

1
2 THE REFEREE: Are you ready, Mr. Sassower?

3 MR.SASSOWER: Good morning, your Honor.
4 Your Honor, first of all, in going through my
5 exhibits, I noticed that in my file I had
6 Referee's Exhibit 3 and 4.

7 I think you're keeping the Referee's exhib-
8 its, aren't you?

9 THE REFEREE: Yes.

10 MR. STRAUS: Now you have two of them, I
11 think, Judge.

12 MR. SASSOWER: Secondly, I'd like to
13 apologize for any inconvenience caused to the
14 Court on Tuesday.

15 I really didn't take ill until about 12:30
16 in the morning on Tuesday morning and I was pretty
17 sick all day Tuesday.

18 In fact, I might be hospitalized tonight
19 or tomorrow to see what's wrong, although I
20 think I know what's wrong.

21 But, the third thing is, when we left off
22 last Tuesday, Mr. Postel was supposed to send
23 Mr. Straus his notice of cross-motion in Supreme
24 Court, Nassau County, and I'd like that introduced.

25 THE REFEREE: What is it you wish?

1
2 MR. SASSOWER: I want the production --
3 when we left Mr. Postel on Tuesday, he was to
4 mail Mr. Straus his notice of cross-motion that
5 he made in Supreme Court, Nassau County.

6 MR. STRAUS: I haven't received anything from
7 Mr. Postel. I haven't received anything from
8 Mr. Postel. I haven't received a communication
9 nor have I received any document.

10 MR. SASSOWER: Did you communicate with
11 him with respect to --

12 MR. STRAUS: Judge Potoker made the direct-
13 ion.

14 I think Mr. Postel's response was if he could
15 find it, he would send one. He hasn't sent me
16 one. I assume at this point that he couldn't find
17 one.

18 MR. SASSOWER: Don't assume, Mr. Straus.

19 THE REFEREE: Did you communicate with him,
20 Mr. Straus? Did you communicate with him, Mr.
21 Straus?

22 MR. STRAUS: Sure, and I'll report to your
23 Honor.

24 THE REFEREE: Thank you, very much.

25 MR. STRAUS: May we proceed at this time, if

your Honor pleases?

THE REFEREE: As soon as Mr. Sassower is ready.

MR. SASSOWER: Yes, your Honor. Do you mind if I sit while making objections?

THE REFEREE: Yes.

MR. SASSOWER: Thank you, very much.

MR. STRAUS: I call Michael Gerstein. May the record note, your Honor, that Mr. Gerstein is accompanied by counsel who is here with him today.

THE REFEREE: Will you note your appearance?

MR. MEYER: Yes, Mr. Court Reporter, is Brett Meyer of the law firm of Kreindler and Relkin.

MR. SASSOWER: I don't think we need counsel sitting next to the witness.

THE REFEREE: Pardon? He's not sitting next to him. He's sitting in the jury box about ten feet away. Go ahead.

M-I-C-H-A-E-L G-E-R-S-T-E-I-N, 500 Fifth Avenue, New York, N.Y., being duly sworn in, called as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. STRAUS:

Q Mr. Gerstein, is 500 Fifth Avenue your residence?

A No, it is not.

Q Is that where you work?

A Yes.

Q What is your business or occupation?

A I'm an attorney.

Q Are you self-employed or with a law firm?

A I'm a member of the firm of Kreindler and Relkin,
P.C.

Q How long have you been an attorney?

A Since 1973.

Q What is the nature of your experience, what kind
of law do you practice?

A Commercial and corporate litigation.

Q Have you been with Kreindler and Relkin, during
~~that entire~~ period?

A No. I have been with Kreindler and Relkin since
1977.

Q During the course of -- what is your position at
Kreindler and Relkin, by the way?

A I'm a partner there.

Q During the course of your business at Kreindler

1
2 and Relkin, did you have occasion to be involved in
3 litigation pertaining to Puccini Clothing, Limited or
4 its shareholders?

5 A Yes.

6 Q And when did you first begin to get involved
7 in that?

8 A The firm was retained in 1979.

9 Q Retained for what purpose?

10 A Retained to represent the rights of the estate
11 of Milton Kaufman, who was a twenty-five percent shareholder
12 in Puccini Clothes, Limited.

13 Q Were you the attorney assigned to handle this for
14 Kreindler and Relkin or was there another attorney in the
15 office?

16 A The partner who has been in charge of this matter
17 is Donald Relkin. I have worked on it.

18 Q Are you familiar with the various proceedings that
19 have been brought pertaining to Puccini Clothes?

20 A Yes.

21 Q I show you a document which has been marked
22 Petitioner's 10 for identification. It's designated a
23 schedule. As to Paragraph A under Schedule one, I'd like
24 you to disregard the statement "Lawsuits commenced in viol-
25 ation of court orders" and simply want you to look at the

list and tell us if that's an accurate list of the motions -- excuse me -- lawsuits commenced in the matter of Puccini Clothes or its shareholders?

In conjunction with that question, I also show you Petitioner's Exhibit 11 for identification, which are additions to Schedule 1. Again, disregard the heading "Lawsuits commenced in disregard of court orders."

Will you look at the matters listed there and tell me if that is part of the accurate list.

A It is substantially accurate as far as it goes.

I believe there are other actions which relate to this, which are not on the list.

Q Let me ask you this. Is the list complete? I'm asking you, does this list enumerate every lawsuit which was commenced, that's all.

A There are probably a few others which are not on here in the nature of habeas corpus relating from the Puccini litigation.

Q Is it fair to say that the list is accurate but not complete?

A Yes.

Q Would you look at B? That is the heading B pertaining to Article 78 proceedings and if there is a corresponding paragraph on the additions, look at that also.

THE REFEREE: What exhibit?

MR. STRAUS: B.

Q Disregarding the heading, just look looking at the matters enumerated there, would you tell us if that is an accurate list, has everything listed there actually been brought?

A Yes.

Q Is it a complete list?

A No.

Q Would you look at C, please, of 10 and 11, designated "Motions made in violation of court orders."

Disregard the heading "Motions made in violation of court orders."

Would you look at the list and tell me if that's an accurate listing of all motions made, or is it an accurate list, first of all, not necessarily of all motions but everything there something which has been brought?

A It appears to be substantially accurate.

Q Have I shown you these lists on other occasions?

A Yes.

Q And you have had a chance to compare them at that point?

MR. SASSOWER: Objection.

THE REFEREE: Overruled.

MR. SASSOWER: The objection is, your Honor -- compare them with what?

Q Now --

THE REFEREE: Compared them with what?

MR. SASSOWER: Compared with what?

THE WITNESS: We compared it with documents maintained in our files.

THE REFEREE: The files of the respective motions or proceedings?

THE WITNESS: Yes.

THE REFEREE: You had copies of those.

THE WITNESS: We have copies. There are, there maybe some for which we don't have complete copies. There maybe actions on here -- I'll tell you in a moment.

There are a couple of actions here to which my clients or my firm are not parties. As to those, I didn't compare it to my files.

I've had the opportunity to compare it with the files maintained in Mr. Schneider's office, counsel for the receiver.

Q Is that Donald Schneider?

A Yes.

Q So that's the basis of your comparison.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q Specifically, if I may -- let me have those exhibits.

MR. SASSOWER: May I have a voir dire at this point, your Honor?

THE REFEREE: Well --

MR. SASSOWER: Two or three.

THE REFEREE: These documents are already in evidence.

What's the purpose of the voir dire?

MR. SASSOWER: They were put in evidence subject to cross-examination at the appropriate time, if I recall.

THE REFEREE: Well, they were put in evidence but if the Petitioner fails to prove it --

MR. SASSOWER: He's now attempting to prove it.

THE REFEREE: They will be of no value.

MR. SASSOWER: He's now attempting to prove the veracity.

THE REFEREE: What's the nature of your voir dire?

MR. SASSOWER: I'd like to know when it was drawn up. That's the first thing.

THE REFEREE: On cross-examination you can

develop all of that.

MR. SASSOWER: All right, then I'll reserve that, your Honor, and the documents will be taken subject to evidence produced on cross-examination.

THE REFEREE: Well, the documents are already in evidence.

MR. SASSOWER: Subject to a motion --

THE REFEREE: You will make your motion or application at that time.

MR. SASSOWER: Right, okay, your Honor.

Q Pertaining to the litigation, I want to direct your attention to a matter entitled Barr v. Raffe, index number 16792.

Do you have that in mind?

A Yes.

Q Was there a time where a summary judgment was granted in that case?

A Yes.

Q Do you remember who the judge was?

A Judge Sinclair.

Q After the summary judgment was granted by Judge Sinclair, were there any efforts to reargue, motions, applications to reargue?

A Yes.

1

2

Q And do you know how many?

3

4

A Well, there were approximately sixteen motions made, not just to reargue.

5

6

MR. SASSOWER: Please just answer the question. Reargue, that's the question.

7

MR. STRAUS: He's answering the question.

8

THE REFEREE: Do you want to object, object?

9

MR. SASSOWER: Objection, your Honor.

10

THE REFEREE: Sustained.

11

12

Q Mr. Gerstein, did you have occasion to prepare a list of the efforts made to reargue the summary judgment?

13

14

A We prepared a list of motions made to, in effect, vacate --

15

MR. SASSOWER: Objection.

16

THE REFEREE: Overruled.

17

18

MR. SASSOWER: The question is reargue, your Honor.

19

20

We're, I repeat to the Court, we're getting to very important testimony and distinctions.

21

THE REFEREE: Everything here is important.

22

23

MR. SASSOWER: I realize that but let the words be precise.

24

THE REFEREE: Go ahead.

25

A I am --

MR. SASSOWER: The question is reargue.

THE REFEREE: You are saying efforts made by whom?

THE WITNESS: By Mr. Sassower or Mr. Raffe.

THE REFEREE: Mr. Raffe personally?

THE WITNESS: The papers state that they are, in some cases that they are prepared by Mr. Raffe pro se.

THE REFEREE: And you say efforts, what efforts?

THE WITNESS: Motions.

THE REFEREE: Motions. Motions made before whom?

THE WITNESS: Well --

MR. STRAUS: Let me mark this for identification.

Q Is this the one you are referring to?

A Yes.

MR. STRAUS: May we have a one-page document marked for identification?

THE REFEREE: That will be Exhibit 56 for identification.

MR. STRAUS: It pertains to Barr v. Raffe, 167792, and it's headed "Raffe's attempts to

reargue summary judgment.

MR. SASSOWER: To reargue.

THE WITNESS: Mr. Straus, it's easier for you. There's another duplicate folder of this so we can each have it in front of us.

Q Do you have that here?

A Yes.

MR. STRAUS: With your Honor's permission, the witness has a duplicate of the same set of documents that I have. I think it will help.

MR. SASSOWER: Your Honor --

THE REFEREE: Mr. Straus is preoccupied in the back.

MR. STRAUS: May we have this marked for identification at this time?

THE REFEREE: Yes, 56 for identification.

(So marked)

MR. STRAUS: May I continue, your Honor?

THE REFEREE: Yes.

Q Referring to 56 for identification, is this a list which you prepared?

A Yes.

Q And do you have all the documents -- excuse me -- do you have documents pertaining to all of the eighteen

enumerated items?

A Yes.

Q Do you have them with you?

A Yes.

MR. STRAUS: Your Honor, at this time, I will offer into evidence as Exhibit 56 collectively the list prepared by Mr. Gerstein together with the documents pertaining to each of the enumerated items, and, if it's agreeable, it is contained in a large folder, the documents are contained in a large folder and I would propose that we annex the list to the outside of the folder and that it be received collectively as Exhibit 56 in evidence.

THE REFEREE: Show the exhibit to Mr. Sassower before the Court receives the exhibit.

MR. SASSOWER: Here's the list.

MR. STRAUS: The list is outside. I'll also make the application, there is a duplicate of the document which was marked for identification attached, affixed by tape to that envelope, and I'd ask that that be marked 56 in evidence, so, we'll be substituting --

MR. SASSOWER: Do you have a copy for me so

1
2 so I can check it?

3 MR. STRAUS: You can have the copy which is
4 marked for identification.

5 MR. SASSOWER: I don't want to mark it up.
6 I have to work with something.

7 MR. STRAUS: Here, Mr. Sassower, here's a
8 photocopy of the same list so you can mark that
9 up, if you want.

10 MR. SASSOWER: Your Honor, as per your
11 Honor's suggestion and wishes, the documents
12 I have looked at so far, half of them do not re-
13 flect the title "Attempts to reargue summary
14 judgment"

15 There are other matters mixed in here.
16 They are mixed up. They are confused and --

17 THE REFEREE: Which ones do you claim do
18 not belong in that category?

19 MR. SASSOWER: Okay, on the record, the
20 first order, one of the Appellate Division,
21 dated October 4, 1983, does not come under the
22 title.

23 MR. STRAUS: If your Honor pleases, it has
24 the index number 16792.

25 MR. SASSOWER: It's not a motion to reargue.

MR. STRAUS: I think the documents --

THE REFEREE: Let Mr. Straus respond.

MR. SASSOWER: Very well.

MR. STRAUS: I see that there is a motion in the last paragraph. It says --

THE WITNESS: This is the order which dismissed Mr. Raffe's appeal from the summary judgment for failure to perfect it.

Q Is that enumerated on your list?

A Yes.

MR. SASSOWER: But it is not a motion to re-argue.

MR. STRAUS: If your Honor pleases, Mr. Sassower can offer any collateral evidence that he wishes.

We're offering this in evidence to demonstrate that there were, in fact, eighteen items as indicated here, eighteen items to reargue summary judgment. This certainly is indicative of one of those attempts and that's why it is offered.

MR. SASSOWER: That's not a reargument. It's not a reargument.

THE REFEREE: That's your contention.

MR. SASSOWER: Mr. Gerstein testified it's

not reargument, your Honor.

MR. STRAUS: I'm reading the decision. It says, "Hyman Raffe by letter dated September 29, 1983, requested renewal of such motion. Said motion as renewed is denied."

Is that what you were referring to?

MR. SASSOWER: Argument and renewal are two different things.

MR. STRAUS: I'm sure that -- I'll rely upon Judge Potoker to make the distinctions.

The documents speak for themselves. These are offered as part of a pattern of litigating and re-litigating the same issue.

That's the purpose of the offer.

THE REFEREE: Mr. Sassower, are you all through with all the documents?

MR. SASSOWER: No, I've just started.

THE REFEREE: Go through all the documents, pull out those you claim are not in that category so I'll rule on it at that time.

Q Mr. Gerstein, you have included under the heading of Raffe's attempts to reargue summary --

MR. SASSOWER: Let me look at this.

THE REFEREE: Let him look at his documents

1
2 first.

3 MR. STRAUS: May I ask you not to separate
4 them? These are clipped in order.

5 MR. SASSOWER: They're duplicates.

6 MR. STRAUS: If he's going to remove them,
7 we're going to have trouble locating them.

8 Keep it together with the clip.

9 THE REFEREE: What's the difference?

10 MR. STRAUS: Keep it together with the clip
11 and then you can make your remarks about it,
12 otherwise we'll lose track of them.

13 Sometimes exhibits get misplaced on this
14 table.

15 MR. SASSOWER: The motion of 2-8-83 is put
16 here in duplicate.

17 THE REFEREE: Does that affect the number?

18 MR. SASSOWER: I haven't gotten to that point,
19 your Honor. The order dated 9 something '83 --
20 your Honor, to save time, for two reasons, first,
21 I think we could save time if I could check it
22 at some recess period.

23 Secondly, I have difficulty writing because
24 I have blurred vision right now. I'm dizzy. I
25 can listen to testimony but I can't write very

1
2 easily, so why we mark it, if you want to mark
3 the evidence subject to cross-examination by the
4 Respondent at some convenient time, because this
5 will take me at least a half hour to three-
6 quarters of an hour.

7 MR. STRAUS: As we have indicated, we'll
8 make these copies available for Mr. Sassower to
9 inspect. Mr. Gerstein has represented that
10 they are copies of documents that were filed in
11 connection with these actions and that they
12 correspond to the list that he prepared which is
13 why they are --

14 THE REFEREE: It will be received in evidence
15 as Petitioner's Exhibit 56.

16 MR. SASSOWER: Subject, subject to motions
17 to strike.

18 MR. STRAUS: Of course, if they are inaccur-
19 ate copies, of course they would always be
20 subject to that. On the other grounds, I don't
21 know.

22 MR. SASSOWER: I don't want to look at them.

23 THE REFEREE: Your rights are reserved.

24 MR. SASSOWER: That's all.

25 MR. STRAUS: Let me put them back in the

1
2 folder and we'll have the folder and documents
3 collectively marked in evidence.

4 Let me have these now and we'll make these
5 available to you, okay?

6 MR. SASSOWER: Yes. What number is this?

7 MR. STRAUS: This is 56 in evidence which
8 is a manila folder or a large accordion type
9 folder.

10 The outside of the folder has a list prepar-
11 ed by Mr. Gerstein which was previously marked
12 56 for identification.

