

MR. GRAYSON: Your Honor, yesterday after Mr. Berger finished his testimony he made a short statement concerning his non-appearance last month, and during his statement you noted that you were told by me that Mr. Berger said he would not appear even if he was served with an Appellate Division subpoena. He then stated something to the effect that he did not recall the conversation as occurring that way. I want to reiterate that what I explained to you last month was what occurred. I am sure that that is what he said to me.

THE REFEREE: Mr. Grayson, there is no doubt in my mind that what you said is true. I believed it when you said it because of my experience with you and the way you have conducted the matters entrusted to you. In addition to that, from my observations of Mr. Berger as a witness, I was not that greatly impressed with his candor and all around performance. Anything else, Mr. Grayson?

MR. GRAYSON: Yes, one more statement. Since I knew that Mr. Sassower would be making motions to dismiss the charges, I had previously discussed these charges last week with our chairman Frank Connelly.

After discussion, Mr. Connelly decided that the only charge that we would withdraw based on the testimony would be charge number five, that dealing with the I.R.S. audit. So I don't want it to appear that my position in opposing his motions on the other charges is something that was a last minute shoot from the hip decision.

Thank you, your Honor.

THE REFEREE: Are you offering some transcripts?

MR. GRAYSON: At this time I would like to offer copies of exhibit AQ and BQ for evidence, with the testimony or statements of parties other than Mr. Sassower having been deleted by me. These were two of the transcripts Mr. Sassower reviewed last night.

THE REFEREE: Okay. AQ for identification is now received in evidence as amended by the deletions which appear therein.

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(Respondent's Exhibit AQ previously marked for identification now received in evidence.)

THE REFEREE: BQ heretofore has been marked into evidence. However, we had some discussion about it yesterday and its acceptance into evidence is

reaffirmed at this point with the deletions made therein.

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(Respondent's Exhibit BQ previously marked for identification now received into evidence.)

MR. GRAYSON: You have the original certified. I also will offer the original certified copy of the July 27, 1976 examination before trial of Mr. Sassower in this accounting proceeding.

MR. SASSOWER: No objection.

THE REFEREE: That's in July?

MR. GRAYSON: Yes.

THE REFEREE: That will be Exhibit 64 in evidence.

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(Examination before trial dated July 27, 1976 marked as Petitioner's Exhibit 64 in evidence.)

MR. GRAYSON: I would like to inform you in your pile of exhibits you have the originals AQ and BQ which maybe should be returned. You now have two sets of AQ and BQ.

THE REFEREE: Oh?

MR. GRAYSON: You have the deletion and you have the complete.

THE REFEREE: I see.

MR. GRAYSON: For instance, this is the complete. That is BQ. And AQ is this one. I have nothing further, your Honor.

THE REFEREE: We still have the matter of these three opinions which was discussed some time ago. The opinion of Judge Mishler of March 21, 1978, the memorandum of decision and order of Judge Mishler of September 20, 1977, and the memorandum and decision of Judge Mishler of April 20, 1978, and decision and order of the United States Court of Appeals for the Eastern District Second Circuit rather of December 22, 1978. I am going to receive these into evidence with the caveat that those decisions or orders are subject to be considered in conjunction with the decision of the Court of Appeals for New York Court of Appeals *Gilberg vs. Barbieri*. That citation is heretofore in the record. So these will be received as Petitioner's Exhibits 65, 66, 67 and 68.

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(Opinion of Judge Mishler dated March 21, 1978 received into evidence as Petitioner's Exhibit 65; decision and order of Judge Mishler dated September 20, 1977 received into evidence as

Petitioner's Exhibit 66; decision of Judge Mishler dated April 20, 1978 received into evidence as Petitioner's Exhibit 67; decision and order of the United States Court of Appeals dated December 22, 1978 received into evidence as Petitioner's Exhibit 68.)

MR. SASSOWER: That citation is 53 NY 2d 285.

THE REFEREE: Are you resting now?

MR. GRAYSON: Yes, I am.

THE REFEREE: Mr. Sassower?

MR. SASSOWER: I wish to continue with the motions I started to make yesterday afternoon and we were up to charge number seven, which I respectfully --

THE REFEREE: Was it number six? You are right, Mr. Sassower, it is number seven, right.

MR. SASSOWER: Charge number seven alleges that I did not appear to take an examination before trial of Edward Kelly on June 13, 1977, and did not "inform the Court or Kelly or Kelly's attorney" of my non-appearance. The evidence is to the contrary for Mr. Abuza testified that it could be that I told the Court and he five days previously that I could

not attend. Significantly also, although Mr. Abuza testified that the remarks were transcribed, that is the remarks to the Court were transcribed on June 7th, 1977, by a court stenographer, they have not been produced by the petitioner. Mr. Abuza also testified that it could well have been that I told him again after the Court proceeding where I said I could not attend on June 13, that I told him again that I could not attend on June 13, 1977. In view of that testimony, and as I say, there is no testimony to the contrary in the petitioner's case, then the charge that I did not inform the Court or Kelly's attorney that I would not be there on June 13, 1977 must fall.

THE REFEREE: I think probably in the context of this kind of proceeding that charge I am suggesting can be read in the alternative, that you failed to appear or now addressing yourself to the first part failed to appear.

MR. SASSOWER: I admit that I was not there to take an examination before trial.

THE REFEREE: What basis do you move to dismiss that part of that charge?

MR. SASSOWER: I just waived my right to take an examination before trial. It was not an examination of me, it was an examination by me of somebody else. I had the right to have the examination or not have the examination and I just waived it and told them I just could not appear on that particular day, I had other engagements.

THE REFEREE: Mr. Grayson?

MR. GRAYSON: The Grievance Committee's case in essence rests on what Mr. Abuza says or didn't say in this as to whether or not he was informed by the respondent. Now I recall that Mr. Abuza did not come across as the most truthful witness in this proceeding and I do know that when he appeared in Court on the 13th he said he had received no communication from Mr. Sassower during that week saying he could not appear. Mr. Abuza then testified here he didn't recall or words to that effect.

THE REFEREE: He did not recall what?

MR. GRAYSON: Whether or not he received a communication from the respondent or words to that effect. I think that or I know that the determination will have to be based on your appreciation

of Mr. Abuza's testimony.

THE REFEREE: Well, I do not have a high regard for Mr. Abuza's testimony. From my own standpoint unless I find it supported elsewhere in the evidence I would not render an adverse conclusion based solely on what he said on a particular point. Again, as I say unless I found it supported some place. Anything to say about Mr. Sassower's argument with respect to his failure to appear?

MR. GRAYSON: Yes. I would like to say something. Again I think the problem of the animosity between the parties comes through in this charge. Mr. Sassower was the one who made the motion to have the examination set. He was the one who was going to cause Edward Kelly to lose a day of work and Mr. Sassower and I both know that for whatever reason Mr. Kelly and his wife are very concerned that he doesn't lose any days of work. That is the reason why Mr. Kelly did not testify here. I don't know if there was a conscious effort by the respondent to serve the papers to have this E.B.T. set up and then not to show up, and the end result is that Mr. Kelly who lives in Queens had

to travel all the way out to Riverhead and appear in Court on that day, and within five minutes the whole proceeding was over and he was told he was free to go.

MR. SASSOWER: Except for one point. There is no testimony in the record that I never told Abuza's attorney for the Court --

THE REFEREE: Kelly's attorney.

MR. SASSOWER: Kelly's attorney for the Court that I would show up. All the evidence is to the fact that I could have told the Court and I could have told Abuza in his words it may well have been that I would not show up. Now, if they showed up when I told them I would not show up because I was engaged elsewhere, I have no control over that. You tell me you cannot be here Monday and Tuesday.

THE REFEREE: Refresh my recollection as to what there is in the record as to your engagement on that day.

MR. SASSOWER: There is nothing in the record because I have not testified as yet. But there is in the record that I told them that I would not be there.

THE REFEREE: I will reserve decision on charge

number seven.

MR. SASSOWER: Charge number eight contains a portion of a colloquy which petitioner contends was disrespectful and contumacious tending to bring the legal community into disrespect. I will not be presumptuous and speak for the legal community but there is nothing contained in such colloquy which was or intended to be disrespectful or contumacious. On the contrary, it reveals a great deal of restraint on my part under the circumstances. Significantly omitted is what follows which was an actual turning over to the attorney for the Public Administrator of the records of the Estate of Eugene Paul Kelly. If my language in this charge is subject to disciplinary proceedings, then freedom of speech by attorneys is a questionable right in a courtroom. The charge by itself is sufficiently chilling to the constitutional right as to mandate its summary and unequivocal dismissal.

Your Honor, I respectfully request that your Honor read and the petitioner tell me in what respect could my words in charge number eight be deemed contumacious.

THE REFEREE: Mr. Grayson?

MR. GRAYSON: As of this date in this Court, June 15, 1977, as of the date this colloquy took place apparently the positions of the respondent and the Surrogate of Suffolk County had hardened into such disparate positions that I think the transcript is clear that questions were asked by the Judge and answers were not given by the respondent. The Judge asked questions such as, "Will you obey my order?" And the respondent doesn't say yes or no, he says, in essence, he says, I will let you know.

MR. SASSOWER: You know, let's read the exact words.

THE REFEREE: No, well, I have them before me.

MR. SASSOWER: And this is only a portion, but even taking that portion, what in that language that I used is contumacious?

THE REFEREE: Mr. Grayson?

MR. GRAYSON: If a simple question is asked by the presiding officer of the Court then I think it is the attorney's obligation to answer the

question.

MR. SASSOWER: And I did answer.

MR. GRAYSON: Straightforward, without beating about the bush?

MR. SASSOWER: I did. "I will answer the question when the papers come in from Mr. Berger. I can see what my situation is, I can appraise the situation and then I will answer it."

THE REFEREE: I will reserve decision.

MR. SASSOWER: Your Honor, may I say with respect to charge number eight that I would fear going into a courtroom again and saying anything, and I think any attorney would fear going into a courtroom to say anything if thereafter the Grievance Committee could come along and take remarks such as this as a basis for a disciplinary proceeding.

THE REFEREE: I have to say that the language in and of itself is not disrespectful. The language in and of itself. Then that comes down to whether it was a thwarting of the authority of the Court in not immediately complying. I say it comes down to that.

MR. SASSOWER: No, the thwarting of the authority of the Court is a separate charge, that is charge number four. Charge number four is the thwarting of the authority of the Court. The language that I used is made as a separate charge.

MR. GRAYSON: Your Honor, could I say something on charge number eight?

MR. SASSOWER: Because we have nothing in charge number eight which is a thwarting of the authority of the Court. That is pure and simple. Is that language contumacious?

THE REFEREE: That well may be.

MR. GRAYSON: But I would like to say putting it into context the point is clear that seven weeks before this colloquy took place Judge Signorelli issued an order ordering the respondent to turn over the books and papers, and here we have seven weeks later when the Judge says, "Will you comply with my order?" And the respondent will not give a straightforward answer.

MR. SASSOWER: And I said, "When the papers come in from Mr. Berger."

THE REFEREE: When you talk about papers, you

are talking about papers to hold you in contempt?

MR. SASSOWER: That's right. Then I could answer it. It's just like the example I gave yesterday, if your Honor directs me to do something I cannot appeal that. All I can do is wait until your Honor holds me in contempt where I can say your Honor's direction was improper. And when Mr. Berger's papers come in to hold me in contempt, which the Appellate Division stated --

THE REFEREE: Again, Mr. Sassower, I would make the same complaint with respect to your conduct on this occasion as I have with respect to some of these other charges where I was saying to you again that you didn't advise the Court in this instance and that instance and this instance of particular facts. Here again, why didn't you explain to the Judge what the reason for your position was and if I understand your position exactly, it was that I do not want to turn over the books and in effect accept removal as executor because I have no basis for appeal. Wasn't that your position?

MR. SASSOWER: That was precisely what I did state.

THE REFEREE: Not as I read this transcript.

MR. SASSOWER: Because they only took part of the transcript. But read into the record is what I stated before and what I stated afterward, that whatever I do I do without prejudice and that --

THE REFEREE: Without prejudice, I recall that.

MR. SASSOWER: Okay. And I said when the papers come in to hold me in contempt or for whatever other, and an order is issued, then I can answer responsively. I did explain that, your Honor. But what the Grievance Committee did on this charge was to take one and a half pages out of a full transcript, take it out of context.

THE REFEREE: That transcript is before me, right, in full?

MR. SASSOWER: Right.

THE REFEREE: I will reserve decision on that.

MR. GRAYSON: I am not sure. No, only pages 35 through 40 are before you, Exhibit number 57.

MR. SASSOWER: A lot of it was read into the record.

MR. GRAYSON: Well, do we know if everything

was read into the record?

THE REFEREE: Well, I recall without prejudice many times.

MR. SASSOWER: I have no objection to that whole transcript going into evidence.

THE REFEREE: That's 57?

MR. GRAYSON: Yes.

THE COURT: Let the record reflect that all of Exhibit number 57 is part of the record on consent.

MR. GRAYSON: Your Honor, could you check to see if you have it? Rather than just have those five pages.

(Discussion held off the record.)

MR. GRAYSON: I have the Grievance Committee copy certified and signed by the court reporter. I will offer that as a replacement, Exhibit number 57.

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(Full transcript marked as Petitioner's Exhibit 57 in evidence.)

THE REFEREE: Charge number nine.

