introduce.

18 MR. SASSOWER: I just want to say one thing
19 I am going to ask your Honor to bear with me and keep in
20 mind what I consider one of the fundamental statements
21 made by the United States Supreme Court, Judge Marshall
22 in Pound against Smith, which is the leading case on
23 access to the Courts. He says --

24 THE REFEREE: I know. Mr. Sassower, you are
25 addressing yourself to the wrong forum.

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MR. SASSOWER: Listen to what I am going to say, your Honor. All I am saying, your Honor, is your Honor is too fast for me.

THE REFEREE: I am not fast at all. My powers are limited, sir.

MR. SASSOWER: Judge --

THE REFEREE: You are trying to broaden them.

MR. SASSOWER: No, Judge. No, Judge. Because all I am saying is this: Judge Marshall said this: -- I am not quoting exactly -- In the absence of an adversarial presentation, even the best trial Judge overlooks salient points.

All I am saying, your Honor, is this: I like activist Judges. All I am saying is: give me an opportunity to present my cases, to show your Honor, and maybe your Honor will change his mind.

All I want to say is: Judge, start off clean. Give me a chance to give my authority, give my authority.

THE REFEREE: Authority on what? That I have the power --

MR. SASSOWER: Yes.

THE REFEREE: Well, if you can submit it, I am sure he would be interested in it, too. I know I will. I am the presiding officer here.

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2 MR. SASSOWER: Very frankly I will say this:
3 But, you know, I don't like to present this in a hap-
4 hazard way. I would like -- may I ask this question
5 of your Honor? First of all, what was your Honor given;
6 or, could I ask what papers your Honor was given so that
7 I know what we are talking about, or has seen in this
8 case.

9 MR. STRAUS: He has a copy of the pleadings.

10 THE REFEREE: This is my file.

11 MR. SASSOWER: May I read it for the record?

12 We have a Notice of Petition by the Grievance
13 Committee dated November 12, 1985.

14 We have -- and I am just reading them -- we
15 have an Affirmation in Opposition of Mr. Straus dated
16 January 24, 1986. We have my letter to His Honor dated
17 January 22. We have two copies of that. Are they differ-
18 ent? We have two of them dated January 22. All right.
19 We have my letter dated January 16. We have my Notice
20 of Motion to the United States Circuit Cour of Appeals
21 dated January 19. We have -- may I read this covering
22 letter, your Honor?

23 THE REFEREE: I don't know why.

24 MR. STRAUS: Because you haven't heard the
25 arguments yet.

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MR. SASSOWER: What arguments?

MR. STRAUS: I don't understand why you are going through the procedure of inventorying Judge Potoker's file.

THE REFEREE: You are all over the lot. We are only on one subject matter, and let's restrict ourselves to that, and that is --

MR. SASSOWER: Let me finish. I have three more papers. We have a letter from the Appellate Division to Judge Potoker.

THE REFEREE: It has nothing to do with your response to Charge 1.

MR. SASSOWER: It certainly has, your Honor. Let me show you why.

THE REFEREE: Complete your --

MR. SASSOWER: O.K.

THE REFEREE: -- inventory.

MR. SASSOWER: We have the Order of the Appellate Division dated January 10, 1986, and we have my answer.

Let me say two words.

MR. STRAUS: Do you want some water?

MR. SASSOWER: If you don't mind.

With all due deference to his Honor, I would

1
2 like an opportunity, one, to supplement these papers,
3 because your Honor has none of my papers, and none of
4 my arguments.

5 Wait a second. None of them.

6 THE REFEREE: Sir, again, you are going far
7 afield, sir.

8 MR. SASSOWER: Judge, I am going to say that
9 the Appellate Division rejected his arguments that they
10 are conclusive. If you would look at my papers, your
11 Honor, you may recognize this was a fact. But, your
12 Honor hasn't seen my papers.

13 THE REFEREE: I do not have the authority to
14 go behind a ruling of a Supreme Court Justice, or the
15 Appellate Division.

16 MR. SASSOWER: O.K.

17 THE REFEREE: The Federal Court might have,
18 if you have a constitutional question before it; or the
19 Court of Appeals might have. I do not.

20 MR. SASSOWER: Judge, would you listen to me
21 for a moment and let me just say this: All I am saying
22 is your Honor should hold his decision in reserve. Let
23 me present my papers. Let me present my arguments, with
24 my legal authorities, including my papers to the Appellate
25 Division, and, your Honor, if your Honor was on a clean

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2 slate, may come to the conclusion that your Honor was given
3 the authority to look into it.

4 But if your Honor gives an opinion right now,
5 well, you know, then I am starting from -- I am starting
6 from two strikes against me.

7 I want your Honor not to come to a decision,
8 but just to reserve the decision until your Honor sees
9 both sides. Your Honor hasn't seen my papers. You see
10 a Notice of Petition, but you don't see my opposing papers.
11 You haven't seen where Mr. Straus, for example, moved
12 that I be disciplined without a hearing, based upon the
13 convictions. If Mr. Straus was right now, why didn't
14 the Appellate Division grant his motion.

15 Your Honor doesn't --

16 THE REFEREE: Again, that matter is not be-
17 fore me either.

18 MR. SASSOWER: I am saying your Honor hasn't
19 all the papers to come to a conclusion. That is all I
20 am saying at this point.

21 THE REFEREE: What you are saying, and you
22 haven't changed your position, is that I have the
23 authority to go behind the decisions already rendered by
24 Judges or the Appellate Courts.

25 MR. SASSOWER: Judge, I am just saying this:

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THE REFEREE: Do you want to submit a memorandum of law?

MR. SASSOWER: I want to start, your Honor, with all due respect, with a Judge who is going to say: I will not make up a decision until I get all the papers.

THE REFEREE: If you can show me I do have the authority, based on a higher authority, I have to abide by it.

MR. SASSOWER: That's all I want, your Honor.

THE REFEREE: I can't ignore the Court of Appeals or the Appellate Division.

MR. SASSOWER: Judge, I don't want you to ignore anybody.

I am just saying this, your Honor: Judge, let me read my statement, and maybe we will clarify the issues.

THE REFEREE: Let's get back. Mr. Straus has outlined his position.

MR. SASSOWER: Fine. I will state my position

THE REFEREE: With respect to Judge Gammerman and Judge Klein, and the affirmative convictions --

MR. SASSOWER: How is he going to prove it?

THE REFEREE: He is going to prove it by way of the submission of copies of the Order.

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MR. STRAUS: Absolutely.

That is the same procedure that will be followed with respect to Charge 2 and with respect to Charge 3.

It is our contention that the only issue for the Referee to report on, which is in dispute -- I think there is no factual dispute that there was a conviction and that the conviction was affirmed in each of these Charges. And I have yet to see anything to the contrary.

THE REFEREE: What is your position with respect to my authority with respect to Charges 1, 2 and 3? You will submit the copies of the Order, and it is cut and dried.

MR. STRAUS: I certainly will do that.

I think the only decision is whether it is a serious crime; and the Appellate Division directed you, in fact, to make a determination on that issue; in fact, directed me to include in the Petition the serious crime aspect.

THE REFEREE: I know Mr. Sassower knows my position. However, I will be most amenable to reading anything you have on the subject matter that may change my mind.

MR. SASSOWER: Your Honor, may I just ask this:

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A simple request.

THE REFEREE: You can't make it simple. You make it complicated.

MR. SASSOWER: A simple request. O.K.? I cannot control what is in your mind. All I am asking you -- all I am asking, your Honor --

THE REFEREE: I am sorry, there is nothing on my mind.

MR. SASSOWER: I want you not to express an opinion until you have heard both sides. And I am saying --

THE REFEREE: I don't know what you mean by that. What do you mean "I have heard both sides"?

MR. SASSOWER: Your Honor has said a few times: I am bound by what the Appellate Division said. Fine. O. K. You haven't seen my papers. You haven't heard my arguments. You haven't heard anything, and you have come to a conclusion.

THE REFEREE: I have come to a conclusion only as it relates to my powers.

MR. SASSOWER: Well, Judge, maybe I think differently and maybe --

THE REFEREE: I have already stated, sir, you may submit a memorandum of law to me and I will consider

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it.

MR. SASSOWER: I want to tell you something.

THE REFEREE: I will give you a formal opinion.

MR. SASSOWER: I will tell you something,
your Honor. I am going to say this very candidly and
frank: this to an attorney is a murder 1 charge.

THE REFEREE: I am not minimizing it. I am
not minimizing the fact that --

MR. SASSOWER: So far, my score with the
Grievance Committee is 32 charges thrown out; no charges
sustained, with leave, by the way -- with leave to apply
for sanctions against the Grievance Committee.

In each case, in every case, the Grievance
Committee said: We are bound by what the Appellate
Division did.

In each case, yes, in each case, I said: No.
In each case, the Judge, the Referee said to the Appellate
Division -- and I will give you the exact quotes -- a
very fine Judge, by the way -- in every case --

THE REFEREE: All Judges are fine, if you
win your case.

MR. SASSOWER: No, no, no. I have said this:
We can kid around. No, Judge. Judge, I want -- and I
don't think this is wrong, on a murder 1 charge I would

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2 not accept a juror who has said: this is the way I am
3 inclined; this is my view, before he even hears the
4 case. And I am sure your Honor has charged --

5 MR. STRAUS: Mr. Sassower --

6 MR. SASSOWER: Just a minute.

7 MR. STRAUS: No, no. You have been going on
8 and on and on. The Judge has not made a factual deter-
9 mination. If he has made a ruling, and you don't agree
10 with his ruling, he said: if you want to submit something,
11 he will be happy to hear you. Why are you going on and on?