13 The whole thing is offered as 56 in evidence,
14 and I ask that it be marked.

15 MR. SASSOWER: Subject.

16 MR. STRAUS: May we have it marked at this
17 time?

18 THE REFEREE: Yes.

19 (So marked)

20 MR. STRAUS: Your Honor, I have another
21 document which I'd like to have marked for
22 identification. It's another accordion folder
23 with a one-page document affixed to it by tape
24 on the outside cover.

25 Can I have that marked for identification?

of Judge Sinclair by two separate orders, each dated February 1st, 1982, in an action commenced on a guarantee by Kaufman's estate bearing index number 16792/80, Mr. Sassower was disqualified from --

MR. SASSOWER: No, the document speaks for itself, your Honor. You have the document.

MR. STRAUS: It's already been received in evidence.

MR. SASSOWER: We don't need the interpretation of the witness.

A Mr. Sassower --

MR. SASSOWER: Excuse me. Objection.

THE REFEREE: Objection overruled. Go ahead.

A Mr. Sassower was also disqualified by an order --

THE REFEREE: When you say disqualified --

THE WITNESS: Disqualified from representing Mr. Raffé in a second order also entered February 1st, 1982, in index number 1816/80 which is the Puccini dissolution proceeding, and he was disqualified --

MR. SASSOWER: The document speaks for itself.

THE WITNESS: -- in that action as well as other actions where he represented an interest adverse to Puccini or its shareholders Dann and

Sorrentino.

Q After these disqualification orders, did Mr. Sassower make any motions to vacate his disqualification?

A Yes, he made motions.

Q How many?

A There are sixteen motions which would have the effect of vacating his disqualifications. They may bear different labels but the point of all of it was to get Mr. Sassower back into the case.

Q Have you prepared a list pertaining to those sixteen attempts to vacate?

A Yes. That is the list taped to the outside of Petitioner's 57 for identification.

Q The contents of this, you prepared this list as well?

A Yes.

Q Did you place in this accordion envelope the documents or documents pertaining to those motions or efforts?

A Yes. The documents in the envelope, 57, for identification, are the motions made by Mr. Sassower, or, in some cases Mr. Raffae, to get Mr. Sassower back in the case and the accompanying disposition of the motion. We did not include in this envelope any of the papers

served in response to the motions.

Q But, am I correct then that the paper affixed to the outside corresponds to the contents of the document?

A Yes.

Q Of the envelope?

A Yes.

MR. STRAUS: At this time, your Honor, I offer the folder with the list prepared by Mr. Gerstein as 57 in evidence and I have a copy of the motions, of that same list which I hand to Mr. Sassower, and he can use that to work from and I also give him the folder to look at.

MR. SASSOWER: Rather than look at them now, first of all, it will take up too much time of the Court, and I can look at them some other time.

THE REFEREE: Well, they are being offered in evidence.

The Court is providing you with an opportunity to look at the documents before they are received in evidence.

MR. SASSOWER: Right, subject to a motion to strike.

MR. STRAUS: The only question I have with respect to that, your Honor, we have a witness

on the stand now. I don't -- he's not available next week as I indicated to you. He would be available sometime after Mr. Raffe's testimony is completed and I want it stated for the record that if there is going to be any objection to these items being received in evidence, that they be done at a time when Mr. Gerstein is available as a witness.

I don't want it done after Mr. Gerstein has completed his testimony.

MR. SASSOWER: It won't be done after Mr. Gerstein completes his testimony.

If he's not available next week, when he comes back the week after that, that week, I'll deal with it any way your Honor wants.

THE REFEREE: Look at the documents now and pull out those papers that you think are not covered by Petitioner's Exhibit 57.

MR. STRAUS: If your Honor pleases, rather than physically pulling them out, rather than having -- we do have them put together and they do correspond to the list that Mr. Gerstein prepared --

MR. SASSOWER: May I do that on cross-

examination, your Honor?

THE REFEREE: All right, let's go on.
Received in evidence as Petitioner's Exhibit 57.

MR. SASSOWER: Subject to inspection and
motions.

(So marked)

MR. STRAUS: Here's a copy of the next one.

Q Mr. Gerstein, was there a receiver appointed in
connection with Puccini dissolution?

A Yes.

Q Who was the receiver?

A The receiver initially appointed was John Lindsay.

Q Did he qualify?

A No, he did not.

Q Was someone appointed after that?

A Yes.

Q Who was that?

A Lee Feltman, F-E-L-T-M-A-N.

Q Were there any motions made to remove Mr.
Feltman?

A Yes.

Q Do you know how many?

A May I consult the document? Sixteen.

MR. STRAUS: May I have this again, accordion

folder with a one page document taped to it
marked for identification as 58.

THE REFEREE: It's 58 for identification.

(so marked)

A That also, Mr. Straus, if I may --

Q By that, you are referring to 58 for identification.

A Yes, 58 for identification also includes in addition to motions to remove the receiver, Raffe's motions to have himself appointed as the receiver for Puccini and my reference to the number of motions as sixteen includes both of those categories.

Q Mr. Gerstein, you are referring to Mr. Raffe's efforts. You have referred to it prior in your testimony.

Was Mr. Raffe represented by counsel other than Mr. Sassower?

A For a brief period of time he was.

Q Who was that?

A He was represented by Mr. Polur in the guarantee, and, I believe Mr. Polur -- that's 16792 -- Mr. Polur also appeared for a brief period of time, I believe, in the Puccini dissolution action and there were also occasions while Mr. Sassower was disqualified and Mr. Raffe appeared

1
2 pro se, that an attorney other than Mr. Sassower or Mr.
3 Polur would appear for a single argument or deposition
4 or perhaps for a week or so and would then withdraw from
5 the proceeding.

6 Q Directing your attention to limiting it to
7 actions in which Mr. Raffe purportedly appeared pro se,
8 were there any court determinations pertaining to whether
9 or not Mr. Sassower was appearing in those cases?

10 A Yes.

11 Q What was the determination?

12 MR. SASSOWER: The document speaks for it-
13 self. Show us the document you're talking about.

14 MR. STRAUS: It has to do with the testimony
15 of Mr. Gerstein.

16 I'm asking him to clarify the testimony.

17 THE REFEREE: Overruled.

18 A The determination was that the use of Mr. Raffe
19 as purportedly appearing pro se was a sham for Mr. Sassower's
20 continued representation and direction of all facets of
21 of Mr. Raffe's litigation.

22 Q Who made that decision?

23 A The decision was made by Special Referee Diamond,
24 more recently by an order dated earlier this week, one such
25 ruling or report by Special Referee Diamond was confirmed

by the Appellate Division and Mr. Sassower was found in contempt by the Appellate Division by an order dated just a couple of days ago.

Q The earlier report of Referee Diamond was that, referred by a judge?

A Yes.

Q Confirmed by a judge?

A Yes.

Q What judge confirmed it?

A I believe, I'm not positive, but I believe it was Judge Martin Evans.

Q Was that part of the contempt proceeding against Mr. Sassower?

A Yes.

Q So that was one of the findings?

A Yes.

MR. SASSOWER: Can I see the order you're speaking about?

Q Do you have the order with you?

A Yes.

MR. STRAUS: If you wish, Mr. Sassower, we'll offer it in evidence, if the witness has it with him.

THE WITNESS: I'm referring to an order of

THE REFEREE: Yes.

(So marked)

Q Mr. Gerstein, was there a time at which Mr. Sassower appeared in the litigation as an attorney for one party or another?

A Yes.

Q Who did he appear for?

A He appeared for Hyman Raffe. He also appeared at the inception of the litigation for Eugene Dann and Robert Sorrentino who were also each twenty-five percent shareholders of Puccini, and he also appeared for the corporation, Puccini Clothes, Limited.

Q Did he continue to represent the other parties aside from Mr. Raffe?

MR. SASSOWER: In which litigation?

MR. STRAUS: In any litigation pertaining to Puccini Clothes or its shareholders.

Q Was there --

MR. STRAUS: Let me withdraw the question.

Q Directing your attention to that area, were there any motions to disqualify Mr. Sassower?

A Yes.

Q What was the outcome of the motions?

A Mr. Sassower was disqualified also by order of

the Appellate Division, First Department, dated March 11, 1986.

Q Do you have a spare copy of that?

MR. STRAUS: Can we have this marked in evidence?

THE WITNESS: Yes. I refer to --

MR. STRAUS: Let's get it marked in evidence and if you wish, I'll offer this in evidence, Mr. Sassower.

This would be 58.

MR. SASSOWER: I didn't see it yet.

MR. STRAUS: You want to see it but you don't want us to offer it?

THE REFEREE: It will be Exhibit 59 for identification.

(So marked)

MR. STRAUS: May the record indicate that I am handing a copy to Mr. Sassower of 59 for identification.

MR. SASSOWER: I haven't seen it yet.

Q With respect to Exhibit 58 for identification, let's get back to that, all right?

Am I correct that you prepared the list which appeared on the outside of this envelope?

1
2 A Yes.

3 Q And is it also correct that the contents of
4 the envelope are actually referred to by the list?

5 A Yes.

6 MR. STRAUS: I'll offer -- I'll offer this
7 in evidence as Exhibit 58.

8 Do we have a copy of that for Mr. Sassower?

9 MR. SASSOWER: I have that already, 58.

10 MR. STRAUS: Is this in evidence? It hasn't
11 been received in evidence.

12 THE REFEREE: It's for identification only.

13 MR. SASSOWER: I have a copy of the list.

14 MR. STRAUS: I offer that as 58 in evidence.

15 THE REFEREE: Those are motions to remove
16 Mr. Feltman as receiver and some motions request-
17 ing that Mr. Raffo be appointed instead, is that
18 right, sir?

19 THE WITNESS: That is correct, your Honor.

20 THE REFEREE: It will be received in evidence.

21 (So marked)

22 Q Any of those motions granted, by the way?

23 A In 58?

24 Q Yes?

25 A No.

Q Going back to 57, motions to vacate disqualification of Mr. Sassower, were any of those motions granted?

A Yes.

Q Which one was granted? Was that Judge Danzig's?

A Yes, Judge Danzig.

Q For what duration was Judge Danzig's order in effect?

A It was stayed by a single judge of the Appellate Division two days later, it was stayed by a full bench of the Appellate Division approximately two weeks later. It was reversed unanimously by the Appellate Division upon argument of the appeal.

Q Aside from that, all others were denied?

A That is correct.

Q And --

A Except for one, I believe, in which a decision is still pending.

Q That's number 16 on your list.

A Yes.

Q With respect to the attempts to reargue or affect renew motions for summary judgment, any of those granted?

A None of them resulted in a vacature or alteration of the summary judgment or any of the other ultimate relief.

Q Had Referee Diamond instituted any rules pertain-

ing to motions to renew or reargue?

A Yes.

Q What were those rules?

MR. SASSOWER: Objection.

THE REFEREE: Overruled. If he knows.

A His rule with regard to any relief within the purview of CPLR 221 or which effected in any way a prior order was that such a motion could be brought on only by order to show cause signed only by the justice who rendered the order which was sought to be effected by the motion.

Q And were those rules complied with in making these various motions to renew, reargue?

A Generally not.

Q Were there motions made by Mr. Sassower to disqualify your firm?

A Yes.

Q How many of those were made?

A May I see the document?

MR. STRAUS: Let's have this marked for identification.

I have an accordion folder, one page document affixed to it by tape.

I ask that it be marked 60 for identification.

(So marked)

Q Looking at 60 for identification, how many motions were made to disqualify your law firm by Mr. Sassower?

A There were twelve. Now, I'm not sure they were all made under the name of Mr. Sassower.

Q Were they made by Raffé pro se?

A Some of them may have been by Raffé pro se.

Q As a result of the rulings of Referee Diamond, Judge Evans most recent ruling was there any indication in those decisions as to who made the motion to disqualify?

MR. SASSOWER: Objection. The documents speak for themselves.

Q Was there any ruling as to who actually made the motions?

A The ruling was that Mr. Sassower drafted all -- as Mr. Raffé so testified, that Mr. Sassower drafter all of the papers filed in the name of Mr. Raffé.

THE REFEREE: Was that a conclusion or a decision embodied in Exhibit 60?

THE WITNESS: No.

Q What --

MR. STRAUS: I think he described it.

THE WITNESS: It's in Referee Diamond's report confirmed by Judge Evans.

MR. STRAUS: Those are in evidence, your Honor.

Q Directing your attention to 60 for identification, you have listed twelve motions under the heading "Motions to disqualify Kreindler and Relkin."

A Yes.

Q Any of those motions granted?

A No.

Q Before those motions were made or after the first one was made, any application made to Referee Diamond to renew or reargue?

A I really can't answer that for the following reason --

MR. SASSOWER: Objection.

THE REFEREE: Sustained. Next question.

Q The list that you prepared, does that correspond to some documents that you also compiled?

A Yes.

Q And are those documents -- where are those documents?

A In the folder.

Q So that the list corresponds with the contents of the folder.

A Yes.

MR. STRAUS: I offer this in evidence as 60, the accordion folder with the one page list affixed to the outside.

MR. SASSOWER: With the same reservation.

THE REFEREE: That's the twelve motions to remove your firm as attorneys.

THE WITNESS: Yes.

THE REFEREE: For the estate of Mr. Kaufman.

THE WITNESS: Yes, your Honor.

THE REFEREE: It will be received in evidence.

MR. SASSOWER: Subject.

THE REFEREE: As Petitioner's Exhibit 60 subject to Mr. Sassower's right to challenge, to challenge any one of the documents.

(So marked)

Q Directing your attention to Barr v. Raffé, index number 21208 of '79, do you have that in mind?

A Yes.

Q What was that case about?

A That was the first litigation brought. That was an action on a guarantee. It sought approximately \$39,000 from Puccini, the corporation and on trade acceptances and also from Messers. Raffé, Dann and Sorrentino on guarantees.

Q What was the outcome?

A Some judgment was granted by order of Judge Lane against the three shareholders.

Q Any motions made or any attempts made to set aside, vacate, modify that summary judgment?

A Yes.

Q How many?

A Five.

MR. STRAUS: May I have this marked for identification, please?

This is an accordion folder with one page document affixed by tape.

THE REFEREE: Mark it.

(so marked)

MR. SASSOWER: Mr. Straus, all made by Mr. Sassower, you said five attempts.

MR. STRAUS: We'll get that from the witness. We'll ask him about it.

Q You have made -- looking at 61 for identification, would you describe what it is?

A Yes. This is a folder containing the five motions and the dispositions.

Q And the contents of the folder, do they correspond to the list that you prepared?

THE REFEREE: The motions filed by whom?

THE WITNESS: I believe these were all by
Mr. Sassower.

Q Is that on behalf of Mr. Raffe?

A Yes.

Q While you're looking through the documents, do
they indicate who Mr. Raffe's attorney was?

A Mr. Sassower.

THE REFEREE: These were motions to what ef-
fect?

THE WITNESS: To vacate the summary judg-
ment granted by Judge Lane.

There are also in here several decisions
of the Appellate Division, the first of which
is dated March 12, 1981, affirmed Judge Lane's
order granting summary judgment.

Q Have you indicated that on your list, if you
look at the flap, is there some indication of the affirmance?

A Yes.

Q That's why the documents are included?

A Yes, and there are two other -- sorry -- this one
is erroneously in here. Another one dated July 2nd, 1985
of the Appellate Division, affirms Judge Lane's denial
of a motion seeking vacature of the judgment and also

affirming a subsequent order of Judge Lane granting re-
argument and upon reargument, a hearing to the original
determination and also affirming an order of Justice
Beverly Cohen denying a motion for disqualification.

Q That's why those orders are included.

A Yes.

MR. STRAUS: I offer the list, the envelope
and its contents in evidence as Petitioner's
Exhibit 61.

Do you have that list, Mr. Sassower?

THE REFEREE: It will be received in evidence
as Petitioner's Exhibit 61, again subject to the
right of Mr. Sassower to challenge any one or
all of the documents.

(so marked)

Q Again directing your attention to Barr v.
Raffe 16792 of 1980, was there an award of attorney fees
against Mr. Raffe?

A Yes.

Q Specifically, I'm referring to your firm.

A Yes.

Q When was that decision made?

A Summary judgment was granted in 1982 by decision
in 1982 and an order entered January 4, 1983.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q I have a document indicating --

Could it be February 4 instead of January 4?

A It is possible.

Q Well, let me ask you this, pertaining to that summary judgment, were fees awarded to your law firm?

A Yes.

Q What was the total?

A A jury, after trial, before jury, approximately \$464,000.

Q Who was that judgment against?

A Mr. Raffé.

Q Was Mr. Sassower a party to the action?

A He was initially until disqualified.

Q After that judgment was rendered, any motions made to vacate, amend or otherwise affect the judgment?

A Yes.

Q How many were made?

A That is the eighteen motions which I referred to before.

Q Now --

THE REFEREE: That's Exhibit 58 in evidence. That's the motions to remove the receiver.

THE WITNESS: No, it's not that. I believe that was the first folder introduced today, your

Honor.

THE REFEREE: That's Exhibit 56 in evidence.