MR. SASSOWER: Charge number nine, your Honor, it was stipulated that certain portions of paragraph 61 be deleted which was not marked on your

Honor's copy.

THE REFEREE: Sorry, say that again?

MR. SASSOWER: On charge number nine, the petitioner withdrew some of the allegations in paragraph 61, which was not removed on your Honor's copy.

THE REFEREE: That's right.

MR. SASSOWER: And you want to repeat what has to be removed?

MR. GRAYSON: Yes. Your Honor, in paragraph 61 the last 14 lines were withdrawn beginning with the second word on the 14th line from the bottom, so that the deletion begins with the phrase "causing the substitution of documents."

THE REFEREE: I've got it. You are moving to strike that portion from the charge, is that it?

MR. GRAYSON: Yes. According to my notes we had agreed on October 9th to withdraw those 14 lines.

(Discussion held off the record.)

THE REFEREE: The basis for your withdrawing this part of the charge is what?

MR. GRAYSON: Mr. Abuza testified that these

allegations arose in June or July of 1976, and the suit that we claim was frivolous was brought in August of 1976 and there was no prior adjudication of these questions.

THE REFEREE: All right. It appears that I may have granted that motion earlier but did not correct the papers to so reflect, but in any event nunc pro tunc or as of now that motion is granted and the last 14 lines are stricken.

Continue.

MR. SASSOWER: I respectfully request the recommendation of the dismissal of charge number nine which states that I commenced an action when I knew or should have known the issues presented were previously adjudicated, in short, that I commenced an action when collateral estoppel was a defense. Mr. Abuza admitted that most of the allegations were not the subject of previous adjudications and they have been stricken from the amended petition by consent. In any event, *Gilberg vs. Barbieri* holds that collateral estoppel is not controlling in situations such as this and dismissal of this charge should follow. I again refer this Court to

the opening session of this proceeding to pages 80 and 84 where his Honor in effect stated that it has to be not just a dumb motion or a dumb action, but there has to be something, some malice aforethought that accompanies such action. And Mr. Grayson agreed that the petition be amended accordingly to include those allegations. There is no evidence in the record that I knew that collateral estoppel was a proper defense. In fact *Gilberg vs. Barbieri* seems to hold that it was not a proper defense.

THE REFEREE: I will reserve decision.

Charge number ten.

MR. SASSOWER: I believe and move for the recommendation of dismissal of charge number ten since there is no proof nor can there be any proof that the same issues were before the Appellate Division. There is no evidence that these issues were before the Appellate Division nor can there be such proof because it never was before the Appellate Division.

THE REFEREE: Mr. Grayson?

MR. GRAYSON: Paragraph 67 alleges there was frivolous litigation because these issues had been,

were pending before the Appellate Division and contained broad conclusory and self-serving allegations. Paragraph 67 in essence has four parts. Alleges there was frivolous litigation because the actions had no basis in law or fact and that the issues were previously decided, or that the issues were currently pending in the Appellate Division and that the allegations were broad, conclusory and self-serving.

There is not question but that the 1978 Civil Rights action contains the same allegations that were made in the 1977 civil rights suit brought by Mr. Sassower.

MR. SASSOWER: There is no such evidence.

MR. GRAYSON: We have in evidence several of the documents, public documents from the District Court suits.

THE REFEREE: Some, and some as Judge Mishler's.

MR. GRAYSON: Right. I think the respondent will admit of the twelve charges in the second civil rights action, the first three dealt with the contempt citation of Judge Signorelli.

MR. SASSOWER: No.

MR. GRAYSON: Do we have it?

MR. SASSOWER: Will you agree that this was never adjudicated by the Appellate Division?

MR. GRAYSON: There were four parts to this paragraph 67.

MR. SASSOWER: Let's take each part separately. If you say there are four parts, then take the four parts separately.

MR. GRAYSON: I am looking for the summons and complaint in the two civil rights actions. Are they marked for evidence?

MR. SASSOWER: No.

THE REFEREE: I don't think so.

MR. GRAYSON: Yes. 56 and 57, your Honor. Excuse me, 55 and 56.

MR. SASSOWER: You are right.

MR. GRAYSON: Your Honor, I think if you will compare Exhibits 55 and 56 you will see paragraphs almost word for word identical in those two documents.

MR. SASSOWER: Because they dealt with two separate incidents, one involving Judge Signorelli on his first contempt, and then followed the second

contempt which was brought under almost exact same circumstances in that I was not present, I was tried.

THE REFEREE: You say they involved two different dates?

MR. SASSOWER: Two different dates.

MR. GRAYSON: The first cause of action in each of these exhibits names only Judge Signorelli.

THE REFEREE: Are they the same incident?

MR. GRAYSON: You were only held in contempt by him once.

MR. SASSOWER: And once by Judge Siedel.

MR. GRAYSON: We are talking about Judge Signorelli. Once he held you in contempt there. The first cause of action in each one only concerns that one contempt.

MR. SASSOWER: But it is a predicate to everything else that I say in the second cause of action or in the second complaint, that they knew that that adjudication was illegal and unconstitutional.

MR. GRAYSON: The second cause of action in

each also is virtually identical in language.

THE REFEREE: For the same event?

MR. GRAYSON: For the same event, June 22, 1977.

THE REFEREE: I will have to look at it then.

MR. SASSOWER: We are dealing with one topic at a time. I will answer each issue. Was there any previous adjudication by the Appellate Division as alleged in the petition?

MR. GRAYSON: You obtained a writ. Judge McNearney found that you had improperly been detained.

MR. SASSOWER: Correct.

MR. GRAYSON: The Surrogate appealed it to the Appellate Division. The Appellate Division sustained Judge McNearney.

MR. SASSOWER: Right. But that is only as to the impropriety of the writ, of the incarceration. My civil rights action was based on the fact that they did not allow me to get the writ of habeas corpus, that I was obstructed in getting the writ of habeas corpus, and one was an action for damages on it, one nine eight three. You will find nothing

in the Appellate Division. And besides that --

THE REFEREE: The Appellate Division would not have jurisdiction over that.

MR. SASSOWER: It wouldn't have jurisdiction over a damage claim. And secondly, it has always been true that a one nine eight three action, the federal remedy supplements the state remedy. You can sue under state law and you can sue under federal law. But I did not sue in the Appellate Division for damages, so there was no adjudication by the Appellate Division.

THE REFEREE: All right, I will reserve decision.

MR. SASSOWER: Let me go through the rest, your Honor, if I may.

THE REFEREE: All right.

MR. SASSOWER: I say there is nothing wrong in a complaint having broad conclusory self-serving allegations.

THE REFEREE: I am not concerned with that.

MR. SASSOWER: Besides that, it was not broad, it was not conclusory, it was not self-serving. There were very very specific drawn out incidents

in the complaint in the federal court. And may I say with respect to the exhibits that were introduced today that my position was finally vindicated by the Supreme Court of the United States in Gomez vs. Toledo, which is 446 U.S. 635 100 Supreme Court 1920, 64 Lawyers Edition 2nd 572. In fact, had my case been decided after Gomez vs. Toledo, my allegations would have had to be sustained because the Second Department ruling as enunciated in my case was knocked down in Gomez vs. Toledo.

THE REFEREE: All right, I will reserve decision.

Are you ready to continue the respondent's case?

MR. SASSOWER: I am, your Honor.

THE REFEREE: You want a couple of minutes?

(RECESS)

THE REFEREE: Let the record reflect a continuation of the respondent's case. Mr. Sassower is still under oath. Direct examination.

MR. SASSOWER: Your Honor asked me for two items of information yesterday afternoon. The first one was the second article that appeared

in the Daily News. May we mark it in evidence, your Honor, and I apologize for the -- I do not offer it certainly for the truth thereof, but because it is filled with distortions, errors, mistakes --

THE REFEREE: You offer it to indicate your mental state that it contributed to?

MR. SASSOWER: That is correct, your Honor.

MR. GRAYSON: No objection.

THE REFEREE: CA in evidence.

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(Daily News article marked as Respondent's Exhibit CA in evidence.)

THE REFEREE: What is the date?

MR. GRAYSON: It is typed on the bottom.

THE REFEREE: August 17, 1977. I don't know whether that is the date of the article or --

MR. SASSOWER: August 17, 1977. With permission of the Court may I draw your attention to certain misstatements in this article which really disturbed me at the time and still disturbs me. "Mastriani said he never received the accounting." That accounting was filed and given to all the parties who were interested in the estate two years

before. For Mastriani to have said he never received the accounting was a distortion and if not an outright lie. "And yesterday testified that Sassower had written checks last month from Kelly's estate. He said the checks for \$246 to an insurance company and \$166 to a bank were made out by Sassower." These are checks that I allegedly drew after I had been removed as an executor which they state as a fact here.

THE REFEREE: The article does not indicate those checks were drawn for the benefit of the estate.

MR. SASSOWER: Right. Actually I drew those checks and I sent them to Mastriani. I didn't send them to anybody else but Mastriani. In fact --

THE REFEREE: I think he testified to that effect.

MR. SASSOWER: That's right. And that I did not appear pursuant to an order of the Court. The fact is that on that day I was on trial before Justice Joseph DiFede in Supreme Court Bronx County, Green vs. Green. I was in the middle of the trial. I sent an affidavit of actual engagement to the

Court which they received. I sent it by certified mail and under those circumstances an to allege here that the district attorney is investigating my activities, I mean this just ruined my practice. Your Honor, in my chronological review of my testimony we are up to 1975. 1975 until I took ill in 1976 were the busiest days or year of my practice. I was just on trial almost every day. Although I was very busy with other matters in 1975, by the way, I have put this in a format which I think will save the most time. I do not wish to give the impression that because of these other matters I neglected the Kelly Estate, for I did not. It was because I was very busy with other matters that I had more than the normal desire to cut through all the red tape, resolve all controversies and close the Kelly matter finally and completely.

In 1975 I argued in the Appellate Division Smith vs. Smith, which is reported at 50 A.D. 2nd 749; Richardson vs. Leatherby 47 A.D. 2nd 891; 300 West vs. City of New York 48 A.D. 2nd 629; George vs. George; Rosenberg vs. Dookenhau; Astoria Federal Savings vs. Hughes; Shamberg vs.

Georgetown, and probably a few other appeals which a cursory review of my records did not immediately disclose. I argued in the Appellate Term 300 West vs. Manufacturers Hanover Trust. In 1975 I tried 300 West vs. Manufacturers Hanover Trust -- sorry. In 1975 I tried 300 West vs. City of New York, which lasted about six weeks; Shamberg vs. Georgetown, where I spent at least 20 days in Supreme Court, Kings County; Okun vs. Okun; Smith vs. Smith before Mr. Justice Postel for about a week and a half; Ifcher vs. Ifcher for about eight days before Mr. Justice Grumet; Richardson vs. Leatherby; Rodriguez vs. Williams; Goldberg vs. Rosenthal; Massina vs. Perlowin, which lasted about a week before now Judge Bramwell of Eastern District Federal Court; Cuniff vs. Cuniff; SXar vs. Madison; Ferguson vs. Martin; Vallegos vs. Lopez; Boras vs. Canarik; Moses vs. Insurance Company of North America; Joplin vs. Debrin; People vs. Tursi; Cirrelli vs. A. R. Fuels; Tursi vs. Littman; Tursi vs. Zeit, and about a dozen other cases.

Besides this I had numerous examinations before trial and other hearings before administra-

tive tribunals. All these matters I diligently and competently attended to. I show this Court the record on appeal and brief in Smith vs. Smith, which was not only tried in 1975 but I perfected and argued the appeal in the same year which resulted in a favorable ruling by the Appellate Division. And this is Smith vs. Smith, which I took out of the Westchester County Library. Judgment was entered. It was tried in March. Decision rendered by Mr. Justice Postel. Judgment entered September 5, 1975, and I had it up and argued in the Appellate Division for the October Term. All in one year. Do you want to see it?

MR. GRAYSON: No.

MR. SASSOWER: 300 West vs. City of New York, which was tried for about six weeks before Mr. Justice Tyler, and the appendix is contained in seven volumes which was argued the following year in the Appellate Division. This is a different 300 West than the one I argued in the Appellate Division 1975 and Court of Appeals.

In addition, I had to deal with the numerous

motions made by the Abuza firm both in the Supreme Court and the Appellate Division in the trust matters.

In short, it was a very hectic year.

Now, specifically, in 1975 I had almost daily calls with respect to the Kelly Estate. There was the house to be taken care of. Mrs. DuBois was calling me almost every day. I was trying to work out settlements and compromises between Mrs. Cook and Edward Kelly. He was trying to recover certain claims of the Kelly Estate. I was meeting with them, telephoning them, they were telephoning me, and most of these calls were made from the Court-house during luncheon recesses or after court ended that day. As far as I know the way that I proceeded was with the permission and consent of Samuel Schacter. He didn't bother me in 1975. He never bothered me for an accounting in 1975. In fact, and unfortunately, Mr. Schacter has died recently, because I know if Sam Schacter was here and were put on the stand to testify that my conduct in 1975 would be resolved in my favor without any doubts whatsoever.

I wish to offer in evidence, your Honor, at this time, Defendant's Exhibit FF, which was previously marked for identification and in particular paragraphs 2 and 6. In fact those are the -- all right.

MR. GRAYSON: No objection.

THE REFEREE: FF in evidence.

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(Respondent's Exhibit FF previously marked for identification now received in evidence.)