12 MR. SASSOWER: Because I don't want anybody
13 trying a case who renders an opinion, even a tentative
14 one, before --

15 MR. STRAUS: We have to set the ground rules
16 for the hearing, Mr. Sassower. That's something we have
17 to do. We have to discuss what evidence is being received.

18 THE REFEREE: Mr. Sassower, do you think I am
19 wrong? If you do, you know what to do. That's my ruling
20 right now.

21 MR. SASSOWER: What do you mean?

22 THE REFEREE: It is up to you. You know what
23 remedies you have.

24 MR. SASSOWER: Judge, all I am saying is: you
25 can render any opinion you want, but listen to me.

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2 THE REFEREE: I have still left a proviso that
3 if you can show me any law to the contrary, I will be
4 glad to reverse myself.

5 MR. SASSOWER: May I have a minute to get
6 Gilbert against Barberi?

7 MR. STRAUS: If you can find it.

8 MR. SASSOWER: Give me five minutes. It is
9 44 N.Y.2d, I think.

10 MR. STRAUS: N.Y. 2d are over there.

11 MR. SASSOWER: Let me get the index first.

12 There are many cases rendered after Gilbert,
13 based on Gilbert. There are a lot of Second Department
14 cases.

15 MR. STRAUS: Rather than having you do your
16 research here, I would ask that you make a written sub-
17 mission, so if there is anything in there which I think
18 requires a response, I will have an opportunity to re-
19 spond to it.

20 I don't think it is appropriate for you to be-
21 gin to do your library research at this point.

22 MR. SASSOWER: You asked me for the citation.

23 THE REFEREE: What is the citation?

24 MR. SASSOWER: There was a long decision. The
25 A.D. is 74 A.D. 913.

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MR. STRAUS: Is that A.D. 2d?

MR. SASSOWER: A.D. 2d. 426 N.Y. 72. And the Court of Appeals, I think, is in 441 or 444. But, I will get you that. It is a long decision.

There are a lot of cases after Gilbert. Gilbert is the important case.

All right. Continue.

THE REFEREE: You will submit to me a legal memorandum based on that, or other cases?

MR. SASSOWER: Of course, your Honor.

THE REFEREE: O.K. Let's go on from there.

So far as Charges 1, 2 and 3, Mr. Straus has already indicated to me what proof he will offer.

MR. STRAUS: We are just going to offer copies of the documents.

THE REFEREE: Your position is, you want to go behind the decisions?

MR. SASSOWER: I am going to tell you this, Judge. Two days ago --

THE REFEREE: Sir! Please! That's your position?

MR. SASSOWER: Yes.

THE REFEREE: O.K. Let's go on to the next --

MR. SASSOWER: Do you want the Court of

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Appeals?

THE REFEREE: All right.

MR. SASSOWER: 504 N.Y.2d 285; 441 Sub 2d 49.

And if you shepardize that --

THE REFEREE: You will submit a --

MR. SASSOWER: Surely.

THE REFEREE: Mr. Straus, continue, please.

I will keep an open mind until then.

MR. STRAUS: With respect to Charge 4, the allegation is a pattern of frivolous and harrassing litigation.

We have annexed to the petition a schedule of cases under Schedule 1. At this point, we would like to submit an addition to Schedule 1 based upon additional proceedings which have been instituted since that date, or which have become available to us since that date.

I have a list here. I have a copy for Mr. Sassower. It is designated: Additions to Schedule 1. And I have one for you, Judge Potoker.

I don't know what Mr. Sassower's position is. Our position is that they are simply additions to the schedule which we have previously annexed to the petition which, basically, updates the petition.

We would like to know at this point what Mr.

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2 Sassower feels is an appropriate way for us to produce
3 the materials. They are quite voluminous and would, in
4 fact, probably require a large truck to bring in.

5 I don't know whether Mr. Sassower is contest-
6 ing that any of the items which are listed on Schedule 1,
7 or on the additions to Schedule 1, have not, in fact,
8 been brought; and I don't know to what extent he has in
9 his possession copies of these documents, which would
10 indicate that they were brought.

11 So, as to the trial on this issue, the question
12 really is what the measure of evidence is that is re-
13 quired. I don't know what is being contested as to the
14 schedule at this point.

15 MR. SASSOWER: Your documents, your documents,
16 with all due respect -- you finish your statement.

17 MR. STRAUS: That is what I intend to offer.

18 MR. SASSOWER: Fine. I am a defendant. I
19 am going to sit on my back and just object, because I
20 am going to tell you that a document filed in a County
21 Clerk's Office is only proof that it has been filed. It
22 does not mean that I received a copy of it. It does not
23 mean that I received an exact copy of it.

24 In fact, there has been so much switching of
25 papers here, it is scandalous. O.K. You take Judge

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2 Gammerman. I am going to give you more than you tell me.

3 THE REFEREE: Again, you are going away --

4 MR. SASSOWER: I am going to show Judge
5 Gammerman's Order is a fraud.

6 The only thing he has submitted to you is the
7 measure of evidence. If you want to bring in all the
8 evidence of every case, or the list of cases --

9 MR. STRAUS: Can we get an answer?

10 MR. SASSOWER: He is saying that the number
11 of cases determines that it is frivolous.

12 THE REFEREE: He didn't say that.

13 MR. SASSOWER: For what purpose --

14 THE REFEREE: He said a number of cases.

15 MR. SASSOWER: What does it prove? What does
16 it prove?

17 MR. STRAUS: The charge is pretty specific.
18 It says that you "knowingly and deliberately engaged in
19 professional misconduct which abused the judicial process".

20 MR. SASSOWER: Fine. Put in some --

21 MR. STRAUS: The evidence is as follows: Follow-
22 ing the dissolution, you engaged in a pattern of vexatious
23 litigation for the purpose of harassing, threatening,
24 coercing and maliciously injuring those made subject to it.

25 MR. SASSOWER: Somebody has to be on the stand

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so I can cross examine them.

MR. STRAUS: You can't cross examine a document, Mr. Sassower.

MR. SASSOWER: I can put in any document. I can file any document, sir, in the County Clerk's Office anything I want to. O.K.? All I need is a title and index number.

They are like monkeys there. They take it. Just because somebody files something doesn't mean it is evidence that it is on file. That's all it is, not evidence.

MR. STRAUS: We will ask Judge Potoker to accept the fact that those papers having been filed were accepted in due course by the Clerk of the Court. The question is whether you require us to produce everything which makes up those files which, as I said, is very voluminous.

MR. SASSOWER: Yes.

MR. STRAUS: That is what you are insisting upon?

MR. SASSOWER: Yes.

MR. STRAUS: In that event, that will be a rather lengthy and extremely difficult undertaking.

MR. SASSOWER: No. No. No.

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MR. STRAUS: In the first place, I would ask you to direct Mr. Sassower, who authored these documents, to produce them, since he has them in his possession.

I don't believe we should be put to the burden of having to go to the Clerk's Office in each case and have the Clerk produce these, since Mr. Sassower, as a litigant in this matter, has these in his possession.

He filed them. I believe that he has copies of them. Are you denying that you filed them?

MR. SASSOWER: Excuse me.

MR. STRAUS: Mr. Sassower, are you denying that you filed them?

MR. SASSOWER: Excuse me. I don't know what you are talking about.

MR. STRAUS: Are you denying you filed these?

MR. SASSOWER: I am going to tell you, Mr. Straus, very candidly --

MR. STRAUS: You are not going to answer my question?

MR. SASSOWER: Of course not. I think it is a loaded question.

Now, I will tell you, Mr. Straus, with a subpoena duces tecum, I want you -- I want you to get the County Clerk to bring his files here, which he will do,

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or to the Court room.

MR. STRAUS: I don't think that is necessary, because I am asking Judge Potoker to direct you to bring in copies.

MR. SASSOWER: I want to get the originals. I want to show they were tampered with.

MR. STRAUS: I will ask Judge Potoker to direct you to produce these documents rather than requiring us to subpoena the County Clerk of each Court in which you filed documents to produce everything.

Mr. Sassower, there are, literally, hundreds of actions which you filed, and in far more than three Courts. You have been all over the State of New York. You have been in the Courts at every level: in the Supreme Court --

MR. SASSOWER: Are you summing up, sir?

MR. STRAUS: I am not summing up. You said you have only been in three Courts. That's a misstatement of fact, a substantial misstatement of fact.

MR. SASSOWER: Tell me what substantial misstatement of fact?

MR. STRAUS: You have been in more than three Courts.

MR. SASSOWER: Tell me what Courts.

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MR. STRAUS: I don't hve to tell you. They are listed there in the --

THE REFEREE: You have copies of all these papers?

MR. SASSOWER: No.

MR. STRAUS: Do you say: no?

MR. SASSOWER: On the stand I will tell you about it.

MR. STRAUS: I am only asking because, supposedly, Mr. Sassower has indicated that he wanted to assist to expedite and move this along.

What we are trying to do now is define the issues of proof. It is alleged that you filed these actions.

MR. SASSOWER: May I --

MR. STRAUS: Will you allow me, Mr. Sassower?

MR. SASSOWER: I can't say anything?

THE REFEREE: This is not a criminal case.

MR. SASSOWER: Your Honor, with all due respect, it is a quasi criminal procedure.

MR. STRAUS: No; it is not a criminal case. I can call you to the stand, which will be my intention if you force me to.

MR. SASSOWER: Fine. Fine.

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2 MR. STRAUS: I will ask you whether you filed
3 an action in each of these cases.

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MR. SASSOWER: Fine. You can call me to the
5 stand. I will testify under oath.

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MR. STRAUS: The question is: do you want me
7 to do that?

8

MR. SASSOWER: You will try your case the way
9 you see fit.

10

MR. STRAUS: That is not what we are here for.
11 The question is: should we engage in useless acts? Should
12 we have Clerks of various Courts running around answering
13 subpoenas of volumes and volumes of cases which you --

14

MR. SASSOWER: Yes. Because I am telling you,
15 sir, that most of the papers, or a good number of papers
16 were changed. And I will tell you -- wait a second --
17 were destroyed, were secreted.