Q Among those motions was there a motion made to vacate an order awarding fees to Kreindler and Relkin?

A Yes.

Q How many motions were made?

A I believe what you are referring to is the time six motions were made on a single day.

In compiling the chart which is part of Exhibit 56, we didn't count that six times. I think we counted it twice because there were two decisions, but the motion was made on a single day returnable in six different parts of the court.

Q Let me get this straight. The same motion made returnable in six different courts.

A Yes. Well, in two different courts, six different parts of Supreme Court and in the Appellate Division.

Q Let me show you a one page document.

MR. STRAUS: Let me have this marked.

I have, if your Honor pleases, a one page document, which is affixed by rubberband to an open folder which contains various documents inside.

I'd like that marked for identification as

62.

THE REFEREE: Exhibit 62.

(so marked)

Q Mr. Gerstein, if you'll look at 62 for identification, is that an accurate list of the motions which was made returnable in six different courts on the same day?

A The list is accurate.

However, in looking at the underlying papers the date of the summary judgment was January 4 rather than February 4 as stated on 62.

Q So that where it says "Relief requested, " they should also say, "vacate the January 4 order," is that right, is that your testimony?

A Let me take a look.

I see what it is. It's the judgment that was dated February 4. The order was January 4 and the judgment was February 4.

Q Is the list accurate, 62 for identification?

A Yes.

Q Would you be good enough to take the rubberband off the folder and look at the contents of the folder, please?

A Yes.

Q Do the contents of the folder correspond to the list?

1
2 A They are copies of the six notices of motion.
3 It's one full set of the motion papers. They were compared
4 with the other five sets in my office and they were iden-
5 tical except for the part or place in which the motion was
6 returnable, so I did not make six copies of the identical
7 thing.

8 We have copies in here of the notices of motion,
9 also in here.

10 THE REFEREE: The only difference was the
11 part of the Supreme Court in which the motions
12 were to be made returnable.

13 THE WITNESS: Yes.

14 THE REFEREE: Did that also include a simi-
15 lar motion before the Appellate Division?

16 THE WITNESS: Yes. One of the motions was
17 returnable in the Appellate Division.

18 THE REFEREE: One out of six.

19 THE WITNESS: Yes.

20 A Also in the folder is a letter I wrote to Justice
21 Sinclair dated August 22nd, 1984.

22 MR. SASSOWER: Objection. Self-serving.

23 THE REFEREE: That hasn't been offered.

24 MR. SASSOWER: Okay. Take the letter out,
25 please.

MR. STRAUS: Let's take it out for now.

We may offer it separately.

A A decision of Justice Sinclair, a memorandum dated August 27, 1984, which refers to the letter; a decision declining to sign the order, an order to show cause by Mr. Sassower seeking the relief sought in it six months ago and the Court will note that the motions, the six motions are each dated August 30, three days after Judge Sinclair declined to sign the order to show cause granting the identical relief sought in the six motions.

Q Now, directing your attention to a letter dated August 27, 1984, addressed to Judge Sinclair, did Judge Sinclair take some action in response to your letter of August 22nd?

A Yes.

Q What action did he take?

A He issued the memorandum decision dated August 27.

Q So your letter was in the nature of an application.

A Yes.

Q And the application was granted by the decision.

A Yes.

Q And that's why the letter is included?

A Yes.

1
2 MR. STRAUS: I offer the folder, its con-
3 tents and the list which is all affixed by a rub-
4 berband in evidence as Petitioner's Exhibit 62.

5 MR. SASSOWER: Same -- if your Honor pleases,
6 same reservation.

7 THE REFEREE: It will be received in evi-
8 dence with the same reservation.

9 (so marked)

10 THE REFEREE: Does that include Judge Sin-
11 clair's --

12 MR. STRAUS: Yes, because that was the basis
13 for Judge Sinclair's decision as Mr. Gerstein
14 testified and I have no further questions.

15 THE COURT: Sir, did I understand you to
16 indicate that although the motions were returnable
17 in different parts that Judge Sinclair acted
18 and in effect denied all of them?

19 THE WITNESS: No. Judge Sinclair acted
20 before the motions were made.

21 What happened with that proceeding, the six
22 motions are really the culmination of that
23 particular chapter.

24 An order to show cause was presented to
25 Judge Parness who was sitting in Special Term,

Part 2, and this is all recited in, I believe in Judge Sinclair's decision.

The order to show cause sought vacature of the underlying judgment and the presentation of the order to show cause violated Referee Diamond's rules in that, number 1, it did not have affixed or endorsed thereto a copy of the administrative order of Judge Riccobono appointing Referee Diamond.

Number 2, it was not properly presented to Judge Parness, according to Referee Diamond's rules, such an order affecting the -- an order to show cause seeking relief affecting a prior order granted by Judge Sinclair could be presented only to Judge Sinclair.

Judge Parness, not having a copy of the administrative order or Referee Diamond's rules as part of Mr. Sassower's submission, signed the order to show cause.

When we were served with it, we requested a conference before Judge Parness. Such a conference was held and I was present.

At the conference, Judge Parness endorsed the order to show cause that he had already signed.

1
2 saying that no answering papers need be served
3 and that the order to show cause would be referred
4 to Judge Sinclair for de novo consideration.

5 I then wrote the letter to Judge Sinclair
6 which is part of the folder that's been marked as
7 an exhibit, requesting that Judge Sinclair not
8 sign an order, the proposed order to show cause
9 because it was totally unwarranted and Mr. Raffe
10 and Mr. Sassower had already made numerous motions
11 to vacate the judgment which had been affirmed,
12 which judgment had been affirmed on appeal.

13 Judge Sinclair then ruled in our favor by
14 declining to sign the order to show cause as set
15 forth in his memorandum decision.

16 Mr. Sassower immediately upon such determinat-
17 ion, as you can see it's three days after Judge
18 Sinclair's decision, made the motion returnable
19 in six parts.

20 The motion itself was then -- there was a
21 subsequent decision denying the motion by
22 Referee Diamond which was one of the six places
23 in which the motion was returnable and I think
24 the other judges did not even render a determinat-
25 ion under those circumstances, because included

1
2 in that folder is a letter I wrote to each of
3 the six parts in which the motion was returnable
4 saying that we're submitting one, the motion is
5 improper, we're submitting one set of answering
6 papers and I believe I said it was in Special 1
7 asking that the motion be referred to Judge Sin-
8 clair.

9 MR. STRAUS: I have no further questions,
10 your Honor.

11 THE REFEREE: Go ahead, Mr. Sassower.
12 Are you ready for cross-examination?

13 MR. SASSOWER: May I have the file for 21208,
14 please. That would be Exhibit Number 61.

15 May I have two minutes?

16 THE REFEREE: Yes.

17 (short recess)

18 MR. STRAUS: Judge Potoker, as a matter
19 of courtesy, may I introduce in the audience is
20 Lee Cross, who is the Chairwoman of the Grievance
21 Committee? Judge Potoker, Lee Cross.

22 THE REFEREE: Go ahead, Mr. Sassower.

23 CROSS EXAMINATION

24 BY MR. SASSOWER:

25 Q Mr. Gerstein, with reference to Exhibit 61,

1
2 which is sometimes known as Bar 1, has it been referred
3 to as Barr Number 1?

4 A No, sir.

5 Q Was that the third action commenced in the
6 Puccini litigation?

7 A Yes.

8 Q Okay, and it was commenced by your firm, is that
9 correct?

10 A Yes.

11 Q And it was commenced against Puccini, Dann,
12 Sorrentino, and Raffae.

13 A Yes.

14 Q And was it commenced to recover full indemnifi-
15 cation from Puccini and three-quarters indemnification from
16 the other three jointly and severally?

17 A Yes.

18 Q So the theory -- let's call it Bar Number 1, of
19 Bar Number 1, was that Puccini had to fully indemnify the
20 Kaufman estate, is that correct?

21 A I don't know what you mean by the theory. The
22 complaint speaks for itself.

23 Q Okay, do you have the complaint?

24 A No.

25 Q Do you remember what the complaint says?

1
2 A No, other than as I have just testified.

3 Q Well, what was the theory or what did the complaint
4 say?

5 MR. MEYER: Objection.

6 A It speaks for itself.

7 Q It speaks for itself and you don't have it here.

8 A That is correct.

9 Q Now, that -- was a complaint drawn in that action
10 or was it an affidavit and notice of motion pursuant to
11 3213 CPLR?

12 A Yes, it was a 3213 motion.

13 Q And, there was only one motion made by you before
14 the judgment was granted, is that correct?

15 A I'm not sure.

16 Q Well, do you have any list or sheets with you
17 that would refresh your recollection?

18 A No.

19 Q In any event, Judge Lane determined that you could
20 not recover from Puccini, is that correct?

21 A He denied summary judgment as to Puccini.

22 Q And he granted summary judgment against the three
23 stockholders jointly and severally, is that correct?

24 A He granted summary judgment against the three
25 stockholders.

1
2 Q Did you, as part of that proceeding sue for
3 attorney's fees, yes or no?

4 A Do you have a copy of the complaint or the mot-
5 ion? I would need to see that.

6 MR. SASSOWER: I was going to suggest, to
7 his Honor, adjourn -- would you excuse us for
8 about ten minutes, I'll bring that entire file
9 here. It's in the car and I'd rather go in a
10 systematic fashion because now we have the oppor-
11 tunity of really understanding this case, if we
12 go in that systematic fashion.

13 THE REFEREE: All right, we'll take a ten
14 minute recess.

15 MR. SASSOWER: Thank you, very much.

16 (short recess)

17 MR. SASSOWER: Your Honor, before we re-
18 commence cross-examination, I want to bring one
19 thing to your Honor's attention.

20 If you recall, at the last session, you asked
21 me that if I present to your Honor a subpoena
22 duces tecum to the County Clerk with specific
23 identification, and I'm not trying to be exact in
24 quoting your Honor, because I am not, but this
25 was the thrust -- I made inquiry of the County

1
2 Clerk's office and apparently they cannot honor
3 subpoenas for singular documents. They can
4 either honor it for the entire file or something
5 that's in a -- I don't know what you call it --
6 there are clips with the two legs, because they
7 can't pull it apart and you have to have it in-
8 dexed and everything else so that on some of the
9 documents that I may need, what I may only need
10 is a single document.

11 The only way the County Clerk will honor a
12 subpoena is that by that entire judgment roll,
13 let's say, do you follow me?

14 THE REFEREE: Yes, I follow you, but I still
15 would like to know from you what specifically
16 you want from those files.

17 The County Clerk may send the whole file
18 over.

19 MR. SASSOWER: Fine. I wanted to report as
20 to the results of my inquiry.

21 MR. STRAUS: If your Honor please, could
22 we have applications of those nature at some
23 other time? We don't want to have a witness on
24 the stand --
25

1
2 MR. SASSOWER: The reason that I made the
3 comment at this time is because there are cer-
4 tain documents that I don't have, and, rather than
5 getting the County Clerk to bring an entire file,
6 we're going -- we have to call on the witness to
7 bring single documents. It may serve everybody's
8 convenience.

9 Q To refresh your recollection, Mr. Gerstein, I
10 ask you to look at Pages A15 and A23, and ask you if this is
11 not your -- Kreindler and Relkin, your notice of motion
12 and supporting affidavit for a 3213 judgment in the sum of
13 thirty some odd thousand dollars?

14 THE REFEREE: You are showing him the --

15 MR. SASSOWER: The record on appeal.

16 THE REFEREE: -- the record on appeal.

17 MR. SASSOWER: Right.

18 THE REFEREE: Identified previously.

19 A It appears to be.

20 MR. SASSOWER: May we mark that, your Honor?

21 THE REFEREE: Mark what?

22 MR. SASSOWER: The notice of motion and the
23 affidavit by Jerome H. Barr.

24 THE REFEREE: That's notice of motion filed
25 by you.

MR. SASSOWER: By Kreindler and Relkin.

THE REFEREE: Do you have a copy of it, sir?

THE WITNESS: Not here.

MR. SASSOWER: I'll make a copy of that book, those pages and we can substitute --

THE REFEREE: Pages what?

MR. SASSOWER: A15 to A23, am I correct?

THE WITNESS: That's the affidavit, the summons and the notice of motion for summary judgment in lieu of complaint.

MR. SASSOWER: Right. Would you mark that, Mr. Stenographer, please?

THE REFEREE: Respondent's XX, for identification.

MR. SASSOWER: Let's mark it in evidence.

MR. STPAUS: Unless Mr. Sassower has some offer as to relevance of this document, I don't know where we're going as to the papers.

It's obvious that the charges relate to his conduct much further down-road than at the inception of an action. I don't know what his offer is.

MR. SASSOWER: It will become very apparent as we progress.

MR. SASSOWER: I would ask that Mr. Sassower make his offer now.

MR. SASSOWER: Let's mark it for identification.

THE REFEREE: All right, mark it for identification, XX for identification.

(so marked)

Q Having looked at the motion, Mr. Gerstein, you do agree, sir, that you did not ask for attorney's fees in that proceeding.

MR. STRAUS: Objection, your Honor. What is the relevance of this?

MR. SASSOWER: Very relevant. Okay? You'll see it down the line.

MR. STRAUS: Objection.

THE REFEREE: What is the relevance?

MR. SASSOWER: Judge, it will come down. Let me ask the question. The relevance will be very important. It's decisive.

THE REFEREE: I'll permit you to ask it subject to motion to strike if it's irrelevant.

MR. SASSOWER: Right.

A The relief sought is contained --

Q Just answer the question, please.

1
2 A Sir, that's what I am trying to do.

3 MR. STRAUS: Would your Honor permit the
4 witness to answer the question?

5 THE REFEREE: Yes, Mr. Sassower, ask
6 your question and I'll let him answer it.

7 Is this a new question?

8 MR. SASSOWER: Same question, but I'll repeat
9 it.

10 THE REFEREE: All right.

11 Q Did the summons, notice of motion and affidavit
12 in support, ask for attorney's fees in pursuing this?
13 And, by attorney's fees, you know I don't mean court costs
14 of \$25 or \$50.

15 A The relief sought is contained on Page A23 which
16 is the last page of the affidavit and also on Page A16,
17 which is the notice of motion.

18 Q Okay.

19 MR. STRAUS: Are you finished with your answer?

20 Q That's your answer.

21 A The relief, that is, against Puccini Clothes,
22 Limited, in the amount of \$41,053.80 and against Defendants
23 Raffae, Dann and Sorrentino in the amount of \$30,790.35
24 plus interest, costs, expenses and disbursements, et cetera.

25 Q So the answer is, you did not ask for attorney's

1
2 fees.

3 A That's correct.

4 Q And that proceeding was based on specific docu-
5 ments, was it not, on cross-guarantees?

6 A There are documents annexed as exhibits to the
7 motion papers.

8 Q When I say documents, I'm talking about cross-
9 guarantees.

10 A I don't know what you mean by cross-guarantees.
11 There are specific documents annexed on the pages immediate-
12 ly following which appear to be --

13 THE REFEREE: What's the date of the notice
14 of motion?

15 THE WITNESS: The notice of motion is dated,
16 it's undated. The summons is dated November 8,
17 1979, as is the moving affidavit.

18 Q Now, sir, was I the attorney for the defendants
19 from the beginning of that proceeding until the very end,
20 attorney of record, yes or no.

21 A What -- that depends on what you mean by the end
22 of the proceeding.

23 THE REFEREE: Let's break it up. Was he
24 the attorney of record on November 8, 1979?
25

1
2 THE WITNESS: There was no attorney of
3 record for the defendants on November 8, 1979,
4 since that was the initial paper served, the sum-
5 mons, but Mr. Sassower immediately appeared on
6 behalf of all of the defendants in that action
7 and he answered on behalf of all of them.

8 Q Now, sir, after an order had been granted awarding
9 summary judgment to the plaintiff against Dann, Sorrentino
10 and Puccini, and after a motion was made to reargue, did
11 your firm enter judgment?

12 A Judgment was entered. I don't know whether it was
13 before or after a motion was made to reargue and I don't
14 know which of the five motions to vacate the judgment you're
15 referring to.

16 Q Here it is. Is this the judgment? I'm sorry.
17 Was that judgment affirmed on appeal?

18 A Yes.

19 Q In November of 1984, approximately four years after
20 a judgment was recovered by your firm --

21 MR. STRAUS: Objection. There is no testimony
22 to that effect. This is not in the nature of
23 a question.

24 THE REFEREE: Judgment was entered.

25 Q Was that judgment satisfied by Hyman Raffe, yes or

no?

A I believe -- excuse me -- do you mind if I consider the answer before going at me?

THE REFEREE: Go ahead.

A I believe judgment was paid. I believe it was paid by Mr. Raffae but I'm not positive as to who paid it.

Q Four years later was a motion made to vacate that judgment, yes or no?

A The motion is made --

Q No, no, just answer the question.

A Sir, if you would permit me to answer the question, I would very much like to do so, because I have an answer.

THE REFEREE: Let the witness answer the question.

Q Let me rephrase the question.

A I can answer the question as posed. I have no difficulty with the question.