MR. SASSOWER: That affidavit I believe shows that he received the accounting in December.

THE REFEREE: So the record may be clear, this is an affidavit of Mr. Samuel Schacter dated January 9, 1976.

MR. SASSOWER: So that the allegation that I filed my accounting in April of 1976 is, I think, misleading. I did file it on December 20 or mailed it on December 20, and had been rejected for minor corrections which is usual in Surrogate's Court practice. I draw your Honor's attention to BX in evidence.

THE REFEREE: Yes.

MR. SASSOWER: That immediately upon receipt

of Mr. Schacter's affidavit I asked --

THE REFEREE: That is referring to FF in evidence?

MR. SASSOWER: I immediately communicated with the Court for the right to put in opposing papers to that motion, and I put in Exhibit CC, which is in evidence, and I draw your Honor's attention in CC to paragraphs 1 through 6.

THE REFEREE: Yes.

MR. SASSOWER: And I responded again with my affidavit which is EE in evidence.

THE REFEREE: Yes.

MR. SASSOWER: And I draw the Court's attention that from these affidavits including Mr. Schacter's affidavit there was no request that I be removed. There was only a request that costs be assessed against me.

THE REFEREE: Only request what?

MR. SASSOWER: That costs be assessed against me. No issue of removal whatsoever contained in those papers. But significantly, my affidavits of CC and EE were never considered by the Surrogate's Court nor do I believe are among the papers in

Surrogate's Court. These documents were produced from the file of Mr. Abuza. The originals, I don't know what happened to. But Surrogate's Court does not have those papers as they do not have a lot of other papers that were submitted to that Court and which they acknowledged they received. So whether his Honor feels that I should have explained more, and your Honor is probably correct, the fact is no matter what I would have sent in they were just not considered.

Now the decision of January 28, 1976 was not mailed to me. It was only sent to the Abuza firm. And I didn't see it until about a year later. So anything about removal I didn't even see. The order of March 9th, 1976 --

THE REFEREE: Judge Asch's order?

MR. SASSOWER: No, that was Judge Signorelli's order. I didn't see it. It was never mailed to me, it was never served upon me. I didn't even know of its existence. This is the March 9th order, the March 9th decision. By the way, I have no objection if your Honor wants to ask me or Mr. Grayson wants to ask me questions on cross-examination.

MR. GRAYSON: March 9th was an order.

MR. SASSOWER: March 9th was a decision. I'm sorry, did I say March 9th? January 28th decision. The January 28th Decision was never mailed to me. The March 9th order was purportedly served upon me when I was ill, but noone construed the March 9th order as removing me as executor. Everybody felt rightly or wrongly including Judge Signorelli himself, the court clerks, the court attendants, Mr. Abuza, Mr. Wruck, that the March 9th order was moot since my accounting had been filed, because it gave me 30 days in which to file the accounting which had already been sent in months before.

THE REFEREE: In other words, you are saying that you filed an accounting prior to the order?

MR. SASSOWER: Absolutely.

THE REFEREE: And subsequent to the order?

MR. SASSOWER: Correct, your Honor.

THE REFEREE: Within the 30 days?

MR. SASSOWER: Correct, your Honor. In fact, on April 15 to make absolutely sure that it was filed I went out to Surrogate's Court in Suffolk County, made all the additional corrections

that the court clerk wanted and made sure that a file stamp was put on it. But I had filed that accounting and mailed it on December 20 originally, and the clerks in Surrogate Court they have a backlog, they check all the accounting and it takes about a month, a month and a half before it is accepted or rejected. And when I went out there on April 15, 1976, they didn't want to even attend to it and I just stood there and stood around until they put it after checking it and made all the other corrections they wanted. Most of these corrections are not really corrections, they might want something in Schedule F which you may put in Schedule B, or they may want something in Schedule B which you put in Schedule F. These are minor procedural objections which every clerk handles differently. One clerk would want a particular item in one schedule and another clerk will want them in a different schedule. But there is no question and there is no doubt that for a year following the March 9th, 1976 order, everybody looked upon me as the executor. I did all the work as the executor. I draw all the checks. I entered into

a contract of sale with the real property with the permission and consent if not the direction of Judge Signorelli. I filed the tax returns. I did everything as executor.

THE REFEREE: Did you collect any fees?

MR. SASSOWER: Commission?

THE REFEREE: Yes.

MR. SASSOWER: I never got a penny from the Court. I never got a penny from the estate. To this very day I have never received one nickel from the estate in compensation for anything I did.

THE REFEREE: Expenses?

MR. SASSOWER: Not even expenses. The only expenses that I made were filing fees which of course I took out of the estate. But personal expenses, traveling expenses, commissions, anything else never received a dime, never received a dime commissions, nothing, absolutely nothing to this very day.

Now in March of 1976 I became symptomatic which later turned out to be Guillant-Berre Syndrome and I was hospitalized. That became

progressive and I was becoming more and more paralyzed and finally in May of 1976 I was completely paralyzed. And I was hospitalized in intensive care and I wish to either exhibit or offer into evidence hospital report, hospital bills of my hospitalization.

(Discussion held off the record.)

THE REFEREE: This is an extensive record which I think has relevance and materiality to these proceedings. However, I don't want to deprive you, Mr. Sassower, of having these. I think maybe we ought to put it in evidence and retain it.

MR. SASSOWER: All right.

THE REFEREE: That will be CB in evidence. This is the hospital report of New Rochelle Hospital Medical Center and some insurance papers in connection therewith. CB in evidence.

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(New Rochelle Hospital Medical Center records and insurance papers marked as Respondent's Exhibit CB in evidence.)

MR. SASSOWER: As I stated, it was at that time an unknown malady and I became symptomatic around March of 1976. It was a slow progressive

paralysis. By May I was completely paralyzed. In fact, the day before I was hospitalized, I was in this Court on Gold vs. Gold, pursuant to an Appellate Division mandate and took care of the matter while my hands were completely paralyzed and my legs were completely paralyzed. When I finished that matter, I was taken to New Rochelle Hospital and entered New Rochelle Hospital on May 10th, 1976. A prognosis at that time was that I would be paralyzed for a minimum of three months. I stayed in the hospital -- sorry, I entered the hospital May 14, 1976. I stayed in the hospital I think it was until May 26.

THE REFEREE: You said May 26th?

MR. SASSOWER: May 26, 1976. And still completely paralyzed I signed myself out.

THE REFEREE: You said you were admitted to the hospital May 14 and you stayed until the 26th?

MR. SASSOWER: Right. And I signed myself out of the hospital May 26, still completely paralyzed but because they could not do anything for me in the hospital and my wife was under so much pressure at home with the law work, that I thought

I could be some help at home even paralyzed and help her with the volume of matters that we had pending at the time. So that although I signed myself out of the hospital on May 26th, against all advice, I still remained home in a paralyzed condition for quite a few months.

There were exceptions when I did venture out and one of those ventures, I don't know how I did it, was on July 6th, 1976 when I drove out to Riverhead, New York.

THE REFEREE: That was on the Kelly case?

MR. SASSOWER: That was on the Kelly case. It took me one half hour to get up one flight of steps to the courtroom in Surrogate's Court, Suffolk County. In fact, I was under treatment, therapeutic treatment until August of 1976, because what had happened once the illness had subsided my muscles, particularly my leg muscles had just wasted away, they just were atrophied and I had very little strength in them.

Now I draw your Honor's attention to Exhibit AB in evidence, where the Abuza firm on that day recognized me as the executor.

I draw your Honor's attention to Exhibit Y, where on June 2nd, 1976 my wife sent an affirmation to Surrogate's Court stating that I was paralyzed and that I would need at least two months before I became ambulatory.

I draw your Honor's attention to Exhibit AN in evidence, which despite the fact that my wife sent an affidavit to Court that I was paralyzed and would need two months, they wanted her in Court, they wanted me in Court.

I draw your Honor's attention to Exhibit Z, dated June 17, 1976 where I stated to the Surrogate's Court that I was immobile, that I couldn't come to Court the following week.

My wife, in addition to sending an affidavit to Court, and I know who she spoke to, she doesn't remember who she spoke to, but she spoke to Sereduke, Peter Sereduke, told him that I was immobile, I was paralyzed, could not move around without assistance. Nevertheless he said I should come to Court and despite the affidavit. I really could not believe it. I myself called up Sereduke and at that conversation he had my two

affidavits, or I should say my wife's affidavit and my affidavit about my illness, and he said, "Judge wants you in Court."

THE REFEREE: Wants you in Court on what date?

MR. SASSOWER: July 6th. I draw your Honor's attention to the fact that Abuza spoke to Sereduke and Sereduke told Abuza to come to Court on June 22, even though we were not going to be there.

THE REFEREE: Who do you say says that?

MR. SASSOWER: Abuza. He says it in the transcript of July 6th, which is in evidence. In July 6th, Abuza spoke to Sereduke and Sereduke told Abuza to come to Court on June 22, 1976, even though he knew we were not going to be in Court. I couldn't be in Court on June 22. I was still completely paralyzed. On June 22 obviously I could not be in Court. My wife was handling my matters as well as her own matters. And despite that, the Surrogate's Court sent Exhibit A0 which was marked for identification which I would like to be marked in evidence. I offer this in evidence, your Honor.

Sassower - respondent - direct

THE REFEREE: AO in evidence.

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(Respondent's Exhibit AO previously marked for identification now received in evidence.)

MR. SASSOWER: Before this time I had not seen, did not know of Judge Signorelli, did not know of Sereduke or anyone else. That they would order me to come to Court, not for a trial, just for a perfunctory report as to what is happening on the estate which could have been done by the letter, when I was in that serious a situation I found incredible and still find incredible. And they should threaten me that they are going to report me to the Appellate Division if I didn't come to Court was just incredible, I just couldn't believe it.

By the way, earlier in the testimony I could not recall the name of my neurologist. It was Dr. Holstein and it appears in Exhibit CB in evidence. In fact my wife told Mr. Sereduke that on June 22, 1976 she personally had three other engagements in Court and could not be out in Surrogate's Court, Suffolk County. Nevertheless, they ordered me to come on June 6th, 1976, despite

my condition.

Now during that period the only one that was not served with a citation was Thomas Kelly, and the reason Thomas Kelly was not served is that he died, so being unable to --

THE REFEREE: Thomas Kelly, that is the brother of the deceased?

MR. SASSOWER: Right. Still believing I was the executor.

By the way, I would like to offer into evidence ZZ which has been marked for identification which shows that the decision was only sent to the Abuza firm. I didn't even know about it.

THE REFEREE: You are basing that argument on two facts, I take it, Mr. Sassower, one based upon your statement that you never received it, and, two, based upon the fact that the decision itself shows it to be sent to the firm of Abuza & Schackner?

MR. SASSOWER: That's right, only to them.

THE REFEREE: Yes. Okay, ZZ is in evidence.

(Respondent's Exhibit ZZ previously marked for identification is now received in evidence.)

#3

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MR. SASSOWER: Believing I was executor in June 28, 1976, I sent a letter to the wife of Thomas Kelly, Emma Kelly, and I offer that letter in evidence.

MR. GRAYSON: Objection.

THE REFEREE: Sustained.

MR. SASSOWER: May I know the basis of the objection, your Honor, please?

THE REFEREE: Self-serving.

MR. SASSOWER: Well, it shows prior consistent statements that I thought I was --

THE REFEREE: It's true.

MR. SASSOWER: -- I was the executor.

THE REFEREE: I think at the trial it would not be admissible, but --

MR. SASSOWER: All right.

Now, as I started to say, on July 6th, 1976, in a partially paralyzed condition --

THE REFEREE: July 6, 1976.

MR. SASSOWER: I drove out to Surrogate's Court under great pain and with great difficulty. I finally maneuvered myself up to the courtroom, which is on the second floor. I don't know of any

elevators in that building so I had to get up a flight of steps. And I sat down in the courtroom. Judge Signorelli came in and I had never met Judge Signorelli before, had never had any contact with him before, and he called out, "The Kelly Estate," and I answered, "Present," and he started to make some snide remark that we finally are graced with having Mr. Sassower come to Court, that it needed a letter that he is going to report me to the Appellate Division before I would come to Court, and just embarrassed me in the entire courtroom.

MR. GRAYSON: Objection, your Honor. If there is a transcript, let's offer it, let's not have these statements.

MR. SASSOWER: There is no transcript of that. As far as I am concerned, there is a transcript and I have asked for the Grievance Committee for the production of all transcripts.

MR. GRAYSON: Grievance Committee was never able to obtain a transcript.

THE REFEREE: Your objection is overruled.

MR. SASSOWER: And after being subjected to these remarks, Judge Signorelli said, "Okay, I will

have a conference on this matter after I am finished with the calendar call." I sat down. I was in great pain, so I decided to go out into the hallway where I possibly could elevate my legs on a bench. And I got up to leave the Courtroom and Judge Signorelli yelled out, "Where are you going?" I told him that I was felling ill, that I was going to wait outside in the hallway. And he made some other embarrassing remarks to me, spoke roughly and loudly, "Don't forget I am calling your case right after in chambers, right after we finish the calendar call," and I said, "Yes, your Honor." And I went outside and I put my legs on the bench to relieve the morbid sensation I had in them from my illness.

After a while we were ushered into Judge Signorelli's chambers and the transcript of July 6th, 1976 is not correct because --

THE REFEREE: You mean the transcript in chambers?

MR. SASSOWER: In chambers. If your Honor will turn to the transcript --

THE REFEREE: What exhibit is that?