18

Do you know what I am going to do? I am
19 going to subpoena one person to bring down the papers
20 that he has been secreting for the last two years. O.K.?
21 That's my intention.

22

MR. STRAUS: Judge Potoker, I guess the issue
23 for you to resolve is this: whether it is appropriate
24 for Mr. Sassower to produce them; whether it is appropriate
25 for us to put Mr. Sassower on the stand to ask him whether,

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2 in fact, he filed these papers; or whether it is required
3 and appropriate for us to produce the Clerk of each of
4 these Courts, pursuant to a subpoena, with all the papers
5 that they have in their files relating to these matters?

6 That's the issue. That, I assure you, that
7 those documents will probably fill this room.

8 MR. SASSOWER: Wait a second.

9 THE REFEREE: You have a list of cases. Where
10 did you get that list of cases?

11 MR. STRAUS: In fact --

12 MR. SASSOWER: I know where he got them from.

13 MR. REFEREE: Please!

14 MR. SASSOWER: I am sorry.

15 MR. STRAUS: They were conceded by Mr. Sassower,
16 in other proceedings, before other Judges, to have been
17 filed by him.

18 MR. SASSOWER: Where?

19 MR. STRAUS: In criminal contempt proceedings.

20 MR. SASSOWER: Where? Where?

21 MR. STRAUS: Will you please, Mr. Sassower?
22 I heard your question. Would you give me the contempt
23 proceeding, the papers initiated by Feltman?

24 MR. SASSOWER: Sir, may I interrupt for a
25 second? Finish your statement.

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MR. STRAUS: That's all.

MR. SASSOWER: Excuse me. Do you want to amend your petition?

MR. STRAUS: I offered that. That is right. I offered it for that purpose.

MR. SASSOWER: O.K.

MR. STRAUS: We have gotten side tracked on this issue. So, we will return to that.

MR. SASSOWER: I need the petition in the contempt proceeding. That's what I need -- the papers.

MR. STRAUS: Various motions were made to hold Mr. Sassower in contempt of Court. In conjunction with those motions, schedules of cases, from which Schedule 1 is derived, were submitted.

In response to those motions, Mr. Sassower, I believe, at no time controverted the fact that these cases had been instituted by him on behalf of named clients. And, in fact, it was as a result of the failure to contest those issues that the contempts resulted.

Now --

MR. SASSOWER: Excuse me. Excuse me.

MR. STRAUS: Let me finish.

MR. SASSOWER: Go ahead. You say whatever you like.

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2 MR. STRAUS: We can take this on several
3 levels. We can offer in evidence the findings and con-
4 clusions of adjudicated matters by Supreme Court Judges
5 having established these facts, and Mr. Sassower being
6 estopped by reason of res judicata or collateral estoppel
7 from contesting them at this point.

8 We can have Mr. Sassower admit that he, in
9 fact, did institute the actions, which is the only concern
10 that I have at this point; or, we can at this point --
11 another option is to subpoena all of the records which
12 are named in these schedules; serve subpoenas on the
13 Clerk of those Courts, and have them produced.

14 In fact, I am not sure that all of the docu-
15 ments would be necessary. I think the initiating paper,
16 such as the summons and complaint, would be sufficient
17 for us to meet what we are trying to establish.

18 The purpose of this was to see if Mr.
19 Sassower -- the purpose of this offer was to see if Mr.
20 Sassower wanted to contest certain issues; or whether
21 he wanted to contest it procedurally; or put us to the
22 task of producing all of these things. That was one of
23 the reasons we are having this pre-hearing.

24 He wants the original of every document that
25 was filed now. I don't think that is necessary. But, if

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you direct that that is the best proof, and the proof we should meet, I will just ask for a sufficient amount of time to have those documents produced pursuant to a subpoena or subpoenas.

MR. SASSOWER: I will make my statement after you are finished.

MR. STRAUS: That's all I have to say, Mr. Sassower.

MR. SASSOWER: May I make a statement now? I hope I can clarify the issues.

Your Honor, some of these matters have been discussed already, and I have received satisfactory answers. So there is continuity, I will repeat some of the things that I have already -- for continuity I will repeat what my thoughts are at this point.

I respectfully desire that you, one, identify all materials received by His Honor thus far.

Second, the substance of all oral communications thus far received, or attempted, with respect to this matter.

THE REFEREE: Mr. Sassower, you are not addressing yourself to the question raised by Mr. Straus.

MR. SASSOWER: I will do it in due time.

THE REFEREE: No, no. You will do it now, not

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in due time.

MR. SASSOWER: I cannot answer that as a continuing statement.

I will say this if your Honor wants me to answer it now.

THE REFEREE: Yes.

MR. SASSOWER: I want Mr. Straus put to his common law proof, because I will say this, your Honor: When Mr. Straus subpoenas all the County Clerk's files, which I would be happy for him to do --

MR. STRAUS: I won't, though.

MR. SASSOWER: I will subpoena all the documents that have been secreted and, possibly, been destroyed by officials in the Court.

MR. STRAUS: Mr. Sassower, that won't have anything to do with the allegation --

MR. SASSOWER: Wait a second. Wait a second. O.K. Let me finish my statement.

MR. STRAUS: No. I don't think it is appropriate for you to read a statement. We are trying to establish the rules for a hearing. You are dealing with whatever issues you want to deal with, and when you want to deal with them.

Judge Potoker has asked you, in response to

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my --

MR. SASSOWER: I put you to your proof, that is all.

MR. STRAUS: He has asked you only to respond to that. If you want to make a statement, I am sure you will have an opportunity to do it.

MR. SASSOWER: Fine.

MR. STRAUS: It is not your --

MR. SASSOWER: I want to put you to your proof. You will fall on your face if you --

MR. STRAUS: I am not interested in what you are going to tell me. I am only interested in your answering my questions at this point. I am not interested in your other remarks.

MR. SASSOWER: Let me tell you, your Honor. Mr. Straus didn't draw up this schedule. Mr. Straus did not make these statements. These statements were made by somebody, which have been adopted by Mr. Straus. And what is going to happen is when Mr. Straus brings the original files here, he will see that the statements given to Mr. Straus, and which Mr. Straus has accepted and adopted is substantially false. O. K.?

MR. STRAUS: There is no statement alleged, Mr. Sassower. All it says is that you filed and instituted

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these actions. That is the issue. Whether you --

MR. SASSOWER: I never admitted that.

THE REFEREE: O. K. We are not getting any-
where.

I will rule that it will not be necessary to
subpoena the County Clerks at this time. I will enter-
tain the names of the cases, if that is what you have,
in which Mr. Sassower --

THE REFEREE: They are listed in the schedule.

MR. SASSOWER: Your Honor, wait a second.
Your Honor --

MR. STRAUS: May I offer --

MR. SASSOWER: Mr. Straus will have to verify
from some official source who drew up that schedule. I
don't have to do that. Who drew it up?

MR. STRAUS: I can represent --

MR. SASSOWER: That what?

MR. STRAUS: That the schedule represents
findings made by various --

MR. SASSOWER: You show it to me.

THE REFEREE: You will have a right to cross
examine.

MR. STRAUS: Not me, though. You don't have
a right to cross examine me, sir. You have a right to

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cross examine witnesses that we offer.

MR. SASSOWER: O.K.

MR. STRAUS: As to the charge of a pattern of litigation, our only intention is to offer in evidence findings by Courts, uncontested by you, that you did, in fact, submit, institute or file these actions.

MR. SASSOWER: Judge. I want to tell you something. I am very displeased, and I am trying to come right to the point. Mr. Straus is saying a lot of things which I know are false.

THE REFEREE: He will have to prove it. The fact that he is saying something now --

MR. SASSOWER: Your Honor says he doesn't have to subpoena the County Clerk's file. I am saying --

THE REFEREE: I said at this time I am not going to require him to subpoena the County Clerk's files, period.

Next.

MR. STRAUS: With respect to Charge 5 --

MR. SASSOWER: You are making rulings already.

MR. STRAUS: With respect to Charge 5, which is not contained in the previous one, is that by the filing of the actions -- first of all, I should at this this formally offer, as part of our proof, the additions

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2 to Schedule 1, which I have offered to Mr. Sassower and
3 to yourself.

4 I would like the direction that they may be
5 received.

6 THE REFEREE: The petition will be amended to
7 include an additional list.

8 MR. STRAUS: Thank you.

9 THE REFEREE: Five relates to four; is that
10 right?

11 MR. STRAUS: Yes; in that it is alleged that
12 the actions which were instituted, which are contained in
13 Schedule 1, were brought in violation of various Orders
14 made by Judges and Referees.

15 In connection with this charge, it is our in-
16 tention to offer copies of the Orders of the various
17 Orders which are referred to. In fact, they are annexed
18 to the pleadings as exhibits at this point. That is the
19 only additional proof that I believewith respect to Charge
20 5.

21 The only question that I have, Mr. Referee,
22 is whether Mr. Sassower contests that, actually, these
23 Orders were made by the Judges as alleged in the charge.
24 That is the only --

25 MR. SASSOWER: Mr. Straus, you have adopted

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2 somebody else's statement, and I cannot -- I will not
3 answer somebody's charge that you have echoed. O. K.?

4 Now, when it comes my turn, I will shoot you
5 down clean if his Honor sees fit to afford me the oppor-
6 tunity of a fair trial. I don't say that his Honor has
7 to accept what I say. I don't say his Honor has to adopt
8 my contention. But his Honor must -- must give me an
9 opportunity either to offer my evidence, or to make an
10 offer of proof.