MR. SASSOWER: I withdraw the question.

Q In November --

THE REFEREE: What year?

Q -- of 1983, did I, George Sassower, make -- I'm sorry -- it's December, exactly, December 15, 1983, did I, George Sassower, make a motion to vacate that judgment and

for restitution and I show you a document which came out of your Exhibit 61. Here it is. You have another copy.

A Yes. That's for restitution of the monies paid by Mr. Raffé.

Q Right.

THE REFEREE: Pursuant to the judgment.

MR. SASSOWER: Pursuant to the judgment.

THE WITNESS: Yes.

MR. STRAUS: Judge Potoker, could I ask that your request Mr. Sassower to keep the exhibit at least together, because it's beginning to flow over the table and we sometimes lose --

MR. SASSOWER: Just remind me when you see them go astray.

Q Is that yes?

A I answered the question.

Q And you have a copy of the document in front of you?

A I do.

Q Now, was there any question that Raffé, having paid that judgment, was entitled to indemnification from Puccini?

A Mr. Raffé --

THE REFEREE: That was the relief you sought.

MR. SASSOWER: No, no, no.

THE REFEREE: You said that on December 15, 1983, you filed motion papers to vacate that judgment and for restitution of the monies paid by Mr. Raffe pursuant to the judgment of --

MR. SASSOWER: Right.

Q Was there any question that for the monies that Raffe paid to your firm on behalf of your clients that Raffe was entitled to indemnification from Puccini?

MR. STRAUS: Objection.

MR. SASSOWER: Mr. Straus --

MR. STRAUS: Let me make my objection, sir. Mr. Gerstein is not the judge. The decision was rendered by the court.

Mr. Gerstein is not in a position to give an expert opinion as to whether or not something was arguable or was not arguable.

There is a decision, and, again, I don't know what the relevance of this exploration that Mr. Sassower is going through, has to the charge against him.

MR. SASSOWER: It's decisive.

THE REFEREE: I assume Mr. Sassower is addressing himself to the instant matter on the

grounds that as far as this action is concerned,
he was not barred by any post-197 --

MR. SASSOWER: It was relevance to a few
matters. That's one, your Honor. Let me put it
this way.

Q Is it not a fact that the motion dated December
15, 1983, which asks for relief pursuant to 515A subdivis-
ion 2 and 3, was based on the ground that we had discovered
that some of Puccini's court entrusted assets had been
given to your clients; yes or no?

MR. SASSOWER: Objection, your Honor.
The documents speak for themselves.

THE REFEREE: Overruled. You can answer it.

A Mr. Sassower in his many motions to vacate this
judgment in 21208 by Judge Lane, the judgment granted by
order of Judge Sinclair in the 16792, his applications to
remove the receiver, to disqualify our firm and for all
sorts of other relief constantly alleged all sorts of wrong-
doing on the part of Kaufman estate.

Not a single judge who heard any of the of the
decisions granted those motions.

MR. SASSOWER: I move to strike.

THE REFEREE: You say, sir, that Judge Sin-
clair's order covered December 15, 1985.

MR. SASSOWER: This is not Sinclair.

A I'm saying that with all these allegations Judge Lane declined to vacate the judgment; the same allegations were made on different motions before Judge Sinclair who declined to vacate the judgment.

MR. STRAUS: The point --

Q We'll get to what the judges said.

MR. STRAUS: These are allegations which Mr. Sassower raised.

THE REFEREE: This was my question. I'm permitting the witness to answer. Go ahead, sir. Continue, sir.

THE WITNESS: That is the answer.

Q Let me ask you this again, on June 4, 1980, did the assets of Puccini become court entrusted assets; yes or no?

MR. STRAUS: Objection.

MR. MEYER: Your Honor, I object. He's been asking my client questions about the litigation.

THE REFEREE: Mr. Straus can object. The objection is sustained.

MR. SASSOWER: On what grounds, your Honor?

THE REFEREE: It's irrelevant.

MR. SASSOWER: Your Honor, this is the

heart of the charge.

THE REFEREE: I know it's the heart but --

Q I have the decision of Judge Lane on that motion.
Have you got a copy of it in front of you?

A Yes.

MR. STRAUS: That's in evidence.

THE REFEREE: What exhibit?

MR. STRAUS: It's part of the folder. Mr.
Sassower has it.

I think it's 61. That's what he's reading
from, Judge.

Judge Lane's decision was one of the docu-
ments in that folder.

THE REFEREE: That's one of the five motions.

Q Wasn't this motion based on the fact -- all right --
did that Judge Lane find as his decision, quote, "That the
executors of the estate as individuals may have been guilty
of violation of fiduciary obligations in handling the
assets of the primary debtor?"

MR. STRAUS: Objection.

MR. SASSOWER: I'm reading from this order.

MR. STRAUS: It's in evidence. And, what's
the purpose of asking the question?

MR. GERSTEIN: I object. The document speaks

for itself.

MR. SASSOWER: Excuse me, you have no standing to object, first of all, and let me finish my argument.

THE REFEREE: Mr. Sassower, it's in evidence. Go ahead, question the witness.

Q The question is, had not I in November of 1983 discovered --

THE REFEREE: "Discovered" you said?

MR. SASSOWER: "Discovered."

THE REFEREE: How would he know?

MR. SASSOWER: It's in the paper.

MR. STRAUS: Objection.

Q Did I allege in my motion --

MR. MEYER: I object. The document is in evidence.

MR. SASSOWER: You want to read a five-page document, your Honor, or may I summarize it?

MR. STRAUS: I would certainly object to your summarizing it.

THE REFEREE: Sir, just ask your specific question.

MR. SASSOWER: I am.

THE REFEREE: Let's hear it.

1
2 MR. STRAUS: If your Honor pleases, at
3 this point let me object, at this point so I
4 can make my objection for the record and you can
5 judge the merits of it.

6 This is something that Mr. Sassower has
7 tried to do on innumerable occasions which is to
8 show that there was wrongdoing on the part of
9 the various other people.

10 Now he's trying to do it again.

11 He's again trying to go behind it.

12 MR. SASSOWER: I can prove it.

13 MR. STRAUS: That's exactly the point.

14 THE REFEREE: Mr. Sassower, assuming you
15 prove it, assuming that you can document it,
16 that matter is not before me.

17 MR. SASSOWER: Judge, it is. I'll tell
18 you --

19 THE REFEREE: The matter before me is
20 whether or not, despite what you believe to have
21 been, or what, whether or not you were barred
22 by certain judges --

23 MR. SASSOWER: I was never barred here.

24 THE REFEREE: Okay. Let's address yourself
25 to that.

Q On Motion 2 or Motion 3, in your opposing papers, did you ever allege that I was barred as the attorney for Raffe in this action; yes or no?

A No, sir.

Q On the next motion in this action, when I made a motion on behalf of Raffe, did you ever contend in your papers that I was barred in this action?

A We have never asserted your disqualification in index number 21208 of '79.

Q So from the beginning to the end I've been the attorney for Raffe.

MR. MEYER: I object. Mr. Gerstein already testified he doesn't know what the end means, Mr. Sassower.

THE REFEREE: Overruled. Go ahead.

Q So there's no question --

A May I answer the question?

Q There's no question --

MR. STRAUS: He's asked permission to answer it.

MR. SASSOWER: Let me finish the answer, the question.

THE REFEREE: He's attempting to answer at the same time.

MR. SASSOWER: I'm sorry.

A The answer is, no, sir. The answer is that in the summer of 1985 Mr. Raffe, to my knowledge discharged you and that, in fact, a stipulation was entered, was signed in the Appellate Division on appeal from an order of Judge Lane dated May 23rd, 1985 denying your fourth motion to reargue or vacate the judgment and that stipulation withdraw in the appeal had to be signed, I believe, by Mr. Raffe, because you declined or refused or in any event didn't sign it.

Q Okay. Now --

MR. STRAUS: Your Honor, this is a procedural matter.

I'm not sure that Mr. Meyer is aware of precisely what his position is in this proceeding and I really don't want to get involved in a procedural question.

It is my understanding that Mr. Meyer is available and can consult with the witness at any time, if the witness desires to consult with him.

It is also my understanding that as to objections to questions that I will make them as they relate to this proceeding.

1
2 If Mr. Meyer wants to consult with the
3 witness, I think as a physical matter he may be
4 allowed to be in closer proximity to him.

5 THE REFEREE: I am entertaining only mo-
6 tions or objections made by you or Mr. Sassower.

7 MR. MEYER: Thank you, your Honor.

8 Q Until the summer of 1985, did you ever object
9 to me being the attorney for Mr. Raffe in 21208 of '79?

10 A Not to my recollection.

11 Q Okay. In the summer of 1985, did you ever receive
12 from me or from anybody else a stipulation of substitution,
13 yes or no, signed by me?

14 A No.

15 Q Did you ever receive in that action any order of
16 the court substituting me?

17 A No.

18 Q Is it not a fact that you, Mr. Gerstein, while
19 I was the attorney for Mr. Raffe, directly or indirectly
20 spoke to Mr. Raffe and Mr. Raffe without an attorney's
21 signature on the document signed a document for the
22 Appellate Division; yes or no?

23 MR. STRAUS: Object to the question. There
24 are many actions.

25 MR. SASSOWER: I'm talking about 21208.

That's the only one.

MR. STRAUS: If he specifies that, I have no problem.

Q We're only talking about 21208, Bar 1. Is it not a fact --

A Are you finished with your question?

Q Have you got a copy of the stipulation?

A Which question would you like me to answer?

Q The stipulation that you said that Mr. Raffe signed in the summer of 1985, do you have a copy of that stipulation?

A Not today.

Q Who signed that stipulation, Mr. Gerstein?

MR. STRAUS: Mr. Sassower, I think you're taking one of the exhibits.

MR. SASSOWER: Let's leave a no-man's land here so we can --

Q Who signed that stipulation?

A Without having it in front of me I can't be sure but it was not signed by you.

Q Was it signed by any attorney on behalf of Mr. Raffe?

A I don't know. It may have been signed by Mr. Postel or the --

Q We'll get a copy. Wait a second, Mr. Gerstein.
We'll hold that until I get the exhibits.

Mr. Gerstein, before you had Mr. Raffe sign that stipulation --

MR. STRAUS: Object to the form of the question.

It's clearly improper at this point.

THE REFEREE: Overruled. Let's hear the question.

Q Did you communicate with me in writing as to whether I consented to it, yes or no?

A Mr. Raffe had discharged you.

Q No, no.

THE REFEREE: Did you communicate with Mr. Sassower with reference to a stipulation that was signed or about to be signed by Mr. Raffe?

THE WITNESS: No.

Q Is it not a fact, Mr. Gerstein --

A If it -- it was signed either by Mr. Raffe or Mr. Postel.

THE REFEREE: Did you communicate with Mr. --

THE WITNESS: I did not communicate with Mr. Sassower as to the stipulation withdrawing the appeal.

Q At the time that Mr. Raffe signed that stipulation withdrawing the appeal, was it not a fact that your time to file a respondent's brief had expired?

MR. STRAUS: Objection.

Q Yes or no.

THE REFEREE: Sustained.

MR. SASSOWER: Subject to connection, your Honor.

THE REFEREE: What's the relevance?

Q After you filed the stipulation discontinuing the appeal signed by Mr. Raffe --

THE REFEREE: Did you file that stipulation?

THE WITNESS: Yes. Whether -- Mr. Sassower keeps referring to it as signed by Mr. Raffe.

Without seeing it, I don't know whether it was signed by Mr. Raffe or his attorney, Mr. Postel.

Q In 21208, Mr. Gerstein, you are familiar with section 321 of the Civil Practice, of the CPLR --

MR. STRAUS: Your Honor, I object. We have been through this.

THE REFEREE: With reference to what?

MR. SASSOWER: Don't --

THE REFEREE: You have already indicated that,

1
2 that that was your position, that you cannot
3 be discharged except in writing or by court.

4 MR. SASSOWER: I never was even notified.

5 THE REFEREE: Sir, that's a matter of
6 evidence in this case as to whether 321 applies
7 or not.

8 Q Was it not at the time that Mr. Raffe signed the
9 stipulation --

10 MR. STRAUS: Objection. He's testified over
11 and over that he doesn't know whether Mr. Raffe
12 signed it.

13 THE REFEREE: Sustained.

14 Q Whoever signed it, Mr. Raffe or Mr. Postel, is it
15 not true that at the time that Mr. Raffe or Mr. Postel
16 or anybody else on his behalf signed the stipulation
17 withdrawing the appeal, that there was a criminal convict-
18 ion against Mr. Raffe; yes or no?

19 MR. STRAUS: Objection. I don't know
20 what the relevance of that is.

21 MR. SASSOWER: Mr. Postel testified to that.

22 MR. STRAUS: What does that have to do with
23 Mr. Gerstein's direct testimony?

24 MR. SASSOWER: It doesn't have to deal
25 with his direct testimony.

1
2 THE REFEREE: What's the relevance of that
3 question?

4 MR. SASSOWER: It's all relevant, your
5 Honor.

6 THE REFEREE: That's what you keep insist-
7 ing.

8 MR. SASSOWER: Fine, but, Judge, let me
9 just say this, it's like a painting. The painter
10 starts the painting. You, the observer, can't
11 tell what the finished product can look like
12 until it progresses, your Honor. I know the
13 finished product.

14 MR. STRAUS: I think we all know the
15 finished product.

16 MR. SASSOWER: Your Honor --

17 MR. STRAUS: The point is very clear
18 to everybody at this point. We all know the
19 subject matter.

20 He's tried to paint it many, many times.

21 THE REFEREE: Mr. Sassower, please continue.

22 MR. SASSOWER: Let me draw my picture.

23 THE REFEREE: Don't --

24 MR. SASSOWER: And for the Appellate Division.

25 THE REFEREE: -- don't draw pictures. Just ask

the question.

Q Was there a criminal conviction outstanding against Mr. Raffee at that time?

MR. STRAUS: Objection.

THE REFEREE: Sustained.

Q What consideration did you give Mr. Raffee for withdrawing his appeal?

MR. STRAUS: Objection.

THE REFEREE: Sustained.

MR. SASSOWER: On what grounds?

THE REFEREE: On the grounds that the witness has already told you, number 1, he doesn't even know if Mr. Raffee signed the stipulation and what's the difference whether or not there was consideration or not.

The question is, whether or not you had authority or you disregarded court orders.

MR. SASSOWER: No, Judge.

THE REFEREE: Or the wishes of your client.

MR. SASSOWER: Judge, I'm saying this whole thing is contrived by Mr. Straus.

MR. STPAUS: That's right.

MR. SASSOWER: I'm saying --

MR. STRAUS: I don't have to hear anymore.

1
2 You have ruled on this same point with respect
3 to every --

4 We can get it xerosed.

5 MR. SASSOWER: Fine. I'll prove it.

6 MR. STRAUS: The Judge ruled on numerous oc-
7 casions that you couldn't pursue this area and
8 you are doing it again.

9 MR. SASSOWER: I --

10 THE REFEREE: Mr. Sassower --

11 MR. SASSOWER: Will you please --

12 THE REFEREE: There was an objection made.
13 I sustained the objection.

14 MR. SASSOWER: May I know the grounds so I
15 can obviate the objection?

16 THE REFEREE: Not anymore.

17 MR. SASSOWER: Maybe I can obviate the ob-
18 jection?

19 THE REFEREE: On numerous occasions I've
20 ruled and this is just the same question addressed
21 to the witness.

22 Q Let me ask you this, was there any question --

23 MR. SASSOWER: Withdrawn.

24 Q When the motions were made to vacate the judgment
25 against Raffé as part of the relief, did I request that the

1
2 claims over by Mr. Raffe against Dann, Sorrentino and
3 Puccini also be abolished; yes or no?

4 A In some of them I believe you did.

5 Q On the ones that I asked that the claims over
6 by Mr. Raffe against Dann and Sorrentino and Puccini be
7 vacated, who represented Dann and Sorrentino?

8 A I don't know. Do you have a particular motion in
9 mind?

10 Q No. What firm represented them?

11 A Since the time --

12 Q In 21208. That's the only action we're talking
13 about.

14 A I don't know. Since the time, perhaps to answer
15 your question --

16 Q Okay. Let me --

17 A Sir, let me answer. I'm trying to give you
18 expeditious answers because I have a law practice that
19 I'd like to get back to.

20 I'm here under subpoena from the Grievance
21 Committee and I would like to complete my testimony expe-
22 ditiously and go back to my practice and that's why I'm
23 trying to answer your question expeditiously, if you will
24 allow me.

25 Q I withdraw the question.

THE REFEREE: Go ahead.

Q Did the firm of Arutt, Nachamie, Benjamin --

A I know who they are.

Q We're going to use the name, whether it be the Arutt firm or the Nachamie firm, one became the other, right, at a point in time.

A The firm that was originally known as Arutt, Nachamie and some other names is now known as the firm Nachamie, Levine and some other names.

Q But, it's -- they have always handled, since 1980, the litigation on behalf of Dann and Sorrentino; yes or no?