MR. GRAYSON: Exhibit AQ, your Honor, one of the transcripts with the deletions.

MR. SASSOWER: Turn to page 2, your Honor.

THE REFEREE: Yes.

MR. SASSOWER: The transcript is incorrect in that that is not the way it started off. We went into chambers and he started screaming and yelling at me and he said, "When I send you a notice that I want you in Court, I want you in my Court. I don't want any excuses, I don't want any excuses. In this Court you have to attend." And he started screaming and yelling, and I tried to tell him, "But, your Honor, I was sick, I was paralyzed, I am still paralyzed." He says, "I don't care. When I want you in Court, I want you in Court." And he started yelling, and he said, "Well, what happened, why couldn't your wife come instead of you?" I said, "Well, my wife has her law practice and she was doing not only her law practice but taking care of mine law practice while I was sick, and she had engagements all over the place, she was working 20 hours a day." He said, "I don't care about other engagements, I don't care about

excuses, when I send a notice that I want you in my Court, I want you in my Court." And I said, "But she is busy, she has been trying to take care of --" and I tried to explain in a nice way but he just kept yelling and screaming and yelling and screaming. And I said, "Even today she is running around in a few courts trying to take care of my practice and her practice at the same time." And he said, "You mean to say she is not here also?" I said, "No, your HOnor, she is engaged in another Court." And then he said, "Okay, let's take this down," and that is where that transcript starts, because it is obvious from reading this, this is not the way -- never said good morning to me, never said how do you feel, Mr. Sassower, never said a kind courteous word to me. The whole episode was, in my experience, not only in a Courtroom, but as a human being in society, unbelievable, incredible. Nothing ever happened between me and Signorelli before that date. Just yelling and screaming.

During the course of it that transcript reveals that Abuza wanted to examine me before trial in Manhattan. He knew I was paralyzed, he saw I

was paralyzed, I mean, I weighed 40 pounds less than I weigh now. He says, "No, you have to come out to Riverhead to be examined."

THE REFEREE: You mean the Judge said that?

MR. SASSOWER: The Judge said that. I said, "Abuza is in Manhattan, his client is in Queens, I am in Westchester County, why must we come out to Riverhead?" He said, "I want it out in Riverhead." I said, "Judge, I am paralyzed, you know, I endangered my own life in coming out here trying to drive a car coming out here."

THE REFEREE: Is this in the transcript?

MR. SASSOWER: That is in the transcript. He said, "I want it in Riverhead." It is not in that many words, but he wanted it out in Riverhead. He says, he doesn't say it in the transcript, but later he says, "Get an ambulance to drive you out here." I mean, this is the type of remarks that I was met with. And I did nothing, said nothing that I know of that was discourteous or should have brought on this type of response by him. All he wanted to know is what the situation was with the estate, something I could have done by letter which we did

by affidavit. The only one that had not been served Thomas Kelly, that's the only one, and the only reason Thomas Kelly had not been served is because he had died.

There are a couple of affidavits of service where the title was erroneous but that just had to be corrected. Just went out there for no reason whatsoever. I had to get a supplemental citation.

I draw your Honor's attention to AR in evidence. That day I gave \$5 or \$10 to the court stenographer for him to type out an affidavit for me to expedite the matter. I am the executor of the Estate of Eugene Paul Kelly. That was notarized by the Court stenographer, signed by Judge Signorelli. He recognized me as the executor.

THE REFEREE: You had not been removed?

MR. SASSOWER: Yes.

MR. GRAYSON: March 9th.

THE REFEREE: Right.

MR. SASSOWER: I am the executor. This was typed out in court by court personnel. A supplemental citation had been issued to me on July 6. I offer in evidence a supplemental citation that

had been issued to me for service upon various people including Emma Kelly, which would never have been issued to me if I had been removed as the executor.

THE REFEREE: CD in evidence.

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(Supplemental citation marked as Respondent's Exhibit CD in evidence.)

MR. SASSOWER: You know, your Honor, the only way I know Judge Signorelli's disposition toward me, and Mr. Grayson has stated that possibly it is something that I did which caused him to act this way, he has said it so many times during my motions to dismiss that somehow my attitude got hardened or something that I did that caused Judge Signorelli to act this way toward me, and I say the only way we can arrive at the truth is if I call at this time Mr. Grayson as my witness, let him relate to this Court his own personal experience with Judge Signorelli.

THE REFEREE: No, I don't think that is proper.

MR. SASSOWER: Mr. Grayson knows the reputation of Judge Signorelli.

THE REFEREE: He testified. We go by the record.

MR. SASSOWER: May I ask why I cannot call Mr. Grayson to testify as my witness?

THE REFEREE: As to what?

MR. SASSOWER: As to Judge Signorelli's reputation.

THE REFEREE: No, that is not proper evidence, any more so than someone for Mr. Abuza's reputation.

MR. SASSOWER: Mr. Grayson has intimated if not expressly stated that possibly it was my conduct that caused Judge Signorelli to act that way.

THE REFEREE: That is a conclusion he arrived at. That is not evidence.

MR. SASSOWER: I understand that, but I don't know what I did to Judge Signorelli for him to act this way.

THE REFEREE: Okay.

MR. SASSOWER: We are talking about 1976.

THE REFEREE: Yes. Okay.

MR. SASSOWER: By the way, I draw your Honor's attention to Exhibit KK in evidence. That examination before trial was to be held in New York.

Judge Signorelli made me come out to Riverhead for the examination before trial.

THE REFEREE: Well, this is Abuza's application to examine you?

MR. SASSOWER: Right.

THE REFEREE: And he served this on you?

MR. SASSOWER: Correct, your Honor.

THE REFEREE: For examination?

MR. SASSOWER: In Manhattan.

THE REFEREE: This is dated July 6th, 1976?

MR. SASSOWER: Correct, your Honor.

THE REFEREE: Did he serve this on you when you appeared in Judge Signorelli's Court that day?

MR. SASSOWER: Correct.

THE REFEREE: Then Judge Signorelli changed it to Riverhead?

MR. SASSOWER: When I was paralyzed. I had a hard enough job to get to Manhattan, but to go out to Riverhead was an outrage.

MR. GRAYSON: Your Honor, there was testimony by Mr. Abuza that the reason the location was changed to Riverhead is that the Surrogate's Court Local Rules state that all examinations of this

nature are to be held at the Court.

MR. SASSOWER: But, you know there are rules and there are rules, and there are extenuating circumstances and, you know, usually you have examinations before trial in the lawyer's office.

THE REFEREE: All right.

MR. SASSOWER: There are many times orders of this Court are issued which state that the examination before trial is to be held in Special Term, Part 2. If they held all the examinations before trial in Special Term Part 2 that are ordered to be held in Special Term Part 2, you would need twice as big a building. Attorneys agree among themselves that they will held them some other place that is more convenient. "No," Judge Signorelli says, "You have to hold it out here."

THE REFEREE: Okay.

MR. SASSOWER: There was the order of Judge Signorelli appointing Mr. Wruck as guardian where I was the executor, and I ask you to produce that order of July 8, Mr. Grayson.

MR. GRAYSON: It is not already marked?

MR. SASSOWER: No. It is a clear indication

that I am the executor.

MR. GRAYSON: July 15, 1976. It is dated July 8, 1976.

MR. SASSOWER: I offer this document in evidence, your Honor.

THE REFEREE: No objection, I take it, Mr. Grayson?

MR. GRAYSON: Well, it does not state that Mr. Sassower is the respondent on that date. It states that this is an examination of his preliminary accounting of his accountings as preliminary executor. It does not state on its face that he was the executor on that date.

MR. SASSOWER: I will show you other documents.

MR. GRAYSON: So I would object.

THE REFEREE: Why encumber the record?

MR. SASSOWER: Then I will withdraw it. I offer into evidence a notice of appearance by Schachter, Abuza & Goldfarb dated July 19, 1976, which is addressed to George Sassower, Esq., as executor appearing pro se.

MR. GRAYSON: No objection.

THE REFEREE: CE in evidence.

**

(Notice of appearance marked as Respondent's Exhibit CE in evidence.)

MR. SASSOWER: On July 27 there was an examination before trial of me in Riverhead. I had been --

THE REFEREE: By Abuza?

MR. SASSOWER: By Abuza. I had been so taken aback and was so disturbed by the commands that I appear in Surrogate's Court June of 1976, a month earlier, despite my illness, and by the remarks of Judge Signorelli on July 6, that for the first time in my career I investigated the Judge and some of the personnel, and I learned that Sereduke had been with the Aronson firm while a Kelly matter was there. When I came to Court on July 27, 1976, and the law assistant that was assigned to the Kelly case, Mr. Sereduke, came in, and before we started the examination before trial, I asked for an application to be made to the Court. And the application was to have Mr. Sereduke removed as law assistant in this case because of his association with --

THE REFEREE: Is that a matter of record?

MR. SASSOWER: That is not part of the record.

As far as I know there was a stenographer there. The stenographer took it down. I have asked for transcripts and I can't get transcripts. Is that correct?

MR. GRAYSON: July 27?

MR. SASSOWER: Right.

MR. GRAYSON: That transcript is in evidence.

MR. SASSOWER: That is of the EBT. But what happened before that time?

MR. GRAYSON: That is the transcript we received on that date.

MR. SASSOWER: There is a transcript before that, and I asked Mr. Sereduke to be removed from this case because of what my investigation showed, and Judge Signorelli got red, and made some very uncomplimentary remarks toward me, I mean, he said that I am impugning the integrity of this Court, and I had to investigate what happened, and he got very very disturbed and started chastising me, yelling at me, screaming at me, but he relieved Sereduke from the case and we commenced the examination before trial. That was the first time that I did anything which could have caused any --

I wouldn't call it justifiable response, that I did anything to cause any response or any action by Judge Signorelli to the way I was acting. I draw the Court's attention on the examination before trial that it is stated in there that I am the executor by the other side, that they would ask you questions as the executor.

I draw your Honor's attention to pages 1, 2, 3, 22, 23, 24, 29, 30, 31, 38, 39, 48, 53 and 54, all of which pages recognize me as the executor. Nothing about removal, I was the executor.

If your Honor --

THE REFEREE: This is the examination before trial by Abuza?

MR. SASSOWER: And Wruck.

THE REFEREE: And Abuza is the one who made the application to have you removed prior to that?

MR. SASSOWER: Correct, and who submitted an order to have me removed. He recognized me as the executor throughout. And Mr. Wruck, who had gone through the file, who had examined the entire file, according to his affidavit of services never said that I was removed, recognized me as the executor,

everybody recognized me as the executor. And I draw your Honor's attention to page 9 of the examination before trial. My dealings in 1975 is revealed by page 9 were not with Abuza but with Schachter. There was absolute consent to the delay in the filing of the accounting.

You have also, your Honor, from Edward Kelly saying that I cannot -- by Edward Kelly himself saying that I cannot file the accounting until I straighten out certain matters. On page 32 and 33, I state in there that it is my desire to have, one was my desire to have one final complete accounting, not five, ten, fifteen accountings, one accounting complete from beginning to end. They examined me on such picayune things as why I took \$4,000. If your Honor recalls, the objection of Patricia Gilbreath was settled for \$3500 more than she received. She received \$500, so she was to get a total of \$4,000. When it took them that long to draw up the papers to settle the case for \$4,000, and she was bothering me that she was losing interest on the \$4,000, I took out from the estate account \$4,000 and I made it a separate account in

trust for Patricia Gilbreath. Do you recall that testimony, your Honor?

THE REFEREE: Yes.

MR. SASSOWER: Or gave me the right to take out \$4,000 and make a separate account for Patricia Gilbreath so that she gets the interest. We are talking about nickels and dimes here, Judge, yet they examined me on this on page 55, 56, 63 and page 64. And on page 103 I go into how I am spending my own money to try to resolve this case, not estate money, my own personal funds for which I have never received a penny for. I draw your Honor's attention to the letter of July 30, 1976 which Mr. Abuza sent to me as the executor for necessities that I needed in order to file the federal and state return, the 706. I got no cooperation from anyone.

On August 4, 1976 Mrs. Hook objected to my accounting. She objected to my accounting because I had said that she was not entitled to any money. She had made a claim for \$10,000. They sent a notice to me as the preliminary executor, notice of appearance to me as preliminary executor.

Everybody just recognized me as the executor. I don't want to repeat it so many times but I was the executor. Does it so indicate?

MR. GRAYSON: So indicates.

MR. SASSOWER: I won't have to offer it in evidence?

THE REFEREE: No. Who is the attorney in that?

MR. SASSOWER: Siben & Siben. So the house should not be vandalized and it should be kept in good order, I permitted Eugene Paul Kelly's grandson to live in the house to take care of the house. When we thought we had a buyer for the house in September of 1976, I told him that he should vacate the premises, something which I would not have done if I was not the executor. And I want to offer into evidence a letter that I wrote to Christopher Gilbreath, the grandson of the deceased.

MR. GRAYSON: Objection.

THE REFEREE: I don't know why you object, Mr. Grayson. Actually, your charge is that he was acting as executor and he should not have been. Also, there is testimony from Mr. Abuza that

Mr. Sassower wasn't doing anything particularly with respect to the house. The objection is overruled.

CF in evidence.

**

(Letter to Christopher Gilbreath marked as Respondent's Exhibit CF in evidence.)

MR. GRAYSON: Can I ask Mr. Sassower how long the grandson lived in the house?