11 THE REFEREE: The purpose of the pre-trial
12 conference is --

13 MR. SASSOWER: Wait a second.

14 MR. STRAUS: We are not on your case yet.

15 MR. SASSOWER: Here is an Order which was
16 filed January 27, three days ago. On the same evidence,
17 the Judge found me not guilty of criminal contempt.

18 Do you want to see how many other cases --

19 MR. STRAUS: Are you offering evidence now?

20 MR. SASSOWER: I am just saying that on the
21 same charge, based on the same evidence, based upon the
22 same allegations, the Judge didn't even seek criminal
23 contempt.

24 MR. STRAUS: I assume you are referring to
25 Judge Evans; is that right?

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2 MR. SASSOWER: Which Evans are you talking
3 about?

4 MR. STRAUS: Martin. We didn't charge you
5 any contempt by Lester Evans.

6 MR. SASSOWER: Wait a second.

7 MR. STRAUS: There is no Order by Lester
8 Evans mentioned in these charges. What does that have to
9 do with that?

10 MR. SASSOWER: Wait a second. Wait a second.
11 Judge Potoker said -- and I am now quoting you exactly --
12 Judge Potoker said: I cannot go behind an Order of the
13 Supreme Court.

14 THE REFEREE: Before me.

15 MR. SASSOWER: O. K. Fine. If his Honor
16 takes this to be true, I will offer to his Honor the
17 Order of Judge Martin Evans, who had a voluminous sub-
18 mission over a two year period of all the documents, who
19 reviewed it meticulously, and found me not guilty of
20 crminal contempt.

21 Wait a second.

22 MR. STRAUS: He found you guilty of civil
23 contempt.

24 MR. SASSOWER: He said: That is wrong. It was
25 a mistake.

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MR. STRAUS: You are not charged with any contempt.

MR. SASSOWER: Wait a second. In front of Judge Evans you are saying that --

MR. STRAUS: So, why are we talking about it.

MR. SASSOWER: No, no. These guys --

MR. STRAUS: There are three contempt orders. That is not one of them.

MR. SASSOWER: Wait a second. Wait a second. If the same evidence was submitted to another Judge, who found me not guilty, which is Judge Potoker supposed to choose? He says I am --

THE REFEREE: Counselor, nobody will preclude you from offering evidence in your behalf in response to any of these charges.

Mr. Straus has just indicated to you what proof he will offer to sustain Charge 5. Under Charge 5, he says he will submit copies of Orders of Justices of the Supreme Court.

MR. SASSOWER: I will submit my Orders, also.

THE REFEREE: All right.

MR. SASSOWER: I will submit mine, also.

MR. STRAUS: The only question I have for you, Mr. Sassower, is whether you have any objection to the

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2 submission of copies of these Orders. I mean, that is
3 the only thing we are doing.

4 MR. SASSOWER: For what purpose? To prove
5 that they are a document on file; or, to prove the
6 validity?

7 MR. STRAUS: To prove that the Judges, in
8 fact, ordered certain things, and that these are evidence
9 of the Orders that they signed. That is the only pur-
10 pose of this.

11 MR. SASSOWER: All right. Mr. Straus --

12 MR. STRAUS: Do you have a problem with that?

13 MR. SASSOWER: Yes, I do. I will tell you
14 why. Let's not play around, and let's come to the facts,
15 because I don't think --

16 MR. STRAUS: I am not playing around Mr.
17 Sassower. I am trying to deal with the issues in this
18 hearing.

19 MR. SASSOWER: Your Honor, he is going to
20 show you Judge Gammerman's Order, and I am going to show
21 you, your Honor, that Judge Gammerman's Order is a fraud.
22 Wait a second.

23 THE REFEREE: I didn't say anything.

24 MR. SASSOWER: According to Throckmorton,
25 U.S. Supreme Court, and a lot of cases all the way down,

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it has no validity whatever.

I am going to show his Honor that almost every Judge, without exception, who have now recognized how the Gammerman Order was procured, have refused to accept it, including -- including Judge Lester Evans, Judge Wright, Judge Martin Evans, Judge Blyn. They won't say Judge Gammerman's Order was a fraud. And I am going to show it. I am going to show you --

THE REFEREE: You are singling out one. There is Hilda Schwartz; Judge Riccobono.

MR. SASSOWER: Absolutely not. Absolutely not.

THE REFEREE: Thomas Hughes. Federal District Judge William Conner.

MR. SASSOWER: Absolutely not.

THE REFEREE: What do you mean "absolutely not"?

MR. SASSOWER: Judge, I don't know where you are getting it from.

THE REFEREE: I got it from the petition.

MR. SASSOWER: You didn't see my answer.

THE REFEREE: I know that.

MR. SASSOWER: Judge, look at --

THE REFEREE: You are singling out one name, Gammerman.

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2 MR. SASSOWER: Hilda Schwartz did not dis-
3 qualify me. She allowed me to intervene. She allowed
4 me to present --

5 THE REFEREE: All right. That will be your
6 proof that you will submit.

7 MR. SASSOWER: I am going to show --

8 MR. STRAUS: The only question -- Mr. Sassower,
9 please! Maybe we can define the only question which
10 I am trying to raise now.

11 We are going to offer, for example, an Order
12 of Hilda Schwartz; an Order which was duly entered in
13 the Court as an Order signed by Judge Schwartz. That's
14 all we are offering. We say that that, in fact, was an
15 Order that --

16 MR. SASSOWER: No, no. Did you ever read
17 Hilda Schwartz's Order?

18 MR. STRAUS: Please! Mr. Sassower, please!

19 THE REFEREE: Mr. Straus, he will submit copies
20 of Orders of all the Judges.

21 MR. SASSOWER: Fine. For what purpose?

22 THE REFEREE: You will submit proof to the
23 contrary and --

24 MR. SASSOWER: No. I will rely on Hilda
25 Schwartz's Order.

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2 MR. STRAUS: The question is: Is Mr. Sassower
3 permitted to make the kind of proof which he is talking
4 about now? Is he permitted to subpoena Judges for the
5 purpose of having them testify that in their opinion --

6 THE REFEREE: I will not reopen. I said that.
7 I will not reopen.--

8 MR. SASSOWER: Judge --

9 THE REFEREE: -- any proceeding that took place
10 before a Judge or the Appellate Division.

11 MR. SASSOWER: Judge, I am going to say --

12 THE REFEREE: If you think a Judge committed
13 error, you know what you have to do. For the purpose of
14 this hearing, the Order is sufficient.

15 MR. SASSOWER: Now, will you let me say some-
16 thing?

17 THE REFEREE: You are repeating yourself.

18 MR. SASSOWER: No, I am not. I will give you
19 a case.

20 THE REFEREE: Sir, you can submit to me all
21 the cases you want in a legal memorandum.

22 MR. SASSOWER: You are going to make a de-
23 cision even before I submit a case.

24 THE REFEREE: I am not. If you can show me
25 I am wrong, I said I will reverse myself, period.

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MR. SASSOWER: Will you give me two minutes?
Will you give me two minutes?

THE REFEREE: I have given you jore than two
minutes.

MR. SASSOWER: May I --

THE REFEREE: You have taken most of the time
at this pre-trial conference.

MR. SASSOWER: All I want is two minutes. Give
me two minutes.

THE REFEREE: For what?

MR. SASSOWER: To show you, and to help Mr.
Straus out.

THE REFEREE: Go ahead, sir.

MR. SASSOWER: Assuming a person is charged
with criminal contempt, where the penalty imposed, or
by statute, is less than six months, the Constitution of
the United States does not require a jury trial.

Thereafter, after the conviction is rendered,
you use it as a basis of disciplinary proceeding, which
is now considered a serious offense under the Constitution
of the United States, on that I am entitled to a jury
trial. Now, so --

MR. STRAUS: You must be kidding, Mr. Sassower.
Are you going to contest the convictions again? I thought

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we went through that.

MR. SASSOWER: I am saying that once you have put it into the category -- I will give you a case in the Tenth Circuit, one you have put in the category of a serious crime. The convictions cannot stand because of the Bloom against Illinois Supreme Court.

MR. STRAUS: Mr. Sassower, "serious crime" is a term which refers to conduct by attorneys. We are not referring to whether or not you are entitled to a jury trial.

The "serious crime" reference which the Appellate Division makes, -- and the Judiciary Law refers to -- is any crime a necessary element of which indicates criminal contempt of Court, or interference with the administration of justice.

That is what makes it serious so far as disciplining an attorney goes; not as to whether or not you are entitled to a jury trial. You are mixing two issues.

MR. SASSOWER: No, no.

MR. STRAUS: Judge Potoker is not sitting as the Supreme Court of the United States.

THE REFEREE: Do you want a jury trial? Make a demand in a proper forum, not before me.

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MR. SASSOWER: Judge, would you listen?

THE REFEREE: I gave you the two minutes. You went off on a tangent again. That is enough. Let's go. Charge 6.

MR. STRAUS: With respect to Charge 6, we have been over the testimony of Hyman Raffe.

THE REFEREE: That is oral testimony?

MR. STRAUS: Oral testimony. And the testimony of Ira Postel, Mr. Raffe's attorney.

Mr. Raffe will testify to the fact --

MR. SASSOWER: Sir --

THE REFEREE: Let Mr. Straus continue, please.

MR. STRAUS: Mr. Raffe will testify to the fact that he discharged Mr. Sassower as his attorney some time in 1985, and instructed him to bring no more litigation on his behalf.

We will have the testimony of both Mr. Raffe and Mr. Postel to the effect that Mr. Sassower violated those instructions; brought numerous additional suits, which resulted in Mr. Raffe being held in contempt, being fined and assessed penalties.

That's the only testimony which will be offered.

In addition to that testimony, we will offer

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2 a copy of the letter from Mr. Raffe to Mr. Sassower. A
3 copy of that letter has already been provided to Mr.
4 Sassower.