A To my knowledge, they were retained by Messrs. Dann and Sorrentino after Messrs. Dann and Sorrentino discharged you.

A Okay. In 1980 --

A I don't know the date of that, sir.

Q In any event, on the motions that I asked that the judgment secured by your firm's clients against Raffe be vacated, and as part thereof, that Raffe's claim over against Dann and Sorrentino, can you tell the Court the position taken by the Arutt firm?

MR. STPAUS: Objection.

THE REFEREE: Sustained.

MR. SASSOWER: On what grounds, your Honor?

THE REFEREE: Same grounds.

MR. SASSOWER: I'm saying there was a corrupt conspiracy of larceny and I want to prove it.

THE REFEREE: Just the fact that you're saying so --

MR. SASSOWER: I want to prove it.

THE REFEREE: I know but this is not the forum.

MR. SASSOWER: No, no, no.

Now let me show you the point, one of the points.

Don't laugh. You guys are criminals and I'm going to prove it.

MR. STRAUS: Will you please, sir, don't go accusing everyone of everything.

MR. SASSOWER: I would like the attorney to stay back there.

THE REFEREE: The attorney is seated at least fifteen feet away from the witness and your function now is to cross-examine.

Let's do that.

MR. SASSOWER: I'm saying this, your Honor --

THE REFEREE: No, no.

MR. SASSOWER: For the record --

THE REFEREE: No, no. Ask the question.

MR. SASSOWER: May I make an offer of proof?

THE REFEREE: You've made your offer of proof.

MR. SASSOWER: My offer of proof, my offer of proof is that all these motions were needless. I'll consent to that.

THE REFEREE: Your motions?

MR. SASSOWER: All my motions, except they were made, they were made and made necessary and made necessary because of the corruption and the corrupt agreement by Kreindler and Relkin with the receiver, the receiver's law firm and the Arutt firm and if they had --

MR. STRAUS: Your Honor --

MR. SASSOWER: Wait a second. If your Honor would see what is happening in Nassau County --

MR. STRAUS: Objection.

MR. SASSOWER: Excuse me.

MR. STRAUS: Objection. This is not in the --

THE REFEREE: Please.

MR. SASSOWER: Wait a second.

THE REFEREE: Go ahead.

1
2 MR. SASSOWER: I'll show your Honor that
3 if there was not perjury by the Kreindler firm,
4 wait a second --

5 THE REFEREE: Go ahead.

6 MR. SASSOWER: -- conspiring in that perjury
7 with the receiver and his law firm and the Arutt
8 firm which resulted in a judgment over, this
9 case would have been finished before it started,
10 okay, and these motions --

11 THE REFEREE: These motions you claim --

12 MR. SASSOWER: Were necessary.

13 THE REFEREE: -- were made necessary by
14 what you believe to be corrupt practice.

15 MR. SASSOWER: Not believe. I have document-
16 ed evidence of it.

17 THE REFEREE: You should have gone to the
18 law enforcement agencies.

19 It's not a proper matter for this Court at
20 this time and your motion is denied. Next quest-
21 ion.

22 MR. SASSOWER: Fine, wait a second.

23 THE REFEREE: No, I'm not, Mr. Sassower,
24 I'm not going to wait a second. Continue with
25 your cross-examination.

If you've exhausted your cross-examination --

MR. SASSOWER: I haven't exhausted it.

I've just started.

Q I'm asking a question as to what the position was of the receiver, okay, what's the position of the receiver on my motions to vacate where I asked that the claim over as against Puccini be also vacated.

MR. STRAUS: Your Honor, at this time, in view of what's happened on numerous occasions, in view of Mr. --

Just let me finish, sir.

In view of Mr. Sassower's refusal to abide by your rulings with respect to every witness and is again attempting to use this as a forum to explore what he says are corrupt practices, it's inappropriate, I suggest, for him to examine this witness on this basis and I move, at this time, to terminate the cross-examination unless Mr. Sassower has an appropriate line of questioning to pursue and since he's done it with every other witness, I want to be on record at this point, that he has as yet to pursue an appropriate line of questioning based on the witness' direct testimony.

THE REFEREE: Your application is denied at this time. Cross-examination.

MR. SASSOWER: In my cross-examination now we're only talking about --

THE REFEREE: About 21208.

MR. SASSOWER: That's so I don't want to repeat it all the time.

Q You have a copy of this.

A Which motion are we referring to?

Q The motion of December 15.

A I have that.

Q Do you have your papers in opposition to this particular motion?

A No. It was difficult enough --

Q No, no, no.

MR. SASSOWER: Mr. Straus, I'll communicate with you, if I get a copy of his opposing papers, I'll communicate, if I can't get a copy of his opposing papers --

Q Do you recall whether you drew up the opposing papers?

A No, not without seeing them.

Q I ask you -- now this affidavit signed by Hyman Raffé on the 15th day of December, 1983, pretty much,

would you not agree, sets forth the entire history of the Puccini matter?

A No, sir.

Q You mean it omits certain things?

A No, it misstates. I haven't read all of it, but just getting up to the first few pages, I see numerous mis-statements in there.

Q Let's go through it.

MR. STRAUS: Objection. What does this have to do with Mr. Sassower's behavior?

MR. SASSOWER: I'm going to show that my behavior was exemplary.

MR. STRAUS: Not through an affidavit of Mr. Raffé you're not.

MR. SASSOWER: Excuse me, and this charge which Mr. Straus has brought forth is meritless.

All I want is the opportunity, that's all.

THE REFEREE: I know, but how much? You must stay within the rules.

MR. SASSOWER: If I can choose one document that pretty much puts it in a nutshell.

MR. STRAUS: Mr. Raffé will be a witness, your Honor.

He can cross-examine Mr. Raffé on the basis

1
2 of any prior statements. Mr. Gerstein did not
3 prepare it.

4 MR. SASSOWER: I understand that but he
5 answered this, okay?

6 MR. STRAUS: He answered what? That doesn't
7 mean he's bound by whatever was submitted.

8 Your Honor, we're way beyond any --

9 THE REFEREE: Mr. Sassower, please ask him
10 questions.

11 MR. SASSOWER: I am.

12 THE REFEREE: Let's hear the questions with-
13 out editorial comments.

14 Q Do you have a third copy of this, by any chance?

15 A No.

16 Q Do you contend, Mr. Gerstein, that this motion
17 was frivolous, meritless; yes or no?

18 A Will you allow me to answer before you start
19 shouting at me, sir?

20 Q I'm not shouting at you.

21 A We opposed the motion and it was denied by order
22 of Judge Sinclair dated March 12 -- excuse me -- Judge
23 Lane, dated March 12, 1984.

24 Q Did he not say that Raffo had a cause of action
25 against the executors personally?

MR. STRAUS: Objection.

Q For taking money from Puccini?

A No, sir.

MR. STRAUS: Whatever the decision said,
whatever the judge said, it's in evidence.

Why argue with the witness over the contents
of what the judge decided?

Q Let me ask you, when for the first time -- in
December of 1984, '83, -- I'm sorry -- did I and Mr. Raffe
come into possession of a few checks from the account of
Puccini after June 4, 1980, payable to the estate of
Milton Kaufman; yes or no?

MR. STRAUS: Objection.

THE REFEREE: Sustained. Don't answer it.

MR. SASSOWER: Judge --

THE REFEREE: I've sustained the objection.
It's not relevant. Let's go on, Mr. Sassower.
You're attempting to try all of those cases
again.

MR. SASSOWER: It was never tried.

THE REFEREE: What's the difference?

MR. SASSOWER: Judge, you're saying it's --
Mr. Straus is saying they were frivolous and merit-
less. Let me show they weren't. That's all I

1 want to do. It's right on the issue.

2 THE REFEREE: I'll have to make that decision.

3 MR. SASSOWER: Again, but let me give you the
4 proof and whether you accept it --

5 THE REFEREE: Again, you want to go behind
6 the decision of the court.

7 MR. SASSOWER: There's no decision of the
8 court.

9 THE REFEREE: What's the relevance if there
10 is no decision? You have notice of motions
11 without disposition.

12 MR. SASSOWER: No.

13 MR. STRAUS: There is a continuing problem
14 on the part of Mr. Sassower in that he's not
15 pursuing cross-examination.

16 Whatever his impatience is to present his
17 case, he can do it when it's his case but this
18 is a witness who testified on direct and he's not
19 cross-examining him.

20 THE REFEREE: Mr. Sassower --

21 MR. SASSOWER: Judge, I want to make a re-
22 cord.

23 THE REFEREE: I know. That's what we're
24 doing throughout this entire proceeding.
25

Everything is on the record.

MR. SASSOWER: I want to make a record to show -- before we can leave this case -- I want to make a record to show that Mr. Straus has contended these motions were meritless and I want to show through cross-examination that they have compelling merit.

NOW all I ask your Honor is to allow me a few questions which will show merit; that's all right to the heart of it.

I don't see anything, your Honor, that can be more at the heart than these questions and may I ask your Honor --

MR. STRAUS: I'm afraid that since there is a decision in the case --

MR. SASSOWER: After we resolve this question, may I ask your Honor that we recess for lunch? I'm getting awfully parched.

THE REFEREE: Pardon?

MR. SASSOWER: May we recess for lunch? I'm getting awfully parched and I want to take some medication during the lunch hour and I don't want to go to sleep immediately after I take it.

Q Look at the complaint. I think it's Number 7.

1
2 MR. STRAUS: There is a decision which was
3 rendered in this case.

4 THE REFEREE: Charge 7 refers to complaints
5 filed by the failure to coope-ate with the Griev-
6 ance Committee.

7 MR. SASSOWER: I'm sorry, then it's --

8 MR. STRAUS: Which one are you talking about?

9 MR. SASSOWER: "Made many motions and frivo-
10 lous motions."

11 MR. STRAUS: That's Charge 5.

12 MR. SASSOWER: I want to show it's not
13 frivolous.

14 MR. STRAUS: If you can do it by relevant
15 questions, I have no objection.

16 MR. SASSOWER: Mr. Straus, you have made up
17 your mind, okay, let me ask questions.

18 MR. STRAUS: No.

19 THE REFEREE: Mr. Sassower, Charge 5 is very
20 specific. It refers to opinions and decisions
21 of various judges and in Number 11 it says you
22 knowingly and --

23 MR. SASSOWER: I didn't, I want to show
24 I didn't.

25 THE REFEREE: -- by continuing to file a

series of motions.

MR. SASSOWER: I want to show your Honor that I didn't and I want to do a cross-examination.

All I'm asking you is, your Honor, let me show that I didn't.

I know what they said and I say, no, and if you will give me an opportunity, I think I can convince your Honor that it was "no."

THE REFEREE: You didn't file those actions?

MR. SASSOWER: That's a double-ended question.

THE REFEREE: No, that's in response to the remarks that you just made.

MR. STRAUS: We have had the same colloquy and the same rulings on every occasion.

You're doing the same thing.

MR. SASSOWER: No, no, no.

MR. STRAUS: Yes, yes, yes. We'll be here forever but you refuse to abide by the rulings.

THE REFEREE: Mr. Sassower, continue with this witness if you have any relevant questions.

MR. SASSOWER: Okay.

THE REFEREE: But, again --

MR. SASSOWER: Your Honor --

THE REFEREE: -- we're not going to go behind the orders of the judges.

MR. SASSOWER: Wait a second.

THE REFEREE: The orders will speak for themselves.

MR. SASSOWER: Fine, I want to say what the order says.

THE REFEREE: The orders are in evidence.

Q Let me ask you this, Mr. Gerstein, did you ever contend to the court as stated in the order of March 12, 1984, that the money your clients took from Puccini they took as individuals rather than executors?

MR. STRAUS: Objection.

THE REFEREE: Sustained.

MR. SASSOWER: Your Honor, I'm showing -- for the record, the court held --

THE REFEREE: Which court held?

MR. SASSOWER: Judge Lane held in March 12, 1984, when we located a few checks that were taken from Puccini, the court held that they took this money as individuals and not as executors, which was never a contention even raised, okay?

So then we come to the next motion to show

one, it was never raised and, two, that contention had -- that Judge Lane gave, he says, "You can pursue" -- he says, "You can pursue the individual because they took money individually and not as executors." Okay.

This was based on three checks we found.
So, let's go to the next motion.

Q Did there come a time --

MR. STRAUS: I move to strike Mr. Sassower's remarks. Was that testimony?

THE REFEREE: He's not testifying and it's not a question. Go ahead.

Q After the decision of March 12 was rendered, was a motion made by me for, and I'm reading from the relief on Page --

THE REFEREE: What date is your motion?

MR. SASSOWER: April 11.

THE REFEREE: April 11 of '84?

MR. SASSOWER: Right.

Q Did I make a motion for leave to reargue the motion resulting in the order dated March 12 entered March 19; and, two, renewal as a right? Did I make such a motion?

MR. STRAUS: They're in evidence.

THE REFEREE: Overruled.

Q Did I make such a motion?

A Yes. By answering yes, Mr. Sassower, I don't mean to agree.

Q You can do it on redirect.

MR. MEYER: Let my client answer the question.

MR. SASSOWER: Excuse me, you have no standing here.

A I don't mean to agree, to imply that, because you put in your motion as of right, that there is such a thing as renewal motion as of right. That's what he labeled me.

Q Reading from the affidavit -- the affirmation of April 11, on Page 5.

Would you turn to Page 5?

MR. STRAUS: Whose affirmation is this?

MR. SASSOWER: My affirmation.

MR. STRAUS: Objection.

MR. SASSOWER: Wait a second.

THE REFEREE: It's not evidence, so, it's immaterial.

MR. SASSOWER: It's in evidence, your Honor.

THE REFEREE: Your statement that you are

about to make is not in evidence.

Q Do I not state, rather than read the whole thing, on Page 5, after and I underline after, "His Honor's opinion" -- meaning Judge Lane's opinion that we now have seventeen checks that were issued by Puccini in favor of Kaufman after June 4 --

MR. STRAUS: Objection.

THE REFEREE: Sustained.

MR. SASSOWER: Your Honor --

MR. STRAUS: That's your statement.

MR. SASSOWER: Fine, okay.

MR. STRAUS: That's not a question to this witness.

Q The question is now, did I make that statement, yes or no, without conceding the truth thereof?

THE REFEREE: You just said you made the statement.

Q Did you controvert that statement, yes or no?

MR. STRAUS: Objection.

THE REFEREE: Sustained.

Q Is it not a fact, Mr. Gerstein, that you submitted an affidavit by Jerome H. Barr which admitted, signed by Mr. Barr, one of your associates?

MR. STRAUS: Objection. Is this a question?

MR. SASSOWER: Yes.

Q In that affidavit --

MR. STRAUS: Objection.

THE REFEREE: I don't understand the question.

Q Did he not admit --

THE REFEREE: What?

Q -- that those checks had --

THE REFEREE: Sustained.

MR. SASSOWER: On what grounds?

THE REFEREE: Sir, it's the same grounds I sustained all the previous objections.

It's not a matter before this forum at this time.

MR. SASSOWER: What does the complaint say? They are saying that I made motions which had no merit and I am saying that they did have merit.

We even got confessions from them that they took money from Puccini.

MR. STRAUS: Objection. If he wants to offer evidence, he can. This is not appropriate cross-examination.

MR. SASSOWER: Of course it is appropriate. It deals directly with the charge.

THE REFEREE: Mr. Sassower --

MR. SASSOWER: Can I have a recess? I'm
really --

THE REFEREE: We'll resume at 2:15.

MR. SASSOWER: Judge, can we make it a
short afternoon?

THE REFEREE: Then we'll resume at 2 o'clock.

(Luncheon recess ensues)

* * * * *

(Afternoon session ensues)

MR. SASSOWER: If your Honor recalls we first
made arrangements for the 18th to come in, I think
around 12 o'clock that day because of engagements
and then we decided to cancel it all together.

I have been informed by Mr. Straus that the
next time we come, which is Thursday, the 20th,
he'll not be producing Mr. Gerstein.

I find the interruption of witnesses bad
and --

THE REFEREE: Mr. Gerstein is on the
witness stand today. He's now -- direct examin-
ation has now been completed.

He's now subject to your continued cross-
examination.

1
2 MR. SASSOWER: I was going to just explore
3 the possibility, if it's convenient with every-
4 body else, that if Mr. Gerstein, since he can't
5 come back on Thursday, if he can come back on
6 Tuesday, and, if that is convenient to every-
7 body, -- I just bring that up for comment.

8 MR. STRAUS: If your Honor pleases, some
9 weeks ago, I noted that Mr. Gerstein would not
10 be available during the week of the 17th and, in
11 fact, we only had one session scheduled during
12 that week and that, obviously, Mr. Gerstein
13 was to testify on Tuesday, and possibly Thursday,
14 that's today, of this week and we expected to
15 conclude his testimony and then finish with
16 Mr. Raffo who would be our last witness.