MR. SASSOWER: About eight months altogether.

MR. GRAYSON: Did he pay any rent?

MR. SASSOWER: I had an agreement with him where he would pay I think \$200 a month rent plus take care of the place. The day after he moved in, he had a very very bad accident where he broke both legs, very serious accident, and he could never pay rent and he went on welfare. But I was happy to have somebody there because when somebody was there at least I knew the house had less likelihood of being vandalized, of being robbed.

THE REFEREE: All right.

MR. SASSOWER: I would like to offer in evidence a letter I received from Samuel Schachter October 19, 1976.

MR. GRAYSON: This doesn't state on its face that you were the executor.

MR. SASSOWER: Right, but it's for a different purpose I am trying to introduce that.

THE REFEREE: You object?

MR. GRAYSON: For what purpose are you introducing it?

MR. SASSOWER: That I came out there on October 21, 1976 with all my books and records so that we could sit down and resolve this matter through an informal accounting, you know, to be prepared to settle the matter.

MR. GRAYSON: No objection.

THE REFEREE: CG in evidence.

** (Letter dated October 19, 1976 marked in evidence as Respondent's Exhibit CT.)

\$ MR. SASSOWER: When I got out there on October 21, 1976, I didn't find Mr. Schacter or Mr. McCarthy there, but Mr. Abuza and Mr. Wruck were there. I had all my records with me. They examined my papers, my checks, my bank statements, my bankbooks, everything. They must have spent two hours going through everything. In fact, on

some matters where I had duplicates I gave photostatic copies of certain documents. And they were fully satisfied, they raised no objection to anything.

Then we have the October 21, that same day where Judge Signorelli told me to sell the property.

THE REFEREE: Where does that appear?

MR. GRAYSON: Isn't that transcript in evidence?

MR. SASSOWER: That transcript is in evidence. It is a very short transcript. This was not the first time, it happened a few times afterwards because we were having difficulties with the price and I was having difficulties with Abuza agreeing to the price, and Judge Signorelli said, "Go sell the property, sell the property," and here is the transcript, your Honor, it is in evidence.

MR. GRAYSON: Exhibit BT.

THE REFEREE: All right.

MR. SASSOWER: I would like to offer AE in evidence, your Honor.

MR. GRAYSON: That is for identification.

MR. SASSOWER: Why? Because Ed Kelly wanted

certain personal property from the house, and I said it is okay, just give the agent a receipt for what you take. I offer it in evidence.

MR. GRAYSON: Do you have a list that was attached to that?

MR. SASSOWER: I don't have that list.

THE REFEREE: AE in evidence.

**

(Respondent's Exhibit AE previously marked for identification now received in evidence.)

MR. SASSOWER: Attached to AE was a list of items Ed Kelly took out and I think I sent that list to Public Administrator in May, 1981. Certainly I had no authority nor did Abuza have the right to examine me if Edward Kelly could remove certain property from the premises if I was not the executor.

THE REFEREE: Abuza represented Ed Kelly?

MR. SASSOWER: And Abuza represented Ed Kelly.

On December 2nd, 1976, I entered into a contract for the sale of the real property and signed my name to that contract as the executor. I offer the contract of sale in evidence, if your Honor please.

THE REFEREE: Received, CH in evidence.

**
(Contract received in evidence as Respondent's Exhibit CH.)

(Luncheon Recess.)

AFTERNOON SESSION

MR. SASSOWER: If your Honor please, I would like to offer into evidence some bills that I received in January of 1977 with respect to the home owned by the deceased which I paid.

THE REFEREE: Fuel bills and repair bills as executor. I think maybe if you and Mr. Grayson agree on what they are and state it for the record, rather than put more exhibits in of this kind --

MR. GRAYSON: I was handed a cover letter that accompanied the bill for \$53.50 from an oil company. I have a bill for \$114.81 from an oil company dated January 20, 1977, and the cover letter I previously mentioned is January 26, 1977. And I see a bill for \$53.50 from a plumber apparently dated January 7, 1977. That is the bill that the

cover letter relates to. And another oil company delivery bill for \$190.08. This covers deliveries on January 7 and January 20, 1977. And I would like the record to show that these two oil bills were listed as being sold to Brewer, care of the realty company, and apparently Mr. Brewer forwarded these bills to respondent.

THE REFEREE: To refresh my recollection, Judge Signorelli's order of removal was when?

MR. SASSOWER: March 9th, 1976. These are 1977.

THE REFEREE: All right.

MR. SASSOWER: Here are two letters with respect to the contract of sale negotiating the terms of the contract as to things that were not provided for in the contract such as termites and things of that nature.

MR. GRAYSON: I was handed two letters from the law office of Eugene Levitt, Huntington, New York, dated February 3 and 7, 1977, and they do concern the contract for the sale of this house.

THE REFEREE: I think we will receive in evidence this letter of February 3rd, CI in evi-

dence.

**

(Letter dated February 3, 1977 received in evidence as Respondent's Exhibit CI.)

MR. SASSOWER: Here is a letter from the Department of Social Services to me obviously as executor of the Estate of Eugene Paul Kelly dated 1977.

THE REFEREE: To what effect?

MR. SASSOWER: An assignment of the claim of Christopher Gilbreath.

THE REFEREE: He was injured in an accident?

MR. SASSOWER: And had to go on the welfare.

THE REFEREE: You were to reimburse welfare?

MR. SASSOWER: No, no, so this was a claim by welfare for his claim under the estate to the sum that he received welfare benefits, so they sent me a letter with an assignment as executor.

THE REFEREE: All right.

MR. GRAYSON: There is such a letter dated January 28, 1977.

MR. SASSOWER: This is all to show that I acted as executor.

I offer into evidence the objections to the

account by Ernest W. Wruck dated February 23, 1977, and it is sent to me, George Sassower, Executor.

MR. GRAYSON: No objection.

THE REFEREE: I take it it was filed in the Surrogate's Court?

MR. SASSOWER: Correct, your Honor.

THE REFEREE: It is directed to Surrogate's Court and to Mr. Abuza to the respondent as executor. That will be CJ in evidence.

**

(Letter dated February 23, 1977 marked as Respondent's Exhibit CJ in evidence.)

MR. SASSOWER: May I draw your Honor's attention and will you pick out AS in evidence, your Honor. This I think is the most devastating document I have to show that I was the executor.

THE REFEREE: Yes.

MR. SASSOWER: It is a certified copy of letters testamentary issued by the Court on March 14, 1977 that show that I was the executor.

THE REFEREE: Yes. That's correct.

MR. GRAYSON: Your Honor, I would like to bring up a point that when the Surrogate was here he testified as to the procedure when copies of

letters were requested, and he testified that there was a mistake, and the clerk sent it out, and that within about a day or two a letter went out to Mr. Sassower from the clerk requesting the return of that letter because it was issued as a mistake.

THE REFEREE: That is correct.

MR. SASSOWER: Absolutely correct, your Honor. But as your Honor has said previously on this hearing, there is a quota of mistakes. I mean, every document, every --

THE REFEREE: Don't argue. That is argument.

MR. SASSOWER: -- on the file, on the micro-film, on everything has listed me as executor up to March, the middle of March of 1977.

May I draw your Honor's attention to BS, which is notice of a conference for March 17, 1977. Nothing on that notice gave me any indication that I was to be removed as executor in March of 1977 or had been removed as executor. Now on March 17, 1977, I came to Court. Shortly after I came to Court, I noticed Mr. Wruck going in to see Judge Signorelli privately. He came out after about ten or fifteen minutes. Then Mr. Levitt went

in to see Judge Signorelli privately.

THE REFEREE: Mr. Levitt was counsel for the buyer?

MR. SASSOWER: Correct, your Honor. He came out in a few moments. And Mr. Levitt told me, this was the first notice I had, that the Judge is contemplating removing me as executor and cancelling the contract and holding that everything that was done in the year 1976, March of 1976 to March, 1977 was null and void and that I had acted without authority. That was the first notice that I ever had that I was not the executor. And, of course, then we all went into Judge Signorelli's --

THE REFEREE: Just to clarify the record. You had notice of the order, of the entry of the order of removal the year before, correct?

MR. SASSOWER: Not really.

THE REFEREE: You say you never received that?

MR. SASSOWER: No, I don't know whether I received it or I didn't receive it. There is the assertion by Mr. Abuza which I will accept as true that he served me with a copy of that order on March 16, 1976 at the Appellate Division. At that

point already I was ill so --

THE REFEREE: I just want to clarify the record here.

MR. SASSOWER: Right.

THE REFEREE: When you say March 17, 1977, is the first notice that you had, I take it that you agree in substance that there was the existence of a removal order of March 1976. However, your position is in view of your filing the account within 30 days that that order was null and void.

MR. SASSOWER: It was a conditional order.

THE REFEREE: Fine. I just want the record to be straight.

MR. SASSOWER: We all construed it --

THE REFEREE: I just clarified that. Back in March, 1977, when Levitt told you --

MR. SASSOWER: And then came the meeting in Judge Signorelli's chambers of March 17, 1977. A transcript has been marked in evidence as BQ, and I won't repeat it. It's all in evidence.

THE REFEREE: Maybe you should give that in substance, the BQ, so we have the record, some kind of sequence what happened.

MR. SASSOWER: Judge Signorelli stated in substance at that time that I had been removed a year before. Everyone at that meeting contended that they all felt that I had not been removed. Mr. Abuza, Mr. Wruck, Mr. Frank, they all --

THE REFEREE: Who is Mr. Frank?

MR. SASSOWER: He was from Siben & Siben's office.

MR. GRAYSON: In view of the fact that this morning the version given to your Honor is BQ with deletions, it is possible that everyone else's statements will not appear in Exhibit BQ.

MR. SASSOWER: Than have the original go in.

MR. GRAYSON: You follow what I said, your Honor?

THE REFEREE: Yes, I do. We will have the record amended to reflect that all of BQ is in evidence. BQ.

MR. SASSOWER: Now, I made two motions to disqualify Judge Signorelli.

THE REFEREE: This comes after March, 1977?

MR. SASSOWER: Right. I made one motion, and I stated in both motions that I am bifurcating

the motions for a particular reason, and the particular reason was this: One of them was a non-offensive affidavit saying that I wanted to disqualify Judge Signorelli because I wanted him as a witness to show that he recognized me as an executor for an entire year. That I felt was a nonoffensive affidavit which would give Judge Signorelli an opportunity to disqualify himself based just on the fact that I wanted him as a witness.

Then I made another motion where I chose to disqualify Judge Signorelli for his behavior towards me over the past year and a quarter. That was what we might call offensive because it was a personal antagonism that had arisen on his part as against me. At that point I saw nothing that I really did which should have provoked his ire.

THE REFEREE: This is repetitious.

MR. SASSOWER: So that is why I made it in two motions. And I also made a third motion to construe the order of March 9th, 1976 as a conditional order of removal as the parties treated it.

All motions were made returnable May 17, 1977.

They were made in good faith. They were made in the honest belief that they had merit. I still believe they have merit. And certainly do I not feel that it is a basis of a disciplinary proceeding against me. I didn't make it to harass the Judge. In fact, I thought by making it in two motions he could grant the first motion on the ground that I wanted him as a witness and there will be no reflection upon anyone because of what I said in the second motion. On the contrary, I know my position. I know generally you cannot fight a judge. You are always coming out the loser or generally come out the loser. And my entire procedure up to the point of being arrested was trying to placate the situation, to mollify the situation, to try to have a rapport with Judge Signorelli, to deal with him in a manner which would not create any greater antagonism than he had for me, greater than existed. I was not ready to do battle nor did I intend to do battle nor did I want to do battle.

On March 6 -- May 6th, 1977, I sent out a notice of examination before trial for Edward Kelly.

I made it returnable in Supreme Court Queens County. Edward Kelly lived in Queens County, his attorney resided and had an office in New York County, and I was in Westchester County. Queens County seemed the logical place to hold an EBT. It would create the least disruption for all concerned. At the time I did not know that there was a rule in Surrogate's Court, Suffolk County, that all examinations before trial are to be held in Surrogate's Court, Suffolk County. In fact I have had examinations before trial in Surrogate's Court and with only one or two exceptions, none of them took place in Surrogate's Court, except when just as a matter of convenience --

THE REFEREE: You are talking about some other county other than Suffolk?

MR. SASSOWER: Even in Suffolk County, I had an examination before trial on another matter years ago and it did not take place in Suffolk County. Both lawyers were residents of New York and we had it in New York County. We had our conferences in New York County. On May 23, 1977, Edward Kelly defaulted on the notice to examine him before trial.

THE REFEREE: You were talking about you made these three motions returnable with respect to the Judge disqualifying himself, you made those motions in May returnable May 17. Then you made a motion to examine Kelly before trial?

MR. SASSOWER: I sent out a notice of examination before trial returnable May 23, and he did not show up at that time. So I then made another motion.

THE REFEREE: What about May 17, what happened on May 17?

MR. SASSOWER: The motions were submitted to Judge Signorelli. When Edward Kelly defaulted on his notice to examine before trial, on the following day I made a motion to examine Edward Kelly before trial. On the motions to disqualify --

THE REFEREE: When you made this motion to examine Kelly you had been removed at this point then?

MR. SASSOWER: Yes.

THE REFEREE: Why did you bring the motion to examine Kelly?

MR. SASSOWER: Because I still had to go to trial as a preliminary executor.

THE REFEREE: On that basis?