5 There is, also, I believe, one final thing,
6 if I may. There is, also, a formal motion filed by Mr.
7 Raffe against Mr. Sassower for the purpose of having Mr.
8 Postel formally substituted for Mr. Sassower as Mr.
9 Raffe's attorney.

10 THE REFEREE: He will so testify?

11 MR. STRAUS: That is correct.

12 THE REFEREE: Mr. Sassower!

13 MR. SASSOWER: If he will so testify, you
14 will hear it. I will cross examine.

15 THE REFEREE: You can refute, if you want.

16 Charge 7.

17 MR. STRAUS: Before we leave this, if I may.
18 In his answer, Mr. Sassower refers to Charge 6. And this
19 is why I would like to take it up at this point, while
20 we are on Charge 6.

21 He alleges that the allegation is based on
22 illegal, coerced communications purportedly made by
23 Respondent's client while he was disabled, and without
24 complying with procedural statutes.

25 I would like to know what, if any, proof Mr.

1
2 Sassower intends to offer as to Mr. Raffe's disability;
3 and what procedural statutes he is referring to, because
4 he also stated that he reserves the right to make such
5 motions or further defenses.

6 I think we are entitled to
7 know what motions or further defenses he wishes to in-
8 voke, which we are unaware of.

9 He, also, ^{indicates} that there is an attorney-client
10 privilege which has not been waived.

11 I think we take the position, very clearly,
12 that by writing the letter, and by retaining Mr. Postel,
13 and by initiating action against Mr. Sassower, Mr. Raffe
14 clearly is waiving any attorney-client privilege.

15 I would like, since this is not a criminal
16 proceeding, and since Mr. Sassower may wish to offer proof,
17 we are not dealing with his right of self-incrimination,
18 I believe. I think we are entitled to know what the nature
19 of the proof is that he intends to offer in support of
20 this affirmative defense, which is -- that is the way it
21 is phrased, as an affirmative defense.

22 MR. SASSOWER: First, I will see your proof
23 and then I will decide

24 MR. STRAUS: I think an affirmative defense
25 requires proof, if you are raising an affirmative defense.

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MR. SASSOWER: Until I am convinced, I am not going to waive the attorney-client privilege.

MR. STRAUS: Then, that requires a ruling, because you are raising an affirmative defense. If you are raising an affirmative defense, you have an affirmative obligation to prove something. If you are going to prove something, the purpose of a pre-hearing trial conference is to talk about the ground rules. I have no idea what you intend to offer in support of that affirmative defense.

MR. SASSOWER: Mr. Staus, you will not be prejudiced by anything that happens, as far as I am concerned.

I will make my position known when I hear the proffered testimony. As far as I know, legally, I would be breaching my obligation to, at this time, saying anything in view of my insistence that there is an attorney-client privilege.

In fact, sir, assuming --

THE REFEREE: You made your position clear. I don't think you need to belabor the point. I will take testimony from Mr. Raffe, and I will rule accordingly.

MR. STRAUS: I have no problem with that. My problem is what he is offering, or intends to offer as an affirmative defense. I think that's what is important.

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2 If he is saying there is an attorney-client privilege,
3 which he is bound by --

4 THE REFEREE: That is one of his contentions.
5 He is not raising that.

6 MR. SASSOWER: So I am not misleading you,
7 assuming Mr. Raffe discharged me, let's say, hypothetical-
8 ly, January 1, 1986 -- let's take any date -- unless he
9 waives what was said before January 1, the fact that I am
10 discharged does not permit me to testify as to --

11 MR. STRAUS: First of all, with respect to
12 that, you have a right, pursuant to the Code of Profession-
13 al Responsibility, if it is necessary, to defend yourself
14 against charges or professional misconduct. You are not
15 required to keep --

16 MR. SASSOWER: He didn't lodge any charges.
17 He didn't lodge any charges. You lodged the charges.

18 MR. STRAUS: That is not the question.

19 THE REFEREE: Mr. Straus will not testify.
20 Mr. Straus indicated Mr. Raffe will testify.

21 MR. STRAUS: Furthermore, as you know, because
22 you have a copy of the letter, it seems clear to me --
23 and I will ask Judge Potoker to rule --

24 MR. SASSOWER: It isn't a misleading state-
25 ment to the Judge.

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MR. STRAUS: What is that?

MR. SASSOWER: May I ask? Do I have a copy of the letter?

MR. STRAUS: Yes, you do.

MR. SASSOWER: When did I get a copy?

MR. STRAUS: Are you denying it?

MR. SASSOWER: What is that?

MR. STRAUS: Are you denying you have a copy of this letter?

MR. SASSOWER: If you gave it to me, I have a copy of it.

MR. STRAUS: Then, you have a copy of it.

MR. SASSOWER: Not on July 29. I just got it recently.

MR. STRAUS: My statement is accurate, isn't it?

MR. SASSOWER: It is accurate to the extent --

MR. STRAUS: Perhaps you should not take exception to it.

MR. SASSOWER: It is not accurate. It is a half truth.

THE REFEREE: Mr. Sassower, please! It is a half truth?

MR. STRAUS: It is an entire truth.

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2 I will offer a copy of a letter which is
3 dated July 31, 1985, addressed to you by Mr. Hyman Raffe.
4 And by virtue of the fact that carbons of this letter,
5 by direction of the writer, were sent to Michael Gurstein,
6 Donald Snyder, and the Honorable Alvin Klein, we will
7 certainly take the position that there is no attorney-
8 client privilege to this communication. It is, obvious-
9 ly, not privileged.

10 MR. SASSOWER: It is not --

11 MR. STRAUS: It is not confidential. If the
12 client chooses to send it to other people, he has chosen
13 not to make it confidential.

14 MR. SASSOWER: Do you know under what cir-
15 cumstances he sent this?

16 MR. STRAUS: That is what I am asking you.
17 You are making some reference to disability. I don't
18 know what disability of the client you are talking about.

19 MR. SASSOWER: I am saying he was coerced.

20 MR. STRAUS: Is that what you are saying
21 is the disability? That is all I want to find out

22 You also make reference -- he makes reference
23 in his affirmative defense to a procedural statute; that
24 is, Mr. Sassower does.

25 I think that since it is an affirmative de-

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2 fense, we should be, at least, entitled to know what the
3 procedural statute is.

4 MR. SASSOWER: The substitution of attorneys,
5 that statute.

6 THE REFEREE: 321 is the statute that has to
7 do with the substitution of attorneys.

8 MR. SASSOWER: Yes, 321.

9 THE REFEREE: Of the --

10 MR. STRAUS: Of the C.P.L.R.

11 MR. SASSOWER: 320 or 321?

12 MR. STRAUS: I don't know what it was.

13 That completes our proof as to Charge 6.

14 As to Charge 7, we will offer in evidence
15 copies of the documents which are specified there. That
16 will be our complete proof with respect to Charge 7. I
17 am referring to the letters specified. I think there are
18 five letters. Six letters, excuse me.

19 THE REFEREE: There is a total of seven;
20 January 3, January 14, January 22 --

21 MR. STRAUS: The 28th and the 30th as well.

22 THE REFEREE: He did respond to January 28
23 and January 30.

24 MR. STRAUS: Yes; in which he said -- well, we
25 will offer all those letters. That will be our proof with

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respect to this charge of failing to cooperate.

THE REFEREE: All right.

MR. SASSOWER: Say that again.

MR. STRAUS: The proof with respect to Charge
7.

THE REFEREE: They sent you letters, and you
failed to cooperate; you didn't respond.

MR. STRAUS: The only question is: is there
anything that you want to contest as to the letters? I
am only speaking in terms --

MR. SASSOWER: Absolutely. As a matter of
law --

MR. STRAUS: Not as to the content, Mr.
Sassower.

Let me make something clear.

THE REFEREE: Did you receive those letters?

MR. STRAUS: Are you contesting the fact that
you received the letters?

MR. SASSOWER: There should not be a problem
about that. I will tell you what dates I received the
letters.

MR. STRAUS: I want to --

MR. SASSOWER: Do you want the dates?

MR. STRAUS: That's all we are talking about.

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MR. SASSOWER: There will be no problem on that.

MR. STRAUS: In fact, if I may, at the risk of lengthening this, Judge Potoker, with respect to all of the items, all of the documents that we discussed in our prior discussions with respect to the Charges, my questions of Mr. Sassower as to -- my questions to Mr. Sassower were only as to whether he would raise objections to the authenticity of the copies of the documents that were offered.

MR. SASSOWER: Yes.

MR. STRAUS: O.K. I didn't understand whether he was contesting the authenticity, or whether he was seeking to offer -- to go behind the documents to offer some proof.

If it is just a question of whether the documents are authentic; that is, whether Judge Schwartz signed such an Order; or, whether such an opinion was rendered; or, whether such an affirmance came down on appeal -- I am not sure that that is what you are contesting.

Again, I am trying to define what the issues are. Are you seriously contesting, for example, that the Circuit Court of Appeals did, in fact, affirm a conviction? Are you really contesting that?

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2 MR. SASSOWER: I really don't know that. I
3 really don't know. I don't think the Circuit Court of
4 Appeals knows that to be true.

5 THE REFEREE: That's not the question.

6 The question put to you by Mr. Straus --

7 MR. STRAUS: There is a written decision.
8 Can I have it?

9 MR. SASSOWER: Do they say in there that
10 criminal --

11 THE REFEREE: Forget what it says. Do you
12 deny the authenticity of the document?

13 MR. SASSOWER: Of course not.

14 MR. STRAUS: That resolves many of the prob-
15 lems we had with all of these charges.

16 MR. SASSOWER: Mr. Straus, I have tried to
17 make it very, very clear. You do not have to certify
18 papers. Is that clear?