17 I can't ask Mr. Gerstein, in fact, his
18 schedule is not amenable to that type of change.

19 MR. SASSOWER: Okay, that's all.

20 MR. STRAUS: At this point, I'm hopeful
21 that Mr. Raffo will be available on the 20th.

22 We'll confirm that, of course, before we
23 come in on the 20th.

24 MR. SASSOWER: I thought Mr. Gerstein
25 is available on the 18th, you know, we might

1
2 continue on that day. Since you say he's not,
3 he's not, that's the end of the subject.

4 MR. STRAUS: I'm not sure we'll even need
5 him at that point. I don't see any reason why
6 his testimony can't be concluded today.
7 He's testified for about an hour on direct.

8 MR. SASSOWER: There are documents that he
9 hasn't got.

10 MR. STRAUS: If there are documents that
11 should have been available for cross-examination,
12 you have know that he is going to testify for over
13 a month.

14 MR. SASSOWER: Must we go through this again
15 and again?

16 MR. STRAUS: If you keep making statements.

17 MR. SASSOWER: About what Referee Diamond
18 did?

19 MR. STRAUS: I don't know what Referee Diamond
20 did. I know that you keep referring to documents.
21 You could have brought the documents. You've been
22 on notice that he was going to testify.

23 MR. SASSOWER: I could not have brought the
24 documents.

25 Your Honor, I had a document in my possession

and it disappeared.

M I C H A E L G E R S T E I N, previously sworn, was recalled and testified as follows:

Q Mr. Gerstein, did you see the complaint or the petition in this proceeding?

A Yes.

Q Specifically Charge Number 5.

A I saw it generally. Do you have a document that you'd like to draw my attention to?

Q Do you recall when you saw it for the first time?

MR. STRAUS: The Referee has a copy.

THE REFEREE: Look at my copy.

A Perhaps a week or two prior to the date at which the first hearing in this matter was scheduled.

Q Where did you see that document?

A That's what I have just answered.

Q Where?

A I saw it at a meeting with Mr. Straus. I asked him for a copy of it.

Q Did you read it in his presence?

A No.

Q Did you read it thereafter?

A I skimmed it.

Q Did you raise any objection or see any errors in the

petition?

MR. STRAUS: Objection.

THE REFEREE: I'll take it. Overruled.

A I didn't review it for errors, for accuracy.

Q Did you in any way draw Mr. Straus' attention to anything about the complaint that you thought was erroneous, misleading, false?

A I drew Mr. Straus's attention to the fact that perhaps the order of Judge Conner dated October 11, 1985 which I believe was annexed as an exhibit --

Q Anything else?

A May I finish my answer?

Q That's not the subject.

THE REFEREE: Go ahead.

A -- which enjoined Mr. Sassower from filing further suits against my clients or my firm and a long list of other parties in federal court, that I wasn't sure that had been violated except by one motion which was arguably a violation and I didn't know if Mr. Straus had intended to mean that that motion was a violation.

Q That's about it?

A Yes. I drew Mr. Straus' attention to my belief that the captions on the schedules were not correct.

Q Who drew up those schedules?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A I don't know.

THE REFEREE: You're referring to captions.
What, specifically?

THE WITNESS: "Lawsuits commenced in violation
of court order."

While most of these lawsuits were commenced
in violation of court order, they weren't all in
violation of order.

Q You mean in your opinion.

MR. STRAUS: You asked him for his opinion.

A Well, as found by the, as found by the court,
when, holding you in contempt on six occasions.

Q Okay, let's --

A And, the same with the articles --

Q I didn't ask this question.

A You asked what was wrong with it,-- what I
pointed out to Mr. Straus and I'm telling you.

Q This all you told Mr. Straus?

A Is it all? You haven't let me finish.

Q Is this what you told Mr. Straus?

A Yes.

Q Fine.

A I told him that some of the other captions, the
Article 78 proceeding regarding the court order might not

1
2 be accurate and that they weren't all in violation of court
3 order and the same with the caption headed "Motions made
4 in violation of court order." They were all motions made
5 but they weren't all in violation of court orders, and,
6 I told him that the list wasn't complete in my opinion,
7 that there were many other motions, and probably some
8 other actions and 78 proceedings as well.

9 MR. SASSOWER: Would you give a moment, your
10 Honor? I had a document and -- before I left
11 for the Appellate Division and I just don't see
12 it now.

13 Q Mr. Gerstein, were you given a writing by Mr. --
14 is that all you told Mr. Straus?

15 A I may have told him other things too. That's
16 what comes to mind right now.

17 Q Was Mr. Straus making notes or taking any notes?

18 A I don't know.

19 Q Did you have any written correspondence with Mr.
20 Straus?

21 A I don't believe so. I'm not positive but to the
22 best of my recollection, no.

23 Q This writing or whatever you had, from Mr. Raffae
24 whether it be oral or in writing, wherein he said he
25 discharged me, was it in writing or was it oral?

MR. STRAUS: I'm going to object. I don't think the witness is competent to testify.

Q Who told you that I was discharged?

A Mr. Postel told me.

Q Okay. Now, when did Mr. Postel tell you this?

A I've also seen it in Mr. Raffe's affidavit and in his papers.

Q Just tell me when Mr. Postel told you this for the first time.

MR. STRAUS: If your Honor please, I think that the witness was completing his answer to the first question.

He said after Mr. Postel told him that he had also seen it in Mr. Raffe's affidavits.

MR. SASSOWER: Fine, we'll get to that.

THE REFEREE: Do you recall when you spoke to Mr. Postel?

THE WITNESS: Sometime in the summer of 1985.

THE REFEREE: In '85?

THE WITNESS: Yes.

THE REFEREE: All right.

Q What was the occasion of your speaking to Mr. Postel at that time?

1
2 A I'm not sure.

3 Q Was it a personal conversation or was it by
4 phone?

5 A By telephone.

6 Q And did he tell you at that time that I had
7 been discharged?

8 A At or about that time, yes.

9 Q Would you say it was in July or August?

10 A I couldn't say.

11 MR. SASSOWER: Could you give me the letter
12 of May 31st, if you don't mind? It's your exhib-
13 it.

14 MR. STRAUS: The letter of May 31st?

15 THE REFEREE: July 31st.

16 MR. SASSOWER: The letter of July 31st.

17 MR. STRAUS: That's Exhibit 38.

18 Let the record indicate that I am handing that
19 exhibit to Mr. Sassower.

20 A Mr. Sassower, may I correct something?

21 Q Surely.

22 A Actually, the first I had heard of your discharge
23 was from Mr. Bergson in June of 1985, I believe, in connect-
24 ion with proceedings before Judge Nickerson.

25 Q And what did Mr. Bergson say to you and what

1
2 did you say to Mr. Bergson?

3 A Mr. Bergson said -- this was on the occasion
4 of following -- Judge Nickerson had already issued an
5 order holding you, Mr. Raffé and two fuel oil companies
6 in contempt of the federal court, imposing fines on each
7 of them for --

8 Q Just --

9 A I'm trying to tell you, sir, you keep interrupt-
10 ing me -- of a thousand dollars.

11 Q Just the date, I don't want a story. I want to
12 know when.

13 A That wasn't the question you asked.

14 Q When?

15 A I told you that at the beginning, June.

16 Q Okay, fine, that's it. And where?

17 A Excuse me. I haven't finished my answer to the
18 last question.

19 MR. STRAUS: Could you finish?

20 THE REFEREE: The question was when?

21 THE WITNESS: The question was, "What did
22 you say?"

23 Q Referring to my discharge.

24 A I'm telling you what Mr. Bergson said.

25 Q Talking about the discharge.

1
2 A Exactly. Mr. Bergson said there is an order
3 of Judge Nickerson which holds Mr. Raffé and the others
4 in contempt of court, imposes a fine of a thousand dollars
5 a day and provides under certain circumstances that the
6 Kaufman estate can make a further motion to have Mr. Raffé
7 incarcerated, you, the others.

8 Speaking to me, Bergson said the Kaufman estate
9 has made such a further motion. "I've been retained."
10 And these were his exact words. "I've been retained by
11 Mr. Raffé to keep him out of jail."

12 THE REFEREE: Mr. Bergson, you say?

13 THE WITNESS: Howard Bergson who is, I be-
14 lieve an attorney in Nassau County.

15 MR. STRAUS: I think, Judge Potoker, there
16 was some testimony concerning Mr. Bergson's
17 identity by Mr. Postel.

18 Q Thereafter, in federal court, did you receive
19 papers from me on behalf of Mr. Raffé?

20 A I received many papers from you. I don't know
21 at what point they purported to be on behalf of Mr. Raffé
22 or not.

23 Q Let me ask you this, speaking of the Eastern
24 District of New York, did you ever receive papers from
25 anyone else on behalf of Mr. Raffé?

1
2 A Yes.

3 Q Who?

4 A Mr. Bergson.

5 Q On behalf of Mr. Raffe?

6 A Yes, I believe so. If you have the paper that
7 you'd like to show me --

8 Q You will have to show it to me. I don't have
9 any papers.

10 A Sir, you have asked the question, you are a party
11 to that action.

12 Q Sir, I know of no paper. Can you send or bring
13 at the next time --

14 A No, I'm not searching my files because you'd
15 like me to. You have been served with every piece of paper
16 in this case, at least every one that I have served.

17 Q Mr. Gerstein, my recollection is that you served
18 no paper on anybody else in behalf of Mr. Raffe in the
19 Eastern District court.

20 A That's not so.

21 Q Fine, then you bring what you say you served

22 A I'll be glad to bring it if the Court directs
23 but I have been put to an incredible burden already in
24 this case and unless there's some relevant --

25 MR. SASSOWER: Your Honor, I represent I

know of no paper by anybody else.

MR. STRAUS: What's the need for having it, in any event? What would be the relevance of having such a paper?

MR. SASSOWER: He testified somebody else represented Mr. Raffe in federal court. Okay, okay.

THE WITNESS: Mr. Sassower, the fact is I also served you with all the papers too.

MR. SASSOWER: Mr. Postel made a somewhat similar assertion with respect to a cross-motion which nobody seems to know about.

Now we're having the same thing with Mr. --

MR. STRAUS: You had the opportunity, you've had over a month to get ready for this.

THE REFEREE: The witness just added to his testimony that he served you with every piece of paper he has in this matter. Is that right, sir?

THE WITNESS: That's correct.

MR. SASSOWER: That's not the question.

Q Did you receive any paper from anybody else in the Eastern District purporting to represent Mr. Raffe?

MR. STRAUS: What does this have to do with

Mr. Sassower's behavior in this case?

MR. SASSOWER: He says I was discharged.
Okay.

THE REFEREE: He didn't --

MR. STRAUS: He said he was told that.

MR. SASSOWER: Okay, fine. Let's see if
he was told that and under what circumstances.

THE REFEREE: He's already told you the
circumstances under which Mr. Howard Bergson
told him in June of '85 that he was now represent-
ing Mr. Raffe.

He told you about the circumstances, name-
ly a telephone call that he made to Mr. Postel
and vice-versa, in which Mr. Postel informed him
that you were discharged and that he further read
Mr. Raffe's affidavit.

Q Let's go to each point. Did you ever receive an
affidavit or a paper or a document from Mr. Bergson saying
that he represented Mr. Raffe, yes or no?

A I have received papers from --

Q Yes or no.

MR. STRAUS: He's answering.

THE REFEREE: Let him answer the question,
sir.

1
2 A I have received papers from Mr. Bergson in the
3 Eastern District action, I believe, without, although
4 without seeing the papers, I can't be sure, that Mr. Berg-
5 son said in the papers that he was the attorney for Mr.
6 Raffé. I'm not positive because I don't have the papers
7 in front of me.

8 Q Did you, in any of your papers to the Eastern
9 District say Mr. Sassower is no longer the attorney for
10 Mr. Raffé?

11 MR. STRAUS: Objection.

12 Q Yes or no.

13 MR. STRAUS: Objection.

14 Q Directly or indirectly.

15 MR. STRAUS: Objection.

16 THE REFEREE: Sustained.

17 MR. SASSOWER: There's no --

18 Q I show you Petitioner's 38 and ask you if your
19 first conversation with Mr. Postel was prior to that date
20 or after that date?

21 A Probably but not definitely I spoke to Mr. Postel
22 prior to this letter.

23 Q Did you speak to him about this letter before it
24 was mailed out?

25 A No.

1
2 Q When you spoke to Mr. Postel for the first time,
3 would you say it was before July 31st, 1985? Was that by
4 phone or in person?

5 A There are several questions in there. Would you
6 like to break it down?

7 Q Let's say before July 31st, 1985, if you would
8 collapse all the conversations that you had with Mr. Postel
9 into one, could you tell the Court what Mr. Postel told
10 you with respect to his representation of Mr. Raffe?

11 MR. STRAUS: Objection.

12 A I couldn't do that.

13 MR. STRAUS: Objection at this point, your
14 Honor. What's the relevance of the conversations
15 made to --

16 THE REFEREE: He's already answered. Next
17 question.

18 Q Before July 31st, 1985, did Mr. Postel tell you
19 that he represented Mr. Raffe in all matters related to
20 Puccini? Yes or no.

21 MR. STRAUS: Objection.

22 THE REFEREE: Overruled.

23 A I can't answer that. You have asked me to fix
24 the date. I can fix the date that I first saw Mr. Postel,
25 if that will help you. That would be at Mr. Polur's habeas

1
2 corpus hearing before Judge Sandifer which was sometime
3 in the summer of '85. I didn't speak with Mr. Postel sub-
4 stantively at that point. I think I may have been intro-
5 duced to him or he may have introduced himself to me and we
6 had no substantive conversation. Sometime thereafter, he
7 called me and said that Mr. Sassower had been discharged
8 by Mr. Raffe and that he was representing Mr. Raffee. He,
9 Mr. Postel, was representing Mr. Raffe and he may have also
10 said that Mr. Bergson, however, would be or by that time
11 it had already passed, involved in the Eastern District
12 action, and I can't fix the date any more precisely.

13 Q But it was before July 31st?

14 A No, sir. Whenever Mr. Polur's habeas corpus
15 was, was the date I first saw Mr. Postel and the conver-
16 sation where he told me that you were discharged and that
17 he was now representing Mr. Raffe was sometime thereafter.
18 I can't tell you if that's before or after July 31st.
19 There is a record of Mr. Polur's habeas corpus hearing if
20 you want to find the date.

21 Q Did he confirm that statement or that assertion
22 in writing?

23 A Yes.

24 MR. STRAUS: Object to this line.
25

THE REFEREE: Overruled.

Q How long after that conversation did he confirm it in writing?

A I don't know.

Q Was it by letter?

A It was in several methods. There was a letter which we requested be written and that we requested Mr. Raffe countersign to avoid any confusion as to whether we were dealing with the right person.

We received such a letter and we obtained Mr. Raffe's signature on that letter.

There were also several affidavits submitted to the court signed by Mr. Raffe saying that you had been discharged and Mr. Postel was his attorney.

Q Well, let's talk about those letters and those affidavits.

THE REFEREE: What document is that?

MR. SASSOWER: That's the letter of October 2nd, your Honor.

THE REFEREE: Whose letter?

MR. SASOWER: It's signed by Ira Postel, your Honor.

MR. STRAUS: I have no knowledge of it. I don't know where we're going as to this, your

Honor. Mr. Gerstein didn't testify to the terms of the discharge and Mr. Postel has already been a witness.

Why is Mr. Gerstein being asked about it?

There was a letter by Mr. Postel which was marked as Y for identification. I don't believe it was received in evidence. That's my recollection.

THE REFEREE: It's not in evidence.

Q I show you this document which is a copy of Y for identification and ask you if this is the document you were referring to that you requested.

A Yes.

Q Where was that document drawn up?

MR. STRAUS: Objection. It's not prepared by the witness.

Q Were you there when that document was drawn up?

A I'm not sure. We discussed its wording with Mr. Postel.

Q Were you in Referee Diamond's courtroom on that day?

A I don't know.

Q October 2nd.

A I don't know.

1
2 Q When for the first time did you see that document,
3 which is Y for identification?

4 A I assume on or about October 2nd.

5 THE REFEREE: Of '85?

6 THE WITNESS: Yes.

7 Q Can you tell us the meaning, if you can, of
8 the words this letter is sent to induce you to continue
9 and conclude negotiations?

10 MR. STRAUS: Objection, he's not the author
11 of the letter.

12 THE REFEREE: Sustained.

13 Q Do you know --

14 MR. SASSOWER: I'm asking him if he knows.

15 Q What does that mean?

16 MR. STRAUS: Objection.

17 THE REFEREE: You said you discussed the
18 proposed contents of the letter with Mr. Postel.
19 Did you discuss that portion of it?

20 THE WITNESS: Yes.

21 THE REFEREE: All right.

22 Q What was that discussion?

23 A The discussion is that Mr. Postel wanted to
24 resolve on Mr. Raffae's behalf the various cases

25 Q What's "to induce you"?

A We told Mr. Postel that in order to discuss this and resolve it, with Mr. Postel who said he was Mr. Raffe's attorney, we wanted a letter stating his authority.

Q Did you ever call me or write me and ask me as to whether Mr. Postel had any authority from me as the attorney of record?

A No.