MR. SASSOWER: On that basis. I wanted to show everything I did was with his consent, exactly what his actions were. That I made payments, that I made certain settlements with his approval and consent. In fact, on the checks any settlement that I made on the estate on any disputed account, on any disputed bill I had Edward Kelly sign "payment approved" and sign his name on the check. The four disputed bills he signed each one of those checks.

THE REFEREE: All right.

MR. SASSOWER: On May 27, 1977 Judge Signorelli issued his decision on two motions made to disqualify. In the meantime, Judge Signorelli had set the trial down for June 1st, 1977, trial on the preliminary accounting. May 27 he denied the motion to disqualify himself. Without the pencil notations I offer into evidence my affidavit for June 1st, 1977.

MR. GRAYSON: No objection.

THE REFEREE: CK in evidence.

**

(Affidavit marked as Respondent's Exhibit CK in evidence.)

MR. SASSOWER: On June 2nd, 1977 I was in Supreme Court, Queens County, picking a jury with Harold Fields, the attorney for the defendant in Goldberg vs. Godbolt. And when I got back from luncheon recess the clerk called out my name in Trial Term, Part I, and he said, "Sassower, I got a call from the Sheriff's Office in Suffolk County that there is a body attachment against you for not being in Surrogate's Court, Suffolk County." I was embarrassed, I was discombobulated at the fact that I was in the middle of a Supreme Court case and that a body attachment should be issued against me.

MR. GRAYSON: Your HONor, there is no evidence that a body attachment was issued against the respondent.

MR. SASSOWER: This was the announcement.

MR. GRAYSON: There is no evidence the body attachment was issued in Suffolk County against you.

MR. SASSOWER: All right. I therefore went the following morning -- I will connect it up. I didn't mean to interrupt any ruling. The next morning before I went to Supreme Court, Queens County, to continue my trial, I went to the Appellate Division and got an order to show cause signed by then Associate Justice Milton Mollen staying any body attachment against me, which I offer into evidence.

MR. GRAYSON: Your Honor, still there is no evidence of any body attachment.

THE REFEREE: Well, you are going to connect this up?

MR. SASSOWER: Yes.

THE REFEREE: We will hold this in abeyance while you connect it up, the offer.

MR. SASSOWER: So I understand it, a call was made, there was an announcement in Supreme Court, Queens County, there was a body attachment against me. There is no question that I have the signature of Judge Mollen in the Appellate Division, Second Department, staying any body attachment.

THE REFEREE: You have to relate it now to this

case that is here. What happened as a result of this?

MR. SASSOWER: Well, I then found out that although the Appellate Division has jurisdiction over Supreme Court justices, it does not have jurisdiction over Surrogates. You take an appeal from the Surrogate's Court to the Appellate Division and you take an appeal from the Supreme Court to the Appellate Division, but at Article 78 against a Justice of the Supreme Court again you go to the Appellate Division, but an Article 78 as against a Surrogate you go to Supreme Court. So I therefore went when Mr. Selkin told me, although he is having it signed because of the urgency of the situation, although he is having it signed, that I should go to the Supreme Court and get an Article 78 against Judge Signorelli, which I did. And the following day I went to Supreme Court, Nassau County, and got a similar order from Supreme Court, Nassau County, one, staying any body attachment of me, two, to declaring certain portions of the Judiciary Law as being unconstitutional, and that was in conformity with a recent case that had come out by the Federal

Court, Vale vs. -- finally it wound up in the Supreme Court, United States, under the title of Vale vs. Judice, was declared certain sections of the Judiciary Law unconstitutional and the Judiciary Law was amended pursuant thereto, but this was before the amendment was made after the declaration of unconstitutionality.

In sum and substance, the Federal Courts held that you could not be incarcerated or arrested unless you were given clear notice of that fact in a notice of motion or order to show cause. And the Judiciary Law as it now reads specifically provides that you must have in eight-point type a notice on the front of a notice of motion or order to show cause a warning that failure to obey this motion could lead to a fine or imprisonment. This motion was made before the Judiciary Law had been amended so as to conform to the federal decision.

Do I make myself clear, your Honor?

THE REFEREE: Yes.

5 MR. SASSOWER: And that was returnable on June 13, 1977. Now, in the meantime, with respect to the examination before trial of Edward Kelly,

we find in the Surrogate's Court file and I had a copy of this also, before I sent my entire file to the Public Administrator, of a letter by Edward Kelly wherein he stated that it would be inconvenient for him to attend an EBT for a particular day, which was set by the Court.

THEREFEREE: What you are saying you didn't receive a copy of that order?

MR. SASSOWER: I received a copy of that order. But this particular copy I made a copy from what was in Mr. Grayson's file.

THE REFEREE: Which came from the Surrogate's file?

MR. SASSOWER: Which came from the Surrogate's file. I offer this in evidence. There is one charge where I couldn't show up I am subject to disciplinary proceedings. Where the other side doesn't show up, nothing happens.

THE REFEREE: You were having an EBT of him?

MR. SASSOWER: Right.

THE REFEREE: You are saying this letter by Kelly says he cound't show up?

MR. SASSOWER: Right.

THE REFEREE: CL im evidence.

**
(Letter dated April 29, 1977 marked as Respondent's Exhibit CL in evidence.)

THE REFEREE: When was this returnable for?

MR. SASSOWER: To be honest with you I don't even remember the incident that well as far as Kelly asking for an adjournment.

THE REFEREE: You were going to examine him before trial?

MR. SASSOWER: Yes.

THE REFEREE: When?

MR. SASSOWER: I wanted to examine him in May and June.

THE REFEREE: This is dated April 29.

MR. SASSOWER: April, May and June. I couldn't examine him in April. He defaulted in May.

THE REFEREE: All right.

MR. SASSOWER: Now, when I made a motion to examine Edward Kelly before trial we argued that motion in Surrogate's Court and there was a stenographer present. At that time Judge Signorelli said we are going on trial on June 15, two days later. I'm sorry, withdrawn.

When we argued that motion on June 7, 1977 --

THE REFEREE: What motion?

MR. SASSOWER: The motion to examine Edward Kelly before trial, Judge Signorelli said, "Okay, I will allow you to examine Edward Kelly before trial in Riverhead on June 13, 1977, but you are going on trial on June 15, 1977." I said, "Your Honor, June 13 I am going to be out of the state that Friday." I was supposed to go to the Court of Appeals on the Appeal of Bora vs. Manieri. From Albany I was going up to Harvard to see my daughter and spend with her the following Monday. I had done some work and I had written some articles. I will try to make this brief.

I had written an article on the Sacco & Venzetti case, and they were opening up President Lowell of Harvard, his papers on the Sacco & Venzetti case, he was on the commission that had reviewed it, and my daughter made arrangements that I could be one of the first ones to see those papers. So since I had to be in Albany on Friday, I figured Friday I would go on finishing in Albany, I would go up to Harvard, see my daughter, look at those papers

which I was very much interested in and come back the following week taking a day or two off. Believe me, I have not had five days vacation in the last 25 years. I don't know if you know the burdens of a single practitioner, but they are burdensome.

And I told Judge Signorelli I will not be in the State on June 13, and to hold an examination before trial two days before the trial was an effort in futility because I certainly couldn't get the transcript back in two days. The stenographer told me by no means could I get the transcript in less than a month. So I told Judge Signorelli that if he was to set it down on June 13, 1977, when I could not be there, I just could not hold the examination before trial. And after we finished the argument and the discussion when we went out I spoke to Mr. Abuza and I told Mr. Abuza, I said, "June 13, forget about it, I am not going to be in the state, I cannot take the examination before trial."

Not only that, the Thursday before I spoke to Mr. Abuza, I forget on what matter, and I told him again I am not going to take the examination before

trial because the transcript won't be back in less than a month's time, and we are supposed to go to trial on June 15, 1977. And Mr. Abuza said, "Well, you know, Judge Signorelli has got a short fuse and he is not going to blow his top on me. I am going out there anyway." I said, "What are you going out there for? I am not going to be there for the examination before trial." He said, "Well you are not going to be there, but I am going to be there anyway." I certainly told him on three different occasions that I would not be there on June 13, 1977 on the EBT. Why he went out there only Mr. Abuza can tell you. Why he had his client go out there, I don't know. But certainly there was and I still have a tremendous amount of affection for the Kelly family, including Ed Kelly, and I would not do anything to harass Ed Kelly. It is not my nature, it serves no purpose. It just starts wars out of sparks.

On June 15, I came to Court ready to try the case, and all of a sudden here we met Berger for the first time, and Berger said I am not ready for trial. But I had with me all the relevant documents,

all the papers necessary to go to trial.

Now I won't repeat what Mr. Berger said but we went down to the photostat room in the Public Administrator's office, and that girl must have photostated for about three or three and a half hours. Now when Mr. Berger said check -- could I have Exhibit 36, your Honor, please? Thank you, your Honor. Your Honor, when Mr. Berger says checks, I don't want your Honor to get the impression that we had hundreds of checks there. We had about two dozen checks and --

THE REFEREE: What are you talking about, two dozen checks? Do you mean current checks or what?

MR. SASSOWER: Cancelled checks from the estate.

THE REFEREE: Checks cancelled from the subsequent date of death?

MR. SASSOWER: Subsequent to the date of death. Could I have Exhibit Number 35, your Honor? This is how many checks we have, with one exception. Jamaica Savings Bank was about six checks each year because what you used to pay the Jamaica Savings Bank is once every two months or once every three months. Outside of Jamaica Savings Bank --

THE REFEREE: Looks like about 20 checks which you reported on the executor administrator account.

MR. SASSOWER: Now Mr. Berger went through the checks, but he had difficulty photostating them because what he had to do was first of all take it out of the bank statement of each individual monthly statement, he had to put it into a celluloid - when I say Mr. Berger, I don't mean Mr. Berger, I mean the employee at the Public Administrator - put it into the celluloid, then send it through with a carrier, then had to turn it over on the other side so he could get the endorsement on the other side. And they photostated while I was there a substantial number of the documents. What happened was I came out there by train. I gave up my car in 1976 after going to Surrogate's Court, Suffolk County, and almost getting killed, and after almost killing several other people because my reaction on my legs was not what it was before I took ill. So I decided I just could not step on the brake fast enough, I just didn't have the reaction that I had before. So my wife told me to sell my car, and I got rid of my car, and I used to

go no matter where it was, if I didn't drive a car, when I came out on June 15, 1977, I came out by train with two briefcases. We did photostating before lunch. The girl did photostating while Berger and I were at lunch, and as we came out of the lunchroom in that building, there was a little sign, I walked from the train station to the Courthouse, and that little sign said, "Bus-stop" and it had an arrow. And it was a little ambiguous as to where the arrow was pointing.

MR. GRAYSON: Isn't this repetitious of yesterday?

MR. SASSOWER: Can I just --

THE REFEREE: Yes, twice, as a matter of fact.

MR. GRAYSON: May I interrupt with a question?

The 20 or 22 checks in the schedule are for the period September, 1972 to September, 1974. Between September, 1974 and June, 1977, how many additional checks?

MR. SASSOWER: Probably another dozen if that many. Because the only checks you really had at that point I was sending out checks once every

three months to the Jamaica Savings Bank, and you had, you know, a check here and there, that's all. When I left to catch the train and it was the last train from Riverhead to New York, if I didn't catch that train, by the way, at that time I did not know that there were busses that ran from Riverhead to Babylon where you could get a train. When they told me that the last train out of Riverhead to New York for that day was around 3:30, I stayed until about 3:20, took that bus that got me to the station and just made the train by a few seconds.

But when I left, I left behind with Mr. Berger almost every document that had not been photostated.

THE REFEREE: This is all repetitious.

MR. SASSOWER: I'm sorry, your Honor. Stop me again if it is repetitious.

THE REFEREE: Okay.

MR. SASSOWER: Before I left, when it became obvious that the girl would not finish by five o'clock, by the way --

THE REFEREE: Repetitious.

MR. SASSOWER: I spoke to Berger I would see him June 21.

THE REFEREE: Yes.

MR. SASSOWER: I called him June 21 at 4:40.

THE REFEREE: You told us all about that.

MR. SASSOWER: I was ready to go out, somebody was driving me out by car to do the rest of the photostating, and we had arranged that if there was any problems we would sleep over in Suffolk County.

THE REFEREE: You said all that.

MR. SASSOWER: June 23, I got up in the morning, was getting dressed to go to Court, two deputy sheriffs came to my door and put me under arrest.

THE REFEREE: You went over all this, too.

MR. SASSOWER: I don't think we did, but if I did it is hard being a lawyer and a witness at the same time to remember all this, so -- .

About trying to get a writ of habeas corpus?

THE REFEREE: Yes, two prior occasions.

MR. SASSOWER: I was incarcerated and put in jail. I got a writ of habeas corpus signed, the writ was sustained by Judge McNearney in Supreme Court, and while it was pending appeal by

Judge Signorelli, Judge Signorelli took what I considered, what the Attorney General considered to be a frivolous appeal.

MR. GRAYSON: Objection.

THE REFEREE: Sustained.

MR. SASSOWER: On January 28, 1978 --

THE REFEREE: We are jumping from June, 1977 to January?

MR. SASSOWER: Nothing happened in between of any significance.

THE REFEREE: All right. I am happy for the six month jump.

MR. SASSOWER: On January 28 --

THE REFEREE: Excuse me, I am not clear. What happened between June and January?