19 MR. STRAUS: That is why I am asking you, be-
20 cause we got into the discussion as to whether Clerks
21 were necessary.

22 MR. SASSOWER: Of course not. I said you
23 don't have to verify the papers.

24 I have told you a million times, I will battle
25 you on the issues. I will concede on non-issues. O.K.?

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MR. STRAUS: Well, I thought that you said something differently today. I think Judge Potoker may have understood that, also.

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MR. SASSOWER: No. I said I will battle you on issues. I will not battle you on non-issues.

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Let me follow that up. Your Honor, may I read my statement?

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THE REFEREE: Wait.

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MR. STRAUS: Let us just get this issue out of the way, if we may, Mr. Sassower.

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THE REFEREE: He is not contesting the authenticity.

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MR. SASSOWER: If that document is legitimate.

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MR. STRAUS: That's the question.

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THE REFEREE: That's what we are talking about.

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MR. STRAUS: Focus on it. I realize there are a lot of things you want to talk about.

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THE REFEREE: If you have a copy of the letter -- let's show it to him.

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MR. SASSOWER: Authenticity? No.

23

MR. STRAUS: This is an opinion and Order of Judge Conner. We will offer it in evidence.

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MR. SASSOWER: O.K. No objection.

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MR. STRAUS: Fine.

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MR. SASSOWER: Whether his Honor is bound by
this opinion --

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MR. STRAUS: No problem.

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MR. SASSOWER: --is a different story.

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MR. STRAUS: O.K.

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MR. SASSOWER: Now, any document that you show
me that was filed in the County Clerk's Office, O.K., I
will concede --

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MR. STRAUS: O.K.

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MR. SASSOWER: -- it is proper. Wait a second.

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MR. STRAUS: I just wanted to define it again.

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MR. SASSOWER: On the other hand, the mere
fact that it was filed in the County Clerk's Office does
not mean that it was not changed in transit. It does
not mean that it was properly -- and I will show his
Honor -- may I use an example? May I use an example?

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THE REFEREE: Go ahead. We are going right
back to where we started from an hour ago, an hour and
a half ago.

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MR. SASSOWER: I will show you why I am not
playing games. This is an Order of Judge Gammerman
dated January 23, 1985. O.K.? It was noticed for settle-
ment. It is filed in the County Clerk's Office. O.K.?

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2 The affidavit of service order, with notice
3 of settlement, is perjurious. Wait a second. It never
4 went and saw Special Term, Part I, where it was noted
5 for settlement. It is not in the entry book. It is not
6 in the book that is used to send up to Chambers. It does
7 not show that it was checked by Special 1.

8 Wait a second. All the books show it never
9 went there. It went up to Judge Gammerman. He initialed
10 it. It then goes down to Special 1. It is not entered
11 in the book in Special 1, as is the procedure. It is not
12 in any of the books. It is not filed. It did not have
13 the County Clerk's stamp on it, which is required. It
14 was not entered in the minute book. It was found by me
15 three weeks later in the file, and I have all the docu-
16 ments showing that everything is false about it.

17 THE REFEREE: What did you do when you --

18 MR. SASSOWER: Wait a second. Wait a second.

19 THE REFEREE: -- when you learned about it?

20 MR. SASSOWER: I will produce the books of
21 Special 1. I will produce the County Clerk's books. I
22 will produce, if you want, the Clerk who will say it
23 never went through, up or down.

24 THE REFEREE: If a Clerk will say that that
25 was Judge Gammerman's Order, that is one thing. If there

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were any internal problems in the Courthouse, that is one thing.

MR. SASSOWER: No, no. I am saying -- wait a second -- the affidavit of service is completely false.

MR. STRAUS: The question we are asking about -- the only thing we are referring to is the Order of Judge Gammerman.

MR. SASSOWER: That's not an Order.

MR. STRAUS: If we offer a copy of Judge Gammerman's Order in evidence, that is not --

MR. SASSOWER: It is void. It is a nullity.

THE REFEREE: Are you going to take the position that it is not authentic; that is, not an Order that Judge Gammerman signed? We are not talking about what happened to it after that. Is it, in fact, the Order that Judge Gammerman signed? That is the question at this point.

MR. SASSOWER: No.

MR. STRAUS: I am sure Judge Potoker will let you --

THE REFEREE: I so indicated.

MR. SASSOWER: Wait a second, Judge. You haven't read the Throckmorton case; or are familiar with it.

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THE REFEREE: You are throwing cases at me.

MR. SASSOWER: I am giving you the authority.

THE REFEREE: When you give me the authority,
I will certainly review it.

MR. SASSOWER: Do me one little favor.

THE REFEREE: You are going back and forth.
You are going behind the scenes. That I cannot do.
Unless you can prove to me to the contrary --

MR. SASSOWER: Will you do me a little favor?

THE REFEREE: -- by higher authority --

THE SASSOWER: Do me a little favor. Don't
render any opinion until you hear both sides.

MR. STRAUS: O.K., Judge.

MR. SASSOWER: Let me talk --

THE REFEREE: Let's go on to the authenticity
of the documents.

MR. SASSOWER: Of course I deny the authenticity
of that document.

THE REFEREE: Now you are going to contest it.
A moment ago you said surely you are not going to contest
it; you concede it. You are now --

MR. SASSOWER: No. I am conceding that it is
in the file. I am not conceding that it is a valid Order.

MR. STRAUS: We are dealing with two differ-

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ent questions. If you woule answer mine, I will answer yours. O.K.? Please bear with me.

When it comes to a hearing, your disciplinary proceeding, at one point we are going to offer in evidence this Order, this paper, as representing a copy of an Order which was signed by Judge Gammerman.

At that oint, all we want is whether or not you are contesting that this, in fact, is a copy of an Order which Judge Gammerman signed, period. We are not talking about whether it is valid, or what happened to it in the Clerk's Office, or whatever happened to it.

Do you contest, on the grounds of authenticity, that this is, in fact, an Order which Judge Gammerman signed? That's all I am asking.

THE REFEREE: You indicated that Mr. Straus need not have the paper certified.

MR. SASSOWER: Right.

MR. STRAUS: O.K. That's the only question.

As I understand it, if you want to contest it --

MR. SASSOWER: I am talking about the validity. Now, assuming -- assuming, Mr. Straus -- I am giving you an actual case -- asuming Judge Gammerman was fooled or misled into signing that, because he just was given a bunch of papers in a pile and, without even looking at

1
2 them, just signed everything.

3 THE REFEREE: That's what a Judge does, just
4 sign the paper? I have been a Judge for 21 years. I
5 never did that.

6 MR. SASSOWER: Do you want me to tell you some-
7 thing?

8 THE REFEREE: I never did that. I don't think
9 any other Judge did.

10 MR. SASSOWER: In Special Term Part II in
11 New York County, when they get a load of papers like this --
12 bear with me a moment -- the page is opened up to where
13 the Judge has to sign.

14 THE REFEREE: In any event, you are going be-
15 hind the scenes again.

16 MR. SASSOWER: Let's assume it is not a valid
17 Order.

18 THE REFEREE: Once he signs it, it is a valid
19 Order.

20 MR. SASSOWER: Absolutely not. I will show you
21 why.

22 THE REFEREE: You don't contest that Judge
23 Gammerman signed it. What you are saying is that Judge
24 Potoker should, actually, look at the circumstances under
25 which it was signed; that if he did that he would decide

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it was not a valid Order. Is that accurate?

MR. SASSOWER: No; it is not accurate.

THE REFEREE: That's what you are saying to me.

MR. SASSOWER: Let me just say this: Judge Gammerman in that Order restrained me from communicating with the Grievance Committee.

Everybody in this world says that Judge Gammerman has no right to restrain me, or anybody else.

THE REFEREE: But, he did.

MR. SASSOWER: But, he has no power.

THE REFEREE: But, he did. If heas no power, then you go up to the Appellate Division on Madison Avenue.

MR. SASSOWER: There is a problem. There is a problem. If the Judge has ho power to do something, all the affirmances, and everything in the world, cannot give him the power.

For example, Judge Potoker has no power to recommend that I be electrocuted. The fact that he writes it in an Order doesn't give him the power.

THE REFEREE: That is not what Mr. Straus is saying. This is his Order. Are you contesting the fact that it is the Order? The Order will speak for itself.

MR. SASSOWER: I will concede that it found

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its way into the County Clerk's Office, whether His Honor signed it.

MR. STRAUS: Are you really contesting that he signed it? I mean, that is the question. Are you really contesting that Judge Gammerman signed that?

MR. SASSOWER: I would like to hear it from him.

MR. STRAUS: I am not going to produce Judge Gammerman to prove that he signed it. I am offering a copy of the document.

MR. SASSOWER: I will tell you something, from what I understand. I wouldn't be so sure that if Judge Gammerman were called, he himself would question the validity of that document.

THE REFEREE: Mr. Straus does not intend to call him.

MR. SASSOWER: Your Honor --

THE REFEREE: Isn't that what you are saying?

MR. STRAUS: You are absolutely right.

MR. SASSOWER: I deny the authenticity of that document.

THE REFEREE: If it is offered, you will deny its authenticity?

MR. STRAUS: I will offer a copy.

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THE REFEREE: I will rule. That's all.

MR. STRAUS: That's what we will do with each of the documents.

MR. SASSOWER: O.K.

MR. STRAUS: That's wjat we will do with each of the documents.

MR. SASSOWER: O.K.

MR. STRAUS: Mr. Sassower can make his objections at that point and we can --

THE REFEREE: What is the date that you have in mind?

MR. SASSOWER: I would like for you to hear what I have to say, if you don't mind.

THE REFEREE: Go ahead.

MR. SASSOWER: I am very --

THE REFEREE: Go ahead. You said you wish to make a statement. Go ahead.

MR. SASSOWER: I really want to make a good statement.