Q Now, the second paragraph, it says, "I am writing to confirm that I am and have been since approximately July 15," the quote, "attorney of record for Hyman Raffe, in all Puccini cases."

Do you see that on Exhibit Y for identification?

A Yes.

Q What?

A Yes.

Q Did you believe that representation to be true?

MR. STRAUS: Objection, if your Honor please.

Where are we going? This witness testified --

MR. SASSOWER: I'm showing --

MR. STRAUS: Wait a minute, Mr. Sassower.

This witness testified without any regard and in no instance with any respect to Charge 6.

There is nothing in his testimony concerning the circumstances under which Mr. Sassower was

discharged or was not discharged by Mr. Raffe.

Now Mr. Sassower chooses to pursue through this witness what he couldn't or chose not to pursue when Mr. Postel was here himself.

This is not the witness to ask about Mr. Sassower's discharge, and we said over and over again, Mr. Raffe will be a witness and will testify.

MR. SASSOWER: I'm not interested in Mr. Raffe. I'm asking --

THE REFEREE: The witness has already stated that he had discussed his law firm's problem with Mr. Postel as a result of the, as a result of the discussion, the letter of 10-1-85 was sent to them and that he did not call you at all.

MR. SASSOWER: Judge, okay, now, first of all, it has bearing on two matters and I'm just going to try to make it brief. It has bearing on Charge 6 and I'm not limited to what he brought Mr. Gerstein to the stand for.

MR. STRAUS: I thought cross-examination was related to direct examination.

MR. SASSOWER: And secondly, there is certain litigation charged against me as being frivolous

1
2 or meritless or whatever you want, relating to
3 events after July 15 or after January, so I
4 want to show that these things are false, they are
5 contrived, this whole document is contrived. He
6 knew it was contrived, your Honor.

7 THE REFEREE: Mr. Sassower, there you go
8 again, immediately.

9 MR. SASSOWER: Judge, this is a fake document.
10 Judge, I want to tell you something, I'll accuse
11 you of everything.

12 THE REFEREE: Mr. Sassower, please.

13 MR. SASSOWER: Listen to me, I'll accuse
14 you of everything except being dumb, okay. You
15 and I know what that document was for.

16 MR. STRAUS: What?

17 THE REFEREE: I don't know. I was not privy
18 to it. I had nothing to do with it. Don't make
19 me a party.

20 MR. SASSOWER: I didn't get you involved. I
21 said I'll never accuse you of being dumb. Okay.

22 THE REFEREE: Anymore cross-examination?

23 MR. SASSOWER: Yes, plenty. I'm looking for
24 one document, and which I had when I went over
25 to the Appellate Division. I'm doing one thing at

1
2 a time.

3 THE REFEREE: What document are you looking
4 for? Maybe we can expedite matters.

5 MR. SASSOWER: It's a stipulation discontinu-
6 ing an appeal in 21208 signed by Mr. Raffé and
7 Mr. Gerstein, not by Mr. Postel at all.

8 THE REFEREE: Mr. Straus, would you have a
9 copy of it?

10 MR. STRAUS: Mr. Sassower had it the last
11 time. We don't have it. I had it.

12 Also you have ruled on numerous occasions
13 when he asked the witnesses about the terms of
14 the agreement and so forth, that it was not rele-
15 vant.

16 THE REFEREE: We are past that.

17 MR. STRAUS: I don't know what we're doing
18 with it.

19 THE REFEREE: We are past that.

20 Q By the way, how many attorneys are in your firm?

21 A Approximately fifteen.

22 Q Fifteen.

23 A Approximately.

24 Q Looking at Exhibit Y --

25 THE REFEREE: For identification.

Q -- for identification.

1

2

3

THE REFEREE: You have it in front of you,
sir.

4

A That's the letter of October 2nd, 1985.

5

THE REFEREE: Go ahead.

6

7

8

Q It states that Mr. Postel and, I'm paraphrasing,
is the attorney of record as of July 15, 1985, does it
not?

9

A It states what it states.

10

11

12

13

Q Let's trace some events after July 15, 1985.
Were you present before Mr. Justice Alvin Klein around the
30th or 31st of July, 1985, when I argued a motion on be-
half of myself, Polur and Raffé before Judge Klein?

14

A That's not accurate, sir.

15

Q Yes or no.

16

17

18

19

20

21

A Sir, it's not a question susceptible of a yes or
no. The answer is that I was present before Judge Klein
when you argued a motion which was made on, I believe your
behalf for a habeas corpus relief and at the same time
Mr. Postel was present and made an application on behalf of
Mr. Raffé.

22

23

Q Okay. Now, let me ask you this, a few days later,
were you in federal court before Judge Lowe?

24

A Yes.

25

Q I think the date there was August 2nd.

1
2 A I don't know the date. I was present before,
3 for oral argument before Judge Lowe.

4 Q In the oral argument, before the oral argument,
5 you had before you papers which were before her Honor, is
6 that correct, written papers, by me?

7 A There were papers by you, yes, sir.

8 Q And it was for habeas corpus relief, is that cor-
9 rect?

10 A Yes.

11 Q On whose behalf did I submit papers and say I
12 represented?

13 A Would you like to show me a copy of the papers
14 and I can answer that?

15 Q As best as you recollect.

16 A I don't know. Surely on your behalf.

17 Q Well, let me put it this way. Did you ever
18 state to Judge Lowe that I did represent Hyman Raffe, yes
19 or no, yes or no?

20 A Sir --

21 MR. STRAUS: He's trying to answer. You
22 don't give him a chance.

23 THE REFEREE: Go ahead, sir.

24 A I don't recall.

25 Q Okay.

1
2 A There's a transcript and my papers. I submitted
3 papers before Judge Lowe and that will show what I said.

4 THE REFEREE: Do you recall when the matter
5 was before Judge Lowe? That's in the Southern
6 District, Federal Court.

7 THE WITNESS: Mr. Sassower gave a date of
8 August and that seems about right.

9 THE REFEREE: August '85.

10 THE WITNESS: That's correct.

11 THE REFEREE: At that time had you already
12 been informed that Mr. Sassower was no longer
13 representing Mr. Raffe?

14 THE WITNESS: I'm not sure. Mr. Postel was,
15 I believe, present in the courtroom before Judge
16 Lowe.

17 THE REFEREE: You testified earlier that
18 Mr. Bergson, sometime in June of '85 had already
19 apprized you --

20 THE WITNESS: Yes, he apprized me of the
21 fact that he was representing Mr. Raffe's interest
22 in the Southern District. Judge Lowe is in the
23 Southern District. That is a different action.
24 I know it's easy to confuse the many actions even
25 in federal court.

1
2 Q Let me ask you this, since you say that Mr.
3 Bergson told you that he was representing Mr. Raffé in the
4 Eastern District, I show you SS for identification and ask
5 you, did you put in an affidavit of services rendered?
6 It's your affidavit of October 31st, 1985.

7 Did you send a copy of that to Mr. Bergson?

8 A Yes. This is the one where the award just came
9 down last week for \$23,000.

10 Q Did you send a copy to Mr. Bergson?

11 A Yes.

12 Q Did you receive a response from Mr. Bergson?

13 A No.

14 Q Did you --

15 A Excuse me. I received a telephone call in respon-
16 se, I believe, either from Mr. Bergson or possibly Mr.
17 Postel.

18 I did not receive any papers.

19 Q What did they tell you?

20 A They said they were considering whether to put in
21 opposing papers in that they thought I might not be entitled
22 to all I requested.

23 Q Did they ever put in opposing papers?

24 A No.

25 Q Did you get opposing papers from me on behalf of

1
2 Mr. Raffe, yes or no?

3 A I got a -- well, it's a double-pointed question.

4 I got opposing papers from you. I don't recall
5 whether you said they were on behalf of Mr. Raffe and I
6 didn't pay it any attention.

7 Q Okay.

8 A Excuse me. I haven't finished my answer.

9 I didn't pay it any attention because I had re-
10 quested that the judgment and the award be rendered against
11 you, Mr. Raffe, and the two fule oil companies jointly
12 and severally as was done last week by Judge Nickerson
13 last week for \$23,000.

14 I did get from you a motion to dismiss my appli-
15 cation which, Judge Nickerson wrote in his decision last week,
16 was frivolous.

17 Q Let me ask you this, just answer the question.

18 A That's what I'm trying to do, Mr. Sassower, if
19 you'd only allow me.

20 Q Fine. The question is, did you get any papers
21 from Postel or Bergson and you said, "No." Okay. I show
22 you this affidavit --

23 MR. STRAUS: He said, "No, I'm not sure."

24 THE WITNESS: I said that there were no
25 opposing papers to this application by either Mr.

Postel or Mr. Bergson.

Q Did you send this affidavit to Mr. Bergson or Mr. Postel?

THE REFEREE: Has that been identified yet?

MR. SASSOWER: It's an affidavit dated -- what date?

THE REFEREE: Has it been identified for the record?

That will be Exhibit YY for identification.

MR. SASSOWER: While he's looking at that, may I have a minute and a half?

THE REFEREE: Go ahead.

(Marked YY for identification)

Q Did you send that affidavit to Mr. Bergson and Mr. Postel?

A Yes, to the best of my recollection, I sent it to Mr. Bergson, Mr. Postel and you.

Q Would that go for all papers in the Eastern District in the last couple of months, not all, but substantially all?

A I don't know what that means. The only papers which I recall specifically in the past couple of months were the affidavit you have shown me as Exhibit YY, the affidavit which you showed me a moment before. I don't

1
2 remember the exact number on that and the papers in opposit-
3 ion to your motion to dismiss my fee application, and those
4 three --

5 Q Okay, let me ask you this question to make it
6 short, if you sent copies to Mr. Postel or Mr. Bergson
7 and both of them, would it be reflected in your affidavit
8 of service or affirmation of service?

9 A Yes.

10 Q On the original papers.

11 A Yes.

12 Q And I can look that up. All right. And, if you
13 didn't send it to them, then their name would not be there.

14 A Excuse me?

15 Q Let me put it this way, you would not send them
16 papers without indicating that they got the papers in your
17 affidavit of service.

18 A I may have on the initial fee application sent
19 it to Mr. Bergson because he had at that point appeared and
20 filed papers and shown on my affidavit of service that I
21 sent it to, among others, Mr. Bergson. I may have
22 subsequently sent a copy to Mr. Postel which would not be
23 reflected in the affidavit of service.

24 Q But except for this one or two instances, it would
25 be reflected --

1
2 A There are only three papers that we're talking
3 about.

4 Q Now, there is a motion -- by the way, did you
5 or any member of your firm spend any time researching
6 the law as to how one replaces another attorney?

7 MR. STRAUS: If your Honor pleases, the
8 witness' direct examination in no way related to
9 any of the lines of cross-examination --

10 THE REFEREE: Ask direct questions.
11 Let's assume a lawyer is knowledgeable in the
12 law or does research or somebody does it for him,
13 let's go on from there.

14 Q Do your time sheets reflect any work done in re-
15 searching the law as to how one attorney replaces another?

16 MR. STRAUS: Objection.

17 THE REFEREE: Sustained.

18 MR. SASSOWER: How would your Honor want me
19 to rephrase it?

20 THE REFEREE: Mr. Gerstein, when you received
21 the letter from Mr. Postel, the August 2nd letter --

22 THE WITNESS: October 2nd.

23 THE REFEREE: -- October 2nd, did you ever
24 tell Mr. Postel after you received his letter
25 of October 2nd, 1984, that that letter was

insufficient, he'd have to go into the Supreme Court, get an order, enter a stipulation substituting him for Mr. Sassower?

THE WITNESS: I didn't tell him that because Mr. Sassower was disqualified in some of the actions including the Puccini dissolution proceeding, and the guarantee, 16792.

MR. SASSOWER: I move to strike that.

THE REFEREE: You relied on that?

THE WITNESS: I did say to him that he might consider making such a motion anyhow but I don't know if I opined to him as to whether it was necessary.

MR. SASSOWER: Okay?

THE REFEREE: Go ahead.

Q Would you give me Judge Gammerman's order, please?

THE REFEREE: That's Petitioner's Exhibit 8.

A If I may just add one sentence to the last answer?

Q Please.

A Then it's incomplete, if you'd like an incomplete answer, I won't.

Q I'd like you to answer the questions.

A That's what I'm trying to do. What we had done was we specifically requested that Mr. Raffé countersign

1
2 the order because, of course, we had Mr. Sassower running
3 around saying he was Mr. Raffe's attorney and Mr. Postel
4 and we said we don't want to choose. That's why Mr. Postel,
5 if you are Mr. Raffe's attorney, get Mr. Raffe to sign off on
6 this letter, which he did and then we'll know that that's
7 Mr. Raffe's desire.

8 Q Otherwise, and if they didn't sign, would you
9 have the sheriff arrest Mr. Raffe, is that not true and Mr.
10 Raffe will be here to testify, Mr. Gerstein.

11 MR. STRAUS: Objection. Would you ask Mr.
12 Sassower to lower his voice and step back?

13 THE REFEREE: Yes.

14 MR. SASSOWER: Fine.

15 Q Let's ask the question, what was the status of
16 an order of arrest against Mr. Raffe at the time he signed
17 this letter of October 2, 1985?

18 A Judge Klein's order was extant.

19 Q And who had the warrant to arrest Mr. Raffe?

20 MR. STRAUS: Your Honor, objection.

21 THE REFEREE: Overruled.

22 A Warrants had been issued to or orders had been
23 issued to the sheriff.

24 Q Had you been in consultation with the sheriff?
25 Yes or no.

1
2 A Yes.

3 Q And did you tell the sheriff as to your desires
4 to whether you wanted or did not want Mr. Raffe arrested?

5 A Yes.

6 Q Did the sheriff obey your desires?

7 A The sheriff attempted to and was not successful.

8 Q No. When you told the sheriff to hold off on
9 the warrant --

10 MR. STRAUS: Objection, there is no such tes-
11 timony.

12 MR. SASSOWER: I'm asking.

13 MR. STRAUS: Then ask a question.

14 THE REFEREE: Did you tell the sheriff to
15 hold off on the warrant?

16 Q At times.

17 THE WITNESS: Yes.

18 THE REFEREE: Go ahead. Next question.

19 Q Who did you speak to in the sheriff's office?

20 A I don't recall.

21 Q Mr. Casella?

22 MR. STRAUS: With all due respect, your
23 Honor, does this really matter?

24 MR. SASSOWER: Yes, very much.

25 MR. STRAUS: Who he spoke to in the sheriff's

office?

MR. SASSOWER: We're going to bring them here.

MR. STRAUS: Right.

THE REFEREE: Do you recall the name?

THE WITNESS: No.

Q When you say sheriff, do you mean Nassau County or New York?

A Both, Brooklyn, actually.

Q Brooklyn.

A Yes.

Q Did they ever advise you that they went out and tried to arrest Mr. Raffe?

MR. STRAUS: Objection. What's the relevance?

THE REFEREE: Overruled.

A Yes.

Q How many times did they tell you that they went out to see Mr. Raffe?

MR. STRAUS: Objection. It's all hearsay, I don't know how many times removed, aside from the fact that's not relevant.

THE REFEREE: Yes or no.

THE WITNESS: I don't know how many times they told me.

Q Did you only speak to one man in the sheriff's office in Brooklyn?

A No.

Q How many different individuals?

A Several.

Q How about in Nassau County.

A Several people.

Q What was your conversation with the sheriff in Nassau County?

A To the same effect as the Brooklyn sheriff.

Q Did there ever come a time, Mr. Gerstein, where, in negotiations with Mr. Raffé, you said or intimated that if negotiations were broken off you would have him arrested?

MR. STRAUS: Objection.

THE REFEREE: What?

MR. SASSOWER: Have him arrested.

MR. STRAUS: Your Honor, what does this have to do with Mr. Sassower's alleged misconduct?

What do these discussions, what do the arrangements for the sheriff, what does any of this have to do with the misconduct that Mr. Sassower is charged with engaging in? It has

nothing to do with that.

It's an area that he wants to pursue for the same reasons that remain known only to Mr. Sassower, which mainly seem to be to keep the witness on the stand until he grows to be an old man.

There is absolutely nothing in his direct examination which, in any way, relates to any of this, nor is it relevant to the charges, and that's been his tactic since the beginning of this case, just to keep the witness on there for as long as he possibly can.

MR. SASSOWER: Your Honor, again, I make -- whether you are convinced or not convinced, that's besides the point -- I make this representation to you, I have a defense, a great defense, a good defense.

I want to put it on the record, and if I am not able to get certain information, then you are only getting part of a picture.

You must understand, your Honor, I'm sure you do recognize, I don't say understand, you must realize your Honor, at this point, I am uncertain as to whether I'll cross-examine Mr. Raffae

because I still think that there is an attorney-client relationship but that is something I'll meet when I come to it.

At the present time, I must assume that by law, by ethics and by morality, I cannot cross-examine Hyman Raffe, so don't tell me that Mr. Raffe will take the stand.

MR. STRAUS: If Mr. Raffe testifies to that relationship, you're full capable of cross-examining him.

MR. SASSOWER: I may not want to.