MR. SASSOWER: I fought the writ of habeas corpus.

THE REFEREE: You are out of the estate?

MR. SASSOWER: I was out.

THE REFEREE: Okay.

MR. SASSOWER: From there on in I had nothing to do with the estate. I didn't sign checks, I didn't write checks, I didn't do anything. I

already told the Court the problem that arose immediately thereafter with the insurance, and after I got that bad press I mean I did nothing.

THE REFEREE: Those checks, the insurance, the mortgage, the checks that you sent to the Public Administrator, that's subsequent to June, 1977?

MR. SASSOWER: Yes, it was in June of 1977 or thereabouts. On January 28, I went out to Surrogate's Court for the trial on the objections to my accounting.

MR. GRAYSON: I don't think it was January 28. I think the 25th it began.

MR. SASSOWER: January 25, I'm sorry. Thank you.

I was ready, willing and able to proceed to trial. At the beginning of that trial I was served with an order to show cause to hold me in contempt.

THE REFEREE: Served by whom?

MR. SASSOWER: By Mr. Berger. It was returnable February 7, 1978.

THE REFEREE: February 7?

MR. SASSOWER: February 7.

THE REFEREE: To hold you in contempt for what?

MR. SASSOWER: For not complying with the Judge's directions.

THE REFEREE: That's to turn over --

MR. SASSOWER: Not only to -- we look upon it a little differently. Not to turn over books and papers but to turn over physically the accounts, the assets. It was not a matter of turning over bankbooks but signing withdrawals. As a viewed the papers and I still view them that way, it is not a matter of physically turning over the bankbooks or the checking account papers, it was to physically sign my name to a withdrawal slip so that Anthony Mastriani could be placed as the executor. Do I make myself clear? Apparently, I am not.

THE REFEREE: I think so. But why were you not now required to do that?

MR. SASSOWER: Because I had contended I had never been lawfully removed.

THE REFEREE: Between June of 1977 and January of 1978 you have ceased and desisted

operating as executor, correct?

MR. SASSOWER: I didn't sign any checks, let's put it that way.

THE REFEREE: You didn't do anything?

MR. SASSOWER: I didn't do anything.

THE REFEREE: Therefore, why not sign over assets as well as everything else?

MR. SASSOWER: Okay. There is merit to the answer implied by your Honor's question. But what happened was after I had been incarcerated and after I had been vilified, not only -- by the way, these were not news items that were just picked up by the Daily News, these were fed to the Daily News. Not only the Daily News, but the Newsday out in Long Island, I mean, all my relatives live up in Long Island. It was very very embarrassing. After I was arrested and I was vilified I was in a war, and before that I didn't fight like a warrior or a soldier in war, I was trying to pacify the situation and to pour oil on the waters. After June and what happened to me I was not in that mental frame of mind where I was going to give in to what I considered Hitler-like tactics.

I mean I was really angry, not only for myself, but for the usurpation of basic constitutional rights, basic forms of decency. I mean besides that they were writing to the D.A.'s office, they were writing to the Bar Association, they were doing everything possible to force me to surrender, and it was just not my nature. So I think that would be about --

THE REFEREE: That answers my question.

MR. SASSOWER: But before June of 1977 I acted like a lamb. I did nothing to bring on this situation that I could see.

THE REFEREE: At this point in January or February of 1978, rightly or wrongly, that is rightly or wrongly as a matter of fair play or decency or however, whatever other way you wish to characterize it, you were now legally required to turn over the assets, were you not?

MR. SASSOWER: I felt then and I feel now, no. But that is a matter of judgment.

THE REFEREE: Are you saying no because there had been no hearing with respect to a removal?

MR. SASSOWER: That is right, your Honor. No notice and if I had been removed my wife became

the executor or executrix. I mean this is a heavy handed way of doing this.

THE REFEREE: Let's go on from there. All right.

MR. SASSOWER: No hearing, no notice. I am talking about 1977. I had not been removed in 1976. I had not been removed, nobody construed that order that way.

THE REFEREE: In 1978, going back to the 1976 order, you are saying?

MR. SASSOWER: Right.

THE REFEREE: Okay. Go ahead. So we are up to 1978. You were served with an order to show cause by Berger?

MR. SASSOWER: Right. Not to turn over papers and documents physically, but to sign my name over as being removed as the executor. Do I explain that correctly?

THE REFEREE: I don't understand it.

MR. SASSOWER: It is like giving a bankbook in my name, giving that bankbook to you, it means nothing. You cannot use it.

THE REFEREE: I know what you said, but I don't understand -- this is an order to show cause to hold you in contempt for not doing what or for having done what?

MR. SASSOWER: For not turning over the assets of the estate of Eugene Paul Kelly to the Public Administrator. This is not the subject of a charge, by the way, but I will be very happy to explain it all.

THE REFEREE: I didn't understand what you just said. If I understand it, this is for not turning over the assets?

MR. SASSOWER: Right.

THE REFEREE: But that was it. But when you add this other tail onto it about they didn't want you to sign something --

MR. SASSOWER: That is how I would turn over the assets.

THE REFEREE: That is what you meant? Okay. Go ahead.

MR. GRAYSON: Your Honor, it is the subject of a charge because charge number four alleges he didn't turn over the assets. So it is a continuing

failure to turn over.

MR. SASSOWER: But there is something interesting about charge number four. No place do you contend or allege that what the Judge did out there was lawful.

THE REFEREE: There is a presumption of regularity.

MR. SASSOWER: There comes a point where the presumption, all presumptions are rebuttable, and people may disagree with me, but I used my best judgment.

THE REFEREE: Mr. Grayson is just saying it is a subject of a charge, rightly or wrongly. Go ahead from February.

MR. SASSOWER: That order to show cause was returnable February 7, I believe of 1978. I sent in papers responding to that order to show cause.

THE REFEREE: Let me interrupt you. No, go ahead.

MR. SASSOWER: Let me go back to January 27, January 25. If one looks at the examination of January 25, one sees that the Judge Sginorelli said, "I am going to try this matter to the end, no

interruptions." I said to his Honor, "I am here today and I am willing, ready, anxious to proceed to trial, but I want your Honor to know that tomorrow morning I have to be in the Appellate Division to argue an appeal." Judge Signorelli says, "On the record, I don't care about any other Court. You be here." Now, what does one do? Does one obey Judge Signorelli when he says that I am to be there? And this is in the minutes. Does one obey Judge Signorelli?

THE REFEREE: Is that an exhibit?

MR. GRAYSON: It is not an exhibit.

MR. SASSOWER: I would have the whole thing marked into evidence.

MR. GRAYSON: Fine. No objection.

MR. SASSOWER: January 25.

MR. GRAYSON: This transcript includes 25, 26 and 27.

MR. SASSOWER: I was not there on the 26th and 27th.

THE REFEREE: So it is the 25th?

MR. GRAYSON: Rather than separate it, let me point out January 26th and January 27th begins

on page 255. Therefore, we should offer the transcript through page 255.

THE REFEREE: CM in evidence.

**

(Transcript marked as Respondent's Exhibit CM in evidence.)

MR. SASSOWER: When Judge Signorelli says to me, "You be here tomorrow," and I have an engagement in the Appellate Division, what does one do? And when the Judge says, "I don't care about about your engagements any place else, you be here." What does one do, your Honor? And I submit to your Honor the only thing one can do is follow his best judgment. And you may disagree with that judgment, but you cannot be incarcerated for contempt of Court for using what is reasonable judgment, and my reasonable judgment was to be in the Appellate Division the following day and disregard Judge Signorelli's direction.

Now again you can argue with that judgment, but that is my best judgment and throughout all the charges against me --

THE REFEREE: That was the Appellate Division, Second Department?

MR. SASSOWER: Second Department.

THE REFEREE: What case?

MR. SASSOWER Betcher vs. Betcher, which has been in the Court of Appeals twice and the Appellate Division six times. And I argued and tried every aspect of the Betcher case except for one part when I was hospitalized in 1976 for my paralysis. Every time you see Betcher --

THE REFEREE: Okay.

MR. SASSOWER: -- you always see George Sassower the attorney. And Judge Signorelli embarrassed me by calling up the Appellate Division to have them give me a message that I am to be there on the 27th. And I called up Judge Signorelli's secretary, Robert Cimino --

THE REFEREE: When?

MR. SASSOWER: On the morning of the 27th, and said, "I am sorry I cannot be there, I have to be in the Appellate Division, First Department on Friday." That is why I was not there on the 26th or the 27th.

Now let me say what happened in February and Berger's affidavit. Ask me what questions you want,

Mr. Grayson. You ask me the question and I will show you it is contradicted right over here.

MR. GRAYSON: According to Berger's testimony on the 26th, the 26th, the first day the respondent was not in Surrogate's Court, nobody knew where you were because you had not given that information to the Court.

MR. SASSOWER: It's in the transcript.

MR. GRAYSON: Page 255.

MR. SASSOWER: No, right in the beginning. I will get it to you overnight and I will give you the exact page where I say I am going to be in the Appellate Division the next day.

THE REFEREE: I would like to have that. All right, look for that overnight.

MR. GRAYSON: And, your Honor, as for Mr. Sassower's nonappearance on the 27th, the law secretary to the Surrogate testified that he did speak to Mr. Sassower apparently about nine o'clock in the morning of the 27th. He asked Mr. Sassower where he was going to be in Court, and Mr. Sassower refused to give that information.

MR. SASSOWER: Okay, and I have a photostatic

copy of the affidavit of services of Mr. Berger where he said Mr. Sassower also called the Clerk of the Court to advise that he was otherwise engaged in the Appellate Division, First Department. Here is Mr. Berger's affidavit.

THE REFEREE: Let me get the record clear on this. January 27, who testified before the Judge? Some secretary?

MR. GRAYSON: His secretary, Mr. Cimino.

THE REFEREE: He testified?

MR. GRAYSON: Well, it was not sworn, but the Surrogate asked him to explain the substance of his phone conversation with Mr. Sassower on the morning of the 27th.

THE REFEREE: Read his reply from the Court transcript.

MR. GRAYSON: Right. This is not the part that has been marked as an exhibit.

THE REFEREE: Oh? No.

MR. GRAYSON: Page 265. "MR. CIMINO: Mr. Sassower called at approximately nine o'clock. I spoke to him on the telephone and he told me he would not be appearing in Court today. I asked him

why he would not be here, although directed to be here. He told me that he was to be in another court today. I asked him what the Court was and he refused to give me that information."

MR. SASSOWER: And there is from the affidavit of services of Mr. Berger he knew that I was there because I told it to Mr. Cimino, I told him I am going to be in the Appellate Division, First Department, and I gave him the name of the case.

THE REFEREE: What is the document you have just given me?

MR. SASSOWER: The affidavit of services of Vincent Berger.

MR. GRAYSON: Your Honor, there is one other statement by Mr. Berger that I think is relevant to this situation.

THE REFEREE: Is this on the 27th?

MR. GRAYSON: The 27th. Right after Cimino finishes the court says, "Thank you." Then Mr. Berger says the following: "Your Honor, I would like also, I would also like to report to the Court that on arriving at the Courthouse I learned that I had a message in the Public Administrator's office that

Mrs. Sassower had called. Mrs. Sassower affirmed what Mr. Cimino had said. I asked her to name the case Mr. Sassower was on. She didn't have any knowledge of that. The only thing she did know was that he was the attorney of record on a case in the Appellate Division. That conversation took place about an hour ago." Mr. Berger obviously had knowledge of the appearance by respondent in the Appellate Division. He doesn't say which Appellate Division in this transcript.

THE REFEREE: Why not? Where on this document is the name that --

MR. SASSOWER: Right here. If Mr. Berger knew I was in the First Department, Mr. Cimino knew I was in the First Department because I didn't speak to Mr. Berger, I spoke to Mr. Cimino. How could Mr. Berger know I was in the First Department until --

MR. GRAYSON: Possibly he got it from your wife.

MR. SASSOWER: My wife didn't know at that time. If I go through the events I will tell you that she didn't know at the time.

MR. GRAYSON: Berger claims he got the infor-

mation from your wife.

MR. SASSOWER: My wife didn't know at the time.

THE REFEREE: Does he identify the message as coming from Mrs. Sassower?

MR. GRAYSON: Yes.

MR. SASSOWER: That was on the 26th that she knew I was on Betcher vs. Betcher.

MR. GRAYSON: They are talking about the 27th.

MR. SASSOWER: No, they are talking about the 26th. I was engaged in the Second Department on the 26th. I was engaged in the First Department on the 27th.

MR. GRAYSON: Berger's testimony is to the fact your wife confirmed what Cimino had previously told the Judge two minutes earlier.

THE REFEREE: This document that Mr. SAssower has given to me I take it it is agreed, Mr. Grayson, that this comes from Mr. Berger's affidavit of services?

MR. GRAYSON: I have never seen his affidavit so I cannot say.

MR. SASSOWER: It is from your file, from the Surrogate's Court file.

MR. GRAYSON: You are sure?

MR. SASSOWER: Positive. I made a photostat of it. You have it in your possession.

MR. GRAYSON: Well, based on your statement I will go along with what your Honor is about to say.

THE REFEREE: Under the date January 27, appears, "Court appearance at Riverhead. Neither Mr. nor Mrs. Sassower appeared. A call was received from Mrs. Sassower at the office of the Public Administrator which was returned by deponent upon arrival at Court. Mrs. Sassower was advised that the Public Administrator would press to continue and conclude the accounting trial of the removed executor notwithstanding the absence of George Sassower and the anticipated testimony of Doris Sassower as a witness. Mr. Sassower also called the Clerk of the Court who advised that he was otherwise engaged in the Appellate Division, First Department. No further details were given to deponent. The trial was continued and concluded."