MR. STRAUS: There is something else we have to deal with.

In your statement, you have raised affirmative defenses in the pleadings. I don't know whether we have done anything with respect to that, Judge Potoker.

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THE REFEREE: No. We have been unable to.

MR. STRAUS: There are six affirmative defenses alleged.

I was hoping that, at this hearing, we might, at least, understand what was going to be offered in support of those affirmative defenses.

It is my understanding that, obviously, affirmative defenses must be proved.

THE REFEREE: Yes. What do you have to say, Mr. Sassower?

MR. SASSOWER: When I get to the defendant's case, I will. As far as I am concerned --

THE REFEREE: You are not at liberty to disclose?

MR. SASSOWER: As far as I am concerned, your Honor --

THE REFEREE: We are trying to handle this in a professional manner.

MR. SASSOWER: As far as I am concerned, if your Honor would give me an opportunity to show my case, I would verily believe that Mr. Straus would throw in the towel. O. K.? O.K.?

THE REFEREE: Just by the statement you are going to make now?

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MR. SASSOWER: No; at the trial.

THE REFEREE: We are talking about now.

MR. SASSOWER: Now I have no idea.

THE REFEREE: You have no idea? You have made a claim of an affirmative defense. You must have some idea.

MR. SASSOWER: I have a good idea. At this point, I would not --

MR. STRAUS: Mr. Sassower, you raised, for example, an affirmative defense of invidious and selective prosecution.

MR. SASSOWER: Right.

MR. STRAUS: It is our position that that is a question which is not for the Referee to determine.

MR. SASSOWER: O.K.

MR. STRAUS: That's a question which was previously raised in the form of a motion to the Appellate Division.

MR. SASSOWER: And?

MR. STRAUS: Which was dismissed.

MR. SASSOWER: It was not.

MR. STRAUS: Mr. Sassower, it clearly was, as far as I know. We have documents here.

The real question here is whether Judge

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2 Potoker is authorized to rule as to whether or not this
3 case is the product of an invidious and selective prose-
4 cution, to use Mr. Sassower's words.

5 MR. SASSOWER: How can I tell until I present
6 my evidence?

7 MR. STRAUS: I take the position that that is
8 beyond the realm of Judge Potoker's responsibilities as
9 a Referee.

10 MR. SASSOWER: You can take that position if
11 you want to.

12 MR. STRAUS: If you felt it was invidious,
13 you had the opportunity to bring a motion to the Appellate
14 Division, which I believe you made.

15 There is no Order that I am aware of staying
16 this proceeding because it is the product of an invidious
17 and selective prosecution.

18 Therefore, I think it is my position that
19 Judge Potoker has no power to rule on that defense. I
20 do want to know what you intend to submit.

21 MR. SASSOWER: I am going to show -- rather,
22 I am going to submit evidence that --

23 MR. STRAUS: It is our position that the
24 Referee cannot rule on it.

25 MR. SASSOWER: Why can't he?

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MR. STRAUS: Because that is for the Appellate Division to rule on. The Appellate Division authorized this disciplinary proceeding.

THE REFEREE: The only matter before me, sir, is whether or not the proof to be submitted by the Grievance Committee is sufficient to establish the charges filed against you; not whether or not they filed charges against you but at the same time have not filed charges against nine other attorneys.

MR. SASSOWER: I am not saying that, Your Honor. Again, you have read certain documents. You haven't read all the other documents.

MR. STRAUS: Our position is that it doesn't make any difference what documents you submit.

THE REFEREE: I haven't read the entire file.

MR. SASSOWER: You haven't seen my papers yet. They have --

THE REFEREE: I said "the file"; whatever is in the file.

MR. SASSOWER: That is not my papers.

THE REFEREE: I know that. You will have an opportunity to --

MR. SASSOWER: Judge, I don't understand. You read half the file. They gave you -- I don't know who gave

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his Honor half the file.

MR. STRAUS: They were either submitted by you or by me.

MR. SASSOWER: My papers are not there.

MR. STRAUS: What do you mean? There is correspondence there; and your answer is there; and your position is there.

MR. SASSOWER: Your petition is there; right?

MR. STRAUS: And your answer is there.

MR. SASSOWER: My motions are not there.

MR. STRAUS: Your motions are not submitted to the Referee.

THE REFEREE: Motions before whom?

MR. SASSOWER: No, no.

THE REFEREE: Motions made before whom?

MR. SASSOWER: The Appellate Division.

THE REFEREE: I am not interested in any motions made before the Appellate Division.

MR. SASSOWER: Judge --

THE REFEREE: You will have your opportunity to prove --

MR. SASSOWER: Will you listen to me a second?

THE REFEREE: We are going back and forth.

MR. SASSOWER: This is the petition he sub-

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2 mitted to the Appellate Divison. I put in papers. You
3 read his papers and --

4 THE REFEREE: Then, the Appellate Division
5 named me as a Referee; right -- designated me as a
6 Referee to hear the case?

7 MR. SASSOWER: You are reading his allegations
8 without my answer.

9 THE REFEREE: I read the file that was sub-
10 mitted.

11 MR. SASSOWER: That is not the file I am say-
12 ing

13 MR. STRAUS: You submitted a document called
14 an Answer.

15 MR. SASSOWER: Did I have an affidavit with
16 respect to your motion?

17 MR. STRAUS: As far as pleadings go, Mr.
18 Sassower, there is a petition and there is an answer.

19 MR. SASSOWER: Judge Potoker read your papers.

20 MR. STRAUS: What do you mean by "my papers"?

21 MR. SASSOWER: Oh, come on.

22 MR. STRAUS: The papers are a petition. The
23 pleadings constitute the issues which Judge Potoker has
24 to determine.

25 MR. SASSOWER: No. The Judge has read your

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petition which you submitted to the Appellate Division.

MR. STRAUS: Yes.

MR. SASSOWER: My papers --

THE REFEREE: And your answer.

MR. SASSOWER: No. My not a formal answer;
my papers.

THE REFEREE: What do you mean "not a formal
answer"?

MR. STRAUS: The Appellate Division provided
a copy of your answer. That is the only thing that you
are entitled to have.

MR. SASSOWER: What is all this that you put
in?

MR. STRAUS: We filed a Petition, and you
filed an answer.

THE REFEREE: Mr. Sassower --

MR. STRAUS: I tell you, Mr. Sassower, we take
the same position as --

MR. SASSOWER: Forget it. Forget it. Forget
it.

MR. STRAUS: You keep saying: Forget it. I
want to be --

MR. SASSOWER: I want to be on record that he
has been given half the file, and has come to some tenta-

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tive conclusions which, in my --

MR. STRAUS: He has come to no factual conclusions.

MR. SASSOWER: He has come, at least, to some legal conclusions.

MR. STRAUS: That is correct. You can't conduct a hearing without legal rules.

MR. SASSOWER: Did you show his Honor --

THE REFEREE: Mr. Straus, let's go on with the affirmative defenses.

MR. STRAUS: The second affirmative defense is that this proceeding is unconstitutional; is being prosecuted for a corrupt purpose.

We state that, Judge Potoker, you do not have the authority to make a decision as to that; that that is appropriately made in the Appellate Division, and the Appellate Division--and the Appellate Division by designating you as a Referee to hear this, has ruled that this is an appropriate proceeding.

As a third affirmative defense, he says that this is null and void, because it exceeds the prohibition contained in Judiciary Law, Section 90.

We make the same contention, that this is beyond the scope of your reference to determine, and that it

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is appropriately raised in the Appellate Division.

Finally, there is a statement here that the Respondent was vindicated of any criminal contempt by an Order of Judge Martin Evans, entered on or about January 4, 1985.

Since there is no Order of contempt against Mr. Sassower which is the subject, or which is contained in the Notice of Petition, it is our contention that a contempt proceeding involving Judge Evans is in no way involved in the charges against Mr. Sassower and, therefore, is irrelevant and cannot constitute a defense even if it were, in fact, true.

And the sixth affirmative defense we have already discussed. That has to do with the claim of a privilege between Mr. Sassower and Mr. Raffe.

That, I think, concludes what we have to say with respect to the proof that may be offered.

THE REFEREE: Now, do you wish to respond; or, do you want to make a statement?

MR.SASSOWER: I want to make a statement.

THE REFEREE: Make your statement to the point. I think we have reached --

MR. STRAUS: A point of exhaustion, maybe.

THE REFEREE: I am not exhausted. I can

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stay here until all hours.

MR. STRAUS: Maybe the --

THE REFEREE: I don't want to stay here if we are going to repeat ourselves.

Go ahead, sir.

MR. SASSOWER: I respectfully desire that your Honor identify all material received thus far, which has already been done.

THE REFEREE: That is right; which has already been done.

MR. SASSOWER: All right.

And, two, the substance of all oral communications thus far received, or attempted, with respect to this matter be hereafter -- I respectfully request that his Honor, at the first available opportunity report, on the record, any communications related to this matter; any attempt to communicate with his Honor.

This includes witnesses, and prospective witnesses, who should be advised to communicate with counsel; who, in turn, would communicate to his Honor.

I respectfully request that this matter be conducted in an antiseptically clean atmosphere; more like an operating room in the best of hospitals; that is, no ex parte, no off-the-record discussions, except on

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exceptional and legally recognized circumstances.

THE REFEREE: Sir, I know what my oath of office is. I have been a member of the Bench for 21 years, and I know how to conduct myself.

MR. SASSOWER: Judge, let me finish. This is not implying against your Honor.

I would respectfully request that his Honor supply me with some telephone number so that I may communicate with him in the event of an emergency, such as an illness, so that his Honor would not have to appear.

THE REFEREE: Yes. You can take my Court House number, 718-643, 8513. You can get me there on Monday, Wednesday and Friday. They will know where to communicate with me.