MR. SASSOWER: Your Honor asked the question as to what happened the last six months of 1977. A lot happened but not really related to the issues

before your Honor directly. I was, I started an action in the Federal Court against Judge Signorelli, and there were a lot of maneuverings -- I don't know if maneuverings was the proper word - but there was a lot of negotiations going on in the Federal Court with respect to Judge Signorelli. Activity was going on but not directly germane to this particular hearing.

(RECESS.)

MR. SASSOWER: Your Honor, to backtrack a moment, I found that excerpt on page 44 of Exhibit CM in evidence, and may I read it? It is a very very short quote.

THE REFEREE: What date is that?

MR. SASSOWER: January 25, 1978. "MR. SASSOWER: Initially, I am due in the Appellate Division tomorrow morning --" like I am cut off. And brother, I can assure you Judge Signorelli was screaming at this point when he said this. "THE COURT: You are due before me now and you are to appear I am directing you to appear. After we complete what we are working on today. Tomorrow morning at nine thirty with your counsel." I used my best judgment,

your Honor, and I obeyed what I thought was the mandate of the Appellate Division and appeared in the higher Court. On February 8, 1978, was the big snowstorm in 1978, if you recall, and the courthouses in Manhattan were partially closed. And out in Suffolk County, they were completely closed. There was no travel out in Long Island for about a week thereafter. Does your Honor recall that particular snowstorm?

THE REFEREE: I do recall a storm. I don't know the date.

MR. SASSOWER: It was February of 1978. The matter was put over.

THE REFEREE: How did we get to February 8?

MR. SASSOWER: I was served with an order to serve cause to hold me in contempt.

THE REFEREE: You didn't say that.

MR. SASSOWER: I'm sorry.

MR. GRAYSON: Was this a second order to show cause?

MR. SASSOWER: This was a second order. I know I never had the first one.

MR. GRAYSON: You said you were served

January 25?

MR. SASSOWER: Right, returnable February 8.

MR. GRAYSON: You said returnable February 7.

MR. SASSOWER: It was February 7, I am sorry, February 7. The matter was put over until March-

THE REFEREE: So you weren't there on the 7th?

MR. SASSOWER: Nobody was there, nobody was there. But I offer into evidence my affidavit in opposition to that motion.

MR. GRAYSON: No objection.

THE REFEREE: CN in evidence.

j **
(Affidavit dated February 2nd, 1978 received in evidence as Respondent's Exhibit CN.)

MR. SASSOWER: Because of the snowstorm the matter was put over until March 7, 1978. On March 6, 1978 I started a trial before Mr. Justice DiFede which I thought was going to last only one day. The name of the case was Green vs. Green in Supreme Court, Bronx County. It did not conclude that day. So I immediately sent an affidavit out to Surrogate's Court, Suffolk County, told them that I was engaged in Supreme Court and would be unable to be there on March 7, 1978. I offer into evidence a photostatic

copy of the clerk's minute book of Supreme Court, Bronx County, for March 6 and March 7, 1978. It shows that I was actually engaged.

THE REFEREE: CO in evidence.

MR. GRAYSON: These are two separate pages, your Honor.

THE REFEREE: As one exhibit.

**
(2 photostatic pages of clerk's minute book of Supreme Court, Bronx County, marked as Respondent's Exhibit CO in evidence.)

MR. SASSOWER: It is Green vs. Green.

THE REFEREE: Who did you represent?

MR. SASSOWER: The plaintiff, your HONOR.

THE REFEREE: On March 7 was marked an inquest?

MR. SASSOWER: No. This is probably this case.

THE REFEREE: Yes.

MR. SASSOWER: The matter was tried completely and resulted in the verdict for my client, Susan Green. While I was on trial in Supreme Court, Bronx County, I again was tried for criminal contempt in absentia in Surrogate's Court, Suffolk

County. I was tried, convicted and sentenced while I was in Bronx County. The deputy sheriff came again and arrested me.

THE REFEREE: Where?

MR. SASSOWER: In Westchester County. They have no jurisdiction.

THE REFEREE: They came to your home?

MR. SASSOWER: They came to my home. I would like to read part of the transcript which your Honor asked me about yesterday of October 17, 1978. This is direct of Anthony Grzymalski.

MR. GRAYSON: Which action is this?

MR. SASSOWER: In the --

THE REFEREE: Is this subsequent to your arrest as you were saying yesterday? You then learned that the Deputy Sheriff had filed a complaint against you for assault in the second degree?

MR. SASSOWER: Correct, your Honor.

THE REFEREE: And a hearing on that matter to which you are now making reference?

MR. SASSOWER: Correct, your Honor. This is his direct testimony. This is a preliminary hearing. Now this is by the Assistant District Attorney.

"Q Will you please describe to the Court what happened at that particular time?

"A Mr. Sassower was asked to accompany us to our vehicle, which he did. When we reached his front lawn Mr. Sassower started pushing, shoving both Deputy Morris and I. He was screaming at the top of his voice, "Police, police, somebody call the police," screaming at the top of his voice. It was at this time that Deputy Sheriff Morris placed handcuffs on the front of Mr. Sassower and put him in the rear of our vehicle."

Now turning to page 28. "Q As a result of this particular incident that took place between you and the defendant what other injuries --" I'm sorry, cross that out. Page 28. "Q Tell the Court what the defendant said with respect to the police." This is part of cross-examination.

"A Mr. Sassower hollered at the top of his lungs, "Police, police, police, call the police."

Page 37. This is according to his testimony when I was arrested. Then there came a time when I was in the car and the vehicle was moving.

"Q Now you testified there came a point where the

defendant opened the window and started yelling,

"Police, police, police," is that correct?

"A Yes, sir.

"Q Where were you at the time in the vehicle?

"A Driving, sir.

"Q Where was your associate at that time?

"A Front seat, passenger side."

Page 21. "Q As a result of this particular incident that took place between you and the defendant, what other injuries if any did you suffer as a result of this attack besides the injury to your groin?

"A I had a sprained left thumb, a sprained left neck muscle, contusions in my left arm and groin area.

"Q Will you please tell the Court whether as a result of this particular incident you lost any time from work?

"A Yes.

"Q Will you tell the Court how many days you missed?

"A Approximately 11 days."

Your Honor, --

THE REFEREE: Where is the testimony as to how he said he sustained those injuries?

MR. SASSOWER: He said I beat him up.

THE REFEREE: That's what I had asked you.

MR. SASSOWER: Well, as a result of --

THE REFEREE: You said yesterday this six foot four man, 220 pounds or so claimed you hit him over the head with your handcuffs.

MR. SASSOWER: Not over the head; that I kept striking him.

THE REFEREE: Actually as I think about it, this matter has nothing to do with this case.

MR. SASSOWER: I just wanted to bring that forth, your Honor, because after I tell you the next incident I will tell you why I feel, I justifiably feel the way I do.

THE REFEREE: On that issue basically that I received it. But you still have not given me --

MR. SASSOWER: I will try to get it overnight.

THE REFEREE: All right.

MR. SASSOWER: I thought you wanted to know about the injuries.

THE REFEREE: You said you were making the

argument how could this big man, 30 years of age and what not, how could I have injured him in this fashion while I was handcuffed. He said that is how it happened. You have a question?

MR. GRAYSON: I wanted to make your point.

MR. SASSOWER: I will get that other point over the evening. In any event, I was taken out to Suffolk County and incarcerated. My wife got a writ of habeas corpus, went out to Suffolk County which demanded that I be released immediately upon my own recognizance. She went out with my little daughter. She got out there about seven o'clock in the evening, presented the writ of habeas corpus demanding my release. I was not released. Despite the writ of habeas corpus I was kept in jail until one o'clock in the morning. Besides that, for serving the writ of habeas corpus my daughter and my wife were incarcerated. Okay.

You want to know why I feel the way I do?
These are some of the --

THE REFEREE: You say there were incarcerated?

MR. SASSOWER: Absolutely incarcerated. They were locked in an enclosure with no bathroom

facilities, two gates on both sides, walls on the other sides, because they had served a writ of habeas corpus.

MR. GRAYSON: Your Honor, I wonder if the respondent's wife and daughter brought suit against anybody based on that.

MR. SASSOWER: Yes.

MR. GRAYSON: Which court?

MR. SASSOWER: Federal Court.

MR. GRAYSON: What was the result of the suit?

MR. SASSOWER: They dismissed it because it was brought in the Southern District instead of the Eastern District.

MR. GRAYSON: Was it refiled?

MR. SASSOWER: I don't think so. I think, your Honor, I would like to go over now some of the charges, your Honor. I have given a chronology of events.

(Discussion held off the record.)

MR. SASSOWER: I have in effect completed my testimony, your Honor. All I can say is I used my best judgment at all times. Now whether my judgment was faulty --

THE REFEREE: Mr. Sassower says he has completed his direct testimony. How much cross do you have?

(Discussion held off the record.)

MR. SASSOWER: By the way, I have that part. May I read it?

THE REFEREE: Yes.

MR. SASSOWER: This is the answer of Grzymalski on direct. And he is speaking when the car was moving and I was yelling for the police.

"It was at this point while the vehicle was in motion that M. Sassower succeeded in opening the window and opening the door in the rear of the car. With this, I pulled over to the side of the road to the curb. I exited the vehicle, went around to the back, tried to stop Mr. Sassower from fleeing. Mr. Sassower repeatedly kicked me in the groin area. At this time I succeeded, both Deputy Morris and myself succeeded in getting him back into the vehicle. I closed the door, went around to get back in to drive when I heard Deputy Sheriff Morris shout to me, 'Hurry up.' I looked up, I saw Mr. Sassower open the door again. He was out of the vehicle.

I then proceeded to the side where Mr. Sassower repeatedly kicked me in the groin and succeeded in putting him in the vehicle. I ran around, went in the car and we took off." By the way, I should say that after the preliminary hearing the Judge held on October 18, 1978, "After reviewing all the facts and the testimony of this case, I find that there is no probably cause to believe that a crime was committed and I am not certifying the record to the grand jury."

THE REFEREE: Okay. Respondent rests.

CROSS-EXAMINATION

BY MR. GRAYSON:

Q When was the last time that you were in Suffolk County?

A What do you mean?

Q When was the last time you physically were in Suffolk County?

A A few months ago.

Q Were you in the Court in Suffolk County?

A No.

Q When was the last time you appeared in Court in Suffolk County, any court in Suffolk County?

A Before Judge McNearney in 1976, 1977.

Q In the case concerning the first contempt?

A Correct.

THE REFEREE: Were you there in January of 1978?

THE WITNESS: I'm sorry, you are correct, thank you. January of 1978.

Q What is the status of the second contempt against you?

A It is in the Appellate Division-

Q Have you been in Suffolk since that arrest, that second arrest?

A Except as I testified, no.

Q You haven't been in Court?

A No.

Q Why haven't you been in Suffolk County Court since your arrest?

A I have no cases in Suffolk County Court. No reason for me to be in Suffolk County Court. The only case that I have pending --

THE REFEREE: Hold it.

Q Do you feel any obligation toward the beneficiaries of the estate to assist in straightening

out this lengthy estate matter?

THE REFEREE: I don't think that is -- I just don't want to be burdened with that. It's not germane to this. The Surrogate wants to remove him. You want him to stick his nose back in?

MR. GRAYSON: I am not suggesting he stick his nose back in. I have received numerous letters from Mrs. DuBois and I know she is concerned with this matter.

THE WITNESS: I then will give a lengthy statement in reply.

THE REFEREE: No.

MR. GRAYSON: All right, then I will drop that. Can I see that exhibit, the thick transcript?

THE WITNESS: Your Honor, before we proceed, I cannot finish today. I have some lengthy arguments to be made. We have to come back tomorrow in any event. I want to renew my motions to dismiss and make some lengthy arguments.

THE REFEREE: In that case we might as well wrap up and come back tomorrow morning. Ten o'clock tomorrow morning.

* * *

CERTIFIED TO BE A TRUE AND CORRECT
TRANSCRIPT OF MINUTES TAKEN BY ME.

Sorn M. Alexander

O. C. R.

<u>WITNESS</u>	DIRECT	CROSS
GEORGE SASSOWER	26	123

EXHIBITS

For Ident.	In Evid.
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PETITIONER:

57	Full transcript	17
64	EBT - 7/27/76	4
65	Opinion - 3/21/78	5
66	Decision & Order	5
67	Decision - 4/20/78	6
68	Decision & Order - 12/22/78	6

RESPONDENT:

AQ		3
BQ		4
CA	Daily New Article	27
FF		33
CB	Hospital Record & Insurance Papers	39
AO		44
ZZ		45
CD	Supplemental Citation	53
CE	Notice of Appearance	58
CF	Letter to Christopher Gilbreath	64

EXHIBITSFor
Ident In
 Evid.

RESPONDENT:

CG	Letter - 10/19/76	65
AE		67
CH	Contract	68
CI	Letter - 2/3/77	70
CJ	Letter - 2/23/77	71
CK	Affidavit	81
CL	Letter	86
CM	Transcript	104
CN	Affidavit - 2/2/78	114
CO	2 Pages - Court Clerk's Minutes	115