MR. SASSOWER: Fine.

THE REFEREE: You can have that number, too, Mr. Straus.

MR. STRAUS: I think we will have a transcript of this pre-hearing conference. We will have it in the record.

THE REFEREE: I am at 111 Livingston, Special V.

MR. SASSOWER: I will make the same request of Mr. Straus --

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THE REFEREE: You have his office number here.

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MR. SASSOWER: If something happens on a Sun-

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day.

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MR. STRAUS: I don't want --

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THE REFEREE: I don't think you should have

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anybody's home telephone.

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MR. SASSOWER: Again, if you don't give it

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to me, fine.

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MR. STRAUS: I don't wish to be communicated

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with at home with respect to this.

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MR. SASSOWER: This is all your prerogative.

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I wish to begin this hearing immediately.

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THE REFEREE: What is that?

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MR. SASSOWER: I wish to begin these hearings

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immediately.

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THE REFEREE: To begin?

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MR. SASSOWER: Yes. Tomorrow will be fine.

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THE REFEREE: You said you were going to

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submit --

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MR. SASSOWER: I can do that over the weekend;

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it is no problem.

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MR. STRAUS: I might want to respond to them,

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Mr. Sassower.

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MR. SASSOWER: Wait a second.

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2 THE REFEREE: I will read your entire state-
3 ment. Go ahead.

4 MR. SASSOWER: That is my wifh.

5 Unless reasons can be shown, I wish to be-
6 gin Monday afternoon, since I have a Court engagement
7 Monday morning, and a conference at the Court of Appeals
8 immediately thereafter.

9 I draw your Honor's attention to the Appell-
10 ate Division Order, upon my application, which states
11 that this matter shall be expeditiously processed.

12 I respectfully request that these hearing be
13 on a continuous basis.

14 THE REFEREE: Meaning what?

15 MR. SASSOWER: Day after day.

16 THE REFEREE: I can't give you day after day.

17 MR. SASSOWER: Let me finish. This is my
18 request. Morning and afternoon, except where circum-
19 stances do not permit same.

20 I draw your Honor's attention that immediate-
21 ly upon receipt of the complaint from the Grievance Com-
22 mittee, more than a year ago, I requested expeditious
23 hearings, since the fact that such complaint has been
24 publicized even before I knew of it -- Judiciary Law 90.10
25 to the contrary notwithstanding.

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2 Mr. Straus, I will show, has been uncoopera-
3 tive, even to the extent of making no complaint about such
4 unauthorized publication.

5 I desire His Honor to present to the Appell-
6 ate Division His Honor's findings, His Honor's opinions,
7 His Honor's report -- not merely what somebody else thought;
8 what somebody else said; or not what somebody else did.

9 The Appellate Division does not need anybody
10 to read the Order of Mr. Justice Saxe, or Mr. Justice
11 Klein; they are there.

12 And I draw Your Honor's attention that Judge
13 Melia took issue with all his colleagues, including the
14 Appellate Division, based upon a similar situation, and
15 stated --and I thought graciously -- to the Court that
16 they were continually fooled and misled by my adversary
17 and lied to repeatedly. And the Appellate Division, not-
18 withstanding their own opinions, adopted what Judge Melia
19 said.

20 The Appellate Division, Second Department, may
21 choose to disregard your Honor's opinion, or it may rely
22 on your Honor's opinion, and disregard what the Judges in
23 New York County said.

24 But I desire -- and I believe it is implicit
25 in the Order of the Appellate Division -- that his Honor

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2 is to make a full report as to his Honor's opinion.
3 Whether the Appellate Division considers his Honor's
4 opinion over that of the Judges of the Supreme Court, or
5 the Appellate Division, is for the Appellate Division to
6 decide, not for me, Mr. Straus, or your Honor.

7 Your Honor gives the Appellate Division the
8 facts as well as your Honor's opinion and your Honor's
9 report. And they will choose what they want to choose
10 from.

11 I respectfully submit that the essential ques-
12 tion on Charges 1 and 2 and 3 is: was a full and fair
13 hearing given; and, two, was a hearing given as mandated
14 by law. In short, I contend such criminal convictions
15 have no preclusive effect, or res judicata, if you want,
16 or collateral estoppel. And Gilbert against Barberi is
17 the latest authority on that subject, which is the Court
18 of Appeals. And there are similar cases in the Federal
19 Court, the United States Supreme Court. An Order, a
20 rule, anything --

21 MR. STRAUS: I think we discussed this already.
22 Mr. Sassower, this is not a soap box. This is material
23 we covered already. Do we have to go through all this
24 again? I have other things to do. I am sure Judge Potoker
25 has other things to do. Please do not repeat yourself.

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2 MR. SASSOWER: I have stated that His Honor
3 will need help in this case, and thus, will, at the out-
4 set, press hard and fair upon Mr. Straus. who I have con-
5 tended is disqualified. No matter what I have said,
6 justified or unjustified, I expect Mr. Straus to perform
7 in the best and finest tradition of a prosecutor, as a
8 member of the Bar, and as a high official in the Disciplin-
9 ary Committee, and appointed by the Appellate Divison, ob-
10 viously, because they have confidence in his ability and
11 integrity. If he so performs, I will have no complaints.
12 If he fails to do so, I will clearly enunciate.

13 His papers and actions thus far have, in my
14 opinion, been seriously wanting. But, in this respect,
15 I am willing to afford Mr. Straus the opportunity to start
16 on a clean slate.

17 MR. STRAUS: That is very forgiving.

18 MR. SASSOWER: Excuse me. So that I may be
19 guided accordingly, am I to expect from Mr. Straus that
20 he will produce any and all exculpatory and admitted evi-
21 dence and witnesses? And I cite the Childs case.

22 MR. STRAUS: Can we stop at this point?

23 MR. SASSOWER: Yes.

24 MR. STRAUS: There is no exculpatory evidence.
25 We have been over this four or five times privately. I

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2 have indicated to you I am aware of my obligations. If
3 I had any exculpatory evidence, I would provide it to you.

4 I, also, indicated to you that the only other --
5 wait a minute. I can't hold all this while you finish the
6 end of your statement, because I won't remember what you
7 have said.

8 Let me indicate, in the presence of Judge
9 Potoker, that I have told you, and so far as I know, you
10 have a copy of every document that we are offering in
11 evidence. Also, you have been either offered or you
12 have received, as a party in this action, every piece of
13 material that we intend to bring to the Referee's attention.
14 And that I am unaware of any exculpatory material. And
15 if I had it, I would provide it to you.

16 MR. SASSOWER: O. K.

17 MR. STRAUS: You keep renewing the request.

18 MR. SASSOWER: Yes.

19 MR. STRAUS: As I have told you, I will turn
20 it over to you immediately.

21 MR. SASSOWER: May I say something?

22 THE REFEREE: Finish with your statement.

23 MR. SASSOWER: On my part, your Honor can
24 expect the professional performance of any attorney prac-
25 ticing 35 years.

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2 Generally, in a non jury case, I follow com-
3 pletely the orchestration and desires of the Judge pre-
4 siding.

5 In this case, I must bear in mind that it is
6 the Appellate Division that must be convinced and, thus,
7 sometimes to labor a point, even if His Honor seems satis-
8 fied by the evidence already presented, I may find that I
9 need a resounding vindication.

10 For me, this is a Murder 1 case. I must win
11 on every charge in order to avoid punishment. Thus far
12 my score is 32 to zero. Indeed, on one case the Appellate
13 Division, to reveal the charges were absolutely meritless,
14 granted my motion for leave to move for sanctions against
15 the Grievance Committee.

16 MR. STRAUS: Mr. Sassower, I think --

17 THE REFEREE: Are you talking about the charges
18 in this petition?

19 MR. STRAUS: I ask that you stop. It is not
20 appropriate. You have done it before today. It is not
21 appropriate for you to bring to Judge Potoker's attention
22 other proceedings which are unrelqted to this; nor the
23 outcome of those proceedings.

24 Are you trying to influence Judge Potoker's
25 decision?

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MR. SASSOWER: No.

MR. STRAUS: I suggest it is improper for you to do it.

MR. SASSOWER: I am saying to you, sir --

MR. STRAUS: What difference does it make if Judge Melia ruled in some other case?

MR. SASSOWER: Excuse me. Because those findings by Judge Melia, which were contrary to Orders of --

MR. STRAUS: Mr. Sassower!

MR. SASSOWER: Excuse me.

MR. STRAUS: It makes no difference what was decided. Judge Potoker is here to decide the issues in this case.

THE REFEREE: I am not bound by what Judge Melia said in another case, even though you were the subject matter of that case, too.

MR. SASSOWER: The same issue, your Honor.

THE REFEREE: It is not the same issue.

MR. SASSOWER: If you haven't seen it, how can you say it is not?

THE REFEREE: I just inquired whether or not it relates to the incidents alleged in this petition.

MR. SASSOWER: They are similar.

MR. STRAUS: Similar behaviour, you mean; is

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right -- similar behaviour?

MR. SASSOWER: No; not a similar instance.

MR. STRAUS: There is no charge that was before Judge Melia. There is not a case that was before Judge Melia. If it was, you could have brought it as a bar.

MR. SASSOWER: Are you interrupting?

MR. STRAUS: I certainly am, because you don't have the right to go on and on and on on improper topics.

THE REFEREE: How many more pages have you to talk about? Why don't you read it, without any editorial comment.

MR. SASSOWER: I have decided that I will probably take over temporary headquarters in the vicinity of the Court House and, thus, I will not need to have to drag my files day after day for the hearings.

It is impossible to drag all these files from White Plains to Brooklyn or Queens, especially on a daily basis.

If there is any point of substantive law, please make that request at the appropriate time, and I will do my best to give you all the authorities on the point.

The first thing I would like to know, your Honor --