MR. STRAUS: You can't point -- what does that have to do with Mr. Gerstein?

THE REFEREE: Let's go.

Q Mr. Gerstein, you said I was disqualified. I show you Judge Gammerman's order, starting with --

MR. SASSOWER: That's exhibit what?

A It appears to be P8.

THE REFEREE: Petitioner's 8. That's the permanent injunction.

MR. SASSOWER: Well, it's something.

THE REFEREE: I'm asking you.

MR. SASSOWER: Let's call it Exhibit 8.

MR. STRAUS: It enjoins, restrains --

THE REFEREE: It's a permanent injunction.
I didn't make it up.

MR. SASSOWER: I call it the outer orbit.

THE REFEREE: It's Judge Gammerman's order.

MR. SASSOWER: Let's call it Exhibit 8.
Judge, I mean, in all sincerity, Judge Gammerman
just a week ago, and I have the minutes here, said
that's not his order.

MR. STRAUS: Will you please, Mr. Sassower?
Q Was it the attorney, was I the attorney of record?

THE REFEREE: When?

MR. SASSOWER: At the time of, at the time
of January 23rd in Action Number 2.

MR. STRAUS: Objection. I don't know that
the witness can answer.

That's an issue which is before your Honor
as to whether or not he's the attorney of record.
It will have to be resolved.

MR. SASSOWER: Let's see if there were any
orders.

MR. STRAUS: I'm objecting to the question.

Q Mr. Schneider testified that I was the attorney
of record.

MR. STRAUS: We're dealing with Mr. Gerstein.

1
2 THE REFEREE: Were you in the picture on
3 January 23rd, '85?

4 THE WITNESS: Yes, I was.

5 THE REFEREE: At that time, were you aware
6 of the fact that Mr. Sassower was still the at-
7 torney of record for Mr. Raffe?

8 THE WITNESS: At that time Mr. Sassower had
9 started a series of actions on behalf of Mr.
10 Raffe including, if Mr. Sassower is referring
11 as Action Number 2 to the action captioned
12 Hyman Raffe against Kreindler and Relkin, P.C.,
13 no index number, I believe that was one of them.
14 Some of the actions --

15 Q Go down the whole list and tell us.

16 MR. STRAUS: He's answering the question,
17 and you don't like it so you interrupt him.

18 MR. SASSOWER: I want him to be specific.

19 A Can I finish the answer?

20 Some of the actions were started in violation of
21 a temporary retraining order issued by Justice Hughes
22 bringing on the motion which was heard before Justice
23 Gammernan. In other of the actions the first captioned
24 action, the dissolution, you were disqualified.

25 Q Which action?

A The Puccini Clothes dissolution.

Q That's one.

MR. STRAUS: He's answering the question.
Will you direct Mr. Sassower to permit the witness to complete his answer?

MR. SASSOWER: I asked for actions and proceedings two to ten.

THE REFEREE: All you wanted was Action 2.

MR. SASSOWER: I'm going down to 10.

Q Two to ten was I the attorney of record, whether I violated anything or didn't violate anything, was I the attorney of record?

A I believe although I can't be sure without seeing them, that your name was the attorney on each of the summonses served as attorney, each of the summonses commencing each of the actions starting with the second captioned action.

Q But --

A Excuse me. However, I may not have seen the summons, at least initially since neither my client nor my firm is a party thereto, although I may have been shown a copy of the summons by one of the other parties or it may have been included in the moving papers of somebody.

Q Now, Mr. Gerstein, did you prepare Exhibit 8?

1

2

A I participated in drafting of it.

3

Q Who else helped you with it?

4

5

A Attorneys in my firm in consultation with, I believe we consulted with Mr. Schneider's firm. We may have also consulted with the Nachamie firm.

6

7

Q And, it was your office that drew up that order?

8

9

MR. STRAUS: Objection. He just testified to the facts and you want to change the answer.

10

11

Q As far as your firm was concerned, were you the lead attorney in drawing up that order, yes or no?

12

A I don't know if I could characterize it that way.

13

Q Who was a major participant?

14

A I worked on it.

15

16

Q Would you consider you were a major participant to that order?

17

18

A I worked on it. I don't know how you'd like to characterize it.

19

20

Q Would your work sheets or time sheets show who worked on that order?

21

A Perhaps.

22

23

Q When you drew up that order, were you aware of a decision by Judge Gammernan, yes or no?

24

A Yes.

25

Q Where was the decision of Judge Gammernan?

1
2 A I don't understand the question.

3 Q Was it a written decision? Was it on the minutes
4 of the court stenographer?

5 MR. STRAUS: Your Honor, I'll object at
6 this point because it is obvious Mr. Sassower
7 is now going to pursue the same line that he
8 tried to pursue before.

9 He's trying to try through this witness to
10 show that the order doesn't accurately reflect
11 the decision.

12 You have ruled time and time again that he
13 couldn't do it and, in fact, he's doing it
14 surreptitiously in violation of your rulings
15 with knowledge that he is doing it because I
16 don't know how many times he's done it and he's
17 doing it again. That's the purpose.

18 THE REFEREE: Mr. Sassower, either go on --

19 MR. STRAUS: The whole line of questioning
20 has been ruled --

21 MR. SASSOWER: Mr. Straus --

22 MR. STRAUS: I made my motion.

23 THE REFEREE: Will you please continue your
24 cross-examination, if you have any, if not, I'll
25 excuse this witness.

1
2 MR. SASSOWER: Your Honor, may I --

3 THE REFEREE: You will give it to me
4 later. First you will continue with your cross-
5 examination.

6 Q You stated that some of the actions, and I'm
7 not quoting you exactly, but this is the way I have read
8 the thrust of it, is that I violated Judge Hughes' temporary
9 restraining order, is that correct?

10 A That's what the order says.

11 Q No, no, no.

12 A That's what Judge Gammernan's order says, sir.

13 Q You said --

14 A It's what Judge Gammerna's order says. I'm
15 saying what Judge Gammerna's order says.

16 Q It's something you wrote, right?

17 MR. STRAUS: He's talking about -- he has
18 the order of the judge in front of him.

19 MR. SASSOWER: He put it in there.

20 MR. STRAUS: I object, your Honor.

21 How did the order get to be drafted? Objection.

22 MR. SASSOWER: Wait a second.

23 THE REFEREE: Mr. Sassower, Mr. Sassower,
24 Judge Gammernan's order is in evidence and will
25 speak for itself. Next question.

Q Where was Judge Gammerman's decision? That's all I want to know.

MR. STRAUS: Objection.

THE REFEREE: Sustained.

Q Where do you see it says -- would you read what it says in Judge Gammerman's order that says that I violated Judge Hughes' order?

MR. STRAUS: Objection. The order speaks for itself.

THE REFEREE: Sustained.

MR. SASSOWER: I want to see what part he says that Judge Gammerman said --

MR. STRAUS: If it doesn't, then Judge Potoker won't find you in violation.

The witness doesn't have to do this.

We're the ones who have to prove it.

Q Tell me which actions violated Judge Hughes' --

MR. STRAUS: Objection.

MR. SASSOWER: I want to see where it says so in the order. Show me.

THE REFEREE: The order speaks for itself. You have a copy of the order.

MR. SASSOWER: Fine, twenty pages.

THE REFEREE: Can you, sir, show it to him?

MR. SASSOWER: Where it says that I violated Judge Hughes' order. That's all I want to see.

A I'm referring to the second paragraph on Page 6.

Q And, would you, would you read it for the record?

MR. STRAUS: Objection.

THE REFEREE: It's in evidence. You don't need to read what's in the record in evidence.

Q Second paragraph before Judge Gammerman, you put this clause in there on Page 6.

MR. STRAUS: Objection.

MR. SASSOWER: Let me make the record.

THE REFEREE: No, no.

MR. SASSOWER: Please let me make the record.

THE REFEREE: You have already made that time and time again, Mr. Sassower.

MR. SASSOWER: Was there a trial? Was there a chance for affidavits?

THE REFEREE: Mr. Sassower, you have already indicated time and time again that the order that Judge Gammerman did not correspond to the evidence as alluded to in his decision.

MR. SASSOWER: This is different. Let me make myself clear.

MR. STRAUS: Object to your repeating yourself.

1
2 THE REFEREE: I say again I'm not going
3 to go behind Judge Gammerman's order.

4 If Judge Gammerman was incorrect the
5 parties whose rights were violated knew what they
6 had to do.

7 MR. SASSOWER: Now, may I make this point?
8 Okay. My point is -- wait a second -- that Mr.
9 Gerstein, that Judge Gammerman never found this,
10 Mr. Gerstein put this in by himself.

11 THE REFEREE: And Judge Gammerman signed
12 it.

13 MR. SASSOWER: Not giving me an opportunity
14 to be heard.

15 THE REFEREE: But he signed it.

16 THE WITNESS: Your Honor --

17 THE REFEREE: You say that somebody forged
18 Judge Gammerman's signature?

19 MR. SASSOWER: You want me, to tell me some-
20 thing?

21 THE REFEREE: You say that somebody forged
22 Judge Gammerman's signature?

23 MR. SASSOWER: Do you want to hear what
24 Judge Gammerman had to say about it? I have
25 the minutes.

THE REFEREE: I have his order.

MR. SASSOWER: Two weeks ago.

MR. STRAUS: The problem is Mr. Sassower does this deliberately time and time again.

THE REFEREE: Do you have another order vacating his earlier order?

MR. SASSOWER: I want to show you what he said.

THE REFEREE: Do you have an order vacating his earlier order?

MR. STRAUS: This is what Mr. Sassower continues to do. You ignore rulings.

MR. SASSOWER: Would your Honor take from me a copy of United States against Throckmorton, 98 US 61 and Tamimi T-A-M-I-M-I v. Tamimi, 38 AD 2nd, 197?

THE REFEREE: Let me have it. Thank you.
Continue cross-examination.

Q Mr. Gerstein, I show you an opinion of Honorable Thomas V. Sinclair dated October 16, 1981, and ask you if that's the opinion of Mr. Justice Sinclair on the disqualification, cross-motion of the Arutt firm?

A I don't know.

MR. STRAUS: If your Honor please --

THE REFEREE: He doesn't know. Next question.

Q Well --

A There was a --

MR. SASSOWER: Could I have the order of disqualification on 1816?

MR. STRAUS: Do you know what exhibit number? Are you referring to an exhibit number?

MR. SASSOWER: I don't know. It's one of the first few.

THE REFEREE: Whose order?

MR. SASSOWER: Judge Sinclair on 1816.

THE REFEREE: It's either 2 or 3.

They are both dated February 1, 1982.

Q I draw your attention to the recitation, Paragraph 2 and it refers to a decision of October 16, 1981, is that correct, sir?

A Yes.

Q I show you in that same action, that decision of October 16, 1981, and I ask you this question, in the decision of Mr. Justice Sinclair, did he disqualify me in any respect, yes or no?

MR. STRAUS: Objection, your Honor.

THE REFEREE: It's in evidence and it speaks for itself. You don't need an expert opinion.

MR. SASOWER: May I take a moment?

THE REFEREE: Mr. Gerstein, were you aware of a decision rendered by Mr. Justice Sinclair or an order dated February 1, '82?

THE WITNESS: I'm aware of two such orders.

THE REFEREE: Okay.

Q The order was based, was drawn up by your firm based on a decision.

A I don't know. I presume so. I don't know if the decision you are showing me is the decision which relates to that order.

MR. SASSOWER: Will you mark this decision, your Honor please, Mr. Stenographer?

A Because there are so many motions here --

Q No --

A Let me finish my answer.

THE REFEREE: Exhibit ZZ for identification.

(So marked)

MR. STRAUS: Is there a question?

Q The question is that since there are so many motions, Mr. Gerstein, as you say, in all these motions is it not a fact that the statements made that Judge Sinclair did not disqualify me in 1816 but that your firm by means unknown took it upon yourselves to put in a

1 a disqualification provision which never existed in his
2 Honor's decision, yes or no?

3
4 MR. STRAUS: Object to the question. Clearly
5 improper. It is argumentative and assumes
6 facts not in evidence.

7 Furthermore, the order itself is already in
8 evidence and this is again Mr. Sassower's attempt
9 to ignore your rulings going his own merry way
10 asking whatever he wants to ask, and he does this
11 deliberately.

12 THE REFEREE: You are attempting to go
13 behind Judge Sinclair's order.

14 Again, if he erred in his order then --

15 MR. SASSOWER: You go back to Judge Sin-
16 clair.

17 THE REFEREE: Yes.

18 MR. SASSOWER: I'll show you why we can't.
19 Now the point will come up, okay --

20 THE REFEREE: Or you go to an appellate court.

21 MR. SASSOWER: No, because that's why you
22 haven't seen the other half of the picture.
23 We're going to show that this firm follows a
24 continuous course of practice. You don't see it
25 once or twice. They write their own orders.

They don't care.

THE REFEREE: And judges sign them.

MR. SASSOWER: Well, you're a judge, you know something and you can put this on the record.

I, really, and I know a lot of judges, the orders come to them two months later, three months later, they don't remember the decision, they don't look at the order, the page is opened up by the Clerk in Special 1, it's probably looked at by the law secretary who doesn't remember it and they sign their name.

What goes on with the Clerk's Office is the important thing.

MR. STRAUS: If your Honor please, do we have to --

Does the witness have to listen to anymore of this?

THE REFEREE: Next question.

MR. SASSOWER: I don't have to teach your Honor this.

THE REFEREE: If I'm silent, it doesn't mean I agree with you because I disagree with you one thousand percent.

1
2 THE WITNESS: Could I second your Honor's
3 remarks as it refers to my firm and all the
4 accusations we have heard here today?

5 Q Mr. Gerstein, in all the many motions that were
6 made, did you ever see a disqualification provision in
7 186 of 1980 against George Sassower, yes or no?

8 MR. STRAUS: Objection. The documents
9 speak for themselves.

10 THE REFEREE: Mr. Sassower, if there is one,
11 then, obviously the Special Referee will rule
12 against the Grievance Committee.

13 You don't have to belabor the point with this
14 witness.

15 MR. SASSOWER: You see, your Honor --

16 THE REFEREE: Again, you are engaging in --

17 MR. SASSOWER: We are going to show a constant
18 pattern of this type of work.

19 THE REFEREE: Okay.

20 Q The decision of Judge Sinclair --

21 THE REFEREE: Which is received in evidence
22 as Petitioner's Exhibit 3.

23 MR. SASSOWER: Right, and 2 also.

24 THE REFEREE: Yes, but the one you're allud-
25 ing to with respect to this witness was Number 3.

MR. SASSOWER: Your Honor, would your Honor give me about a minute and a half to collect my thoughts, your Honor?

THE WITNESS: Your Honor, we've been giving Mr. Sassower time and time --

(Short recess)

Q Mr. Gerstein, I show you --

MR. SASSOWER: Please mark this, please.

THE REFEREE: Is that another exhibit?

MR. SASSOWER: A notice of cross-motion, made by you.

THE REFEREE: That will be AAA.

MR. SASSOWER: The Arutt firm, dated July 28.

(So marked)

THE REFEREE: What year?

MR. SASSOWER: It's 1981.

Q I ask you if have ever seen that notice of motion before?

A I can't say I recognize it. If you represent that this was the notice of cross-motion, then it probably was.

Q And it's a notice of cross-motion to disqualify me, is that correct?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A It speaks for itself.

Q It's not in evidence yet.

A Well, it speaks for itself, in evidence or not.
You can read it as well as I can and his Honor can too.

Q Fine. It's a motion to disqualify in what action
and what proceeding?

MR. STRAUS: Objection, your Honor. Now
we're going to go to other motions.

MR. SASSOWER: I'll tell you why.

THE REFEREE: Tell us why.

MR. SASSOWER: We have already decided that
it was never -- that I was never disqualified in
21208.

MR. STRAUS: Who decided that?

THE REFEREE: I haven't decided anything.

MR. SASSOWER: He's decided that.

THE REFEREE: Who?

MR. SASSOWER: Mr. Gerstein. I have never
been disqualified in 21208. That's Barr 1.

MR. STRAUS: What's the purpose of this?

MR. SASSOWER: This is a notice of motion
which seeks to disqualify me in Barr 1 and
Puccini.

MR. STRAUS: It's made by another law firm.

MR. SASSOWER: And served on us.

The second or third question will come forth.

MR. STRAUS: Objection. What is the relevance?

MR. SASSOWER: I'll tell you what the relevance is.

MR. STRAUS: That it's a conspiracy?

THE REFEREE: With respect to this witness?

MR. SASSOWER: Yes. I'll tell you what this witness did.

THE REFEREE: All right. No. Ask him what he did, if anything.

Don't tell me what he did.

Q Did your firm get that notice of cross-motion?

A I presume so. I don't know. They are shown that a copy was shown to us.

Q That notice of cross-motion relates to 21208 which is Barr 1. Do you mind if we call 21208 Barr 1?

A I think it's easier if you call it by the index number because there are so many.

Q Let's call it 20208. Does that notice of motion seek to disqualify me in 21208?

MR. STRAUS: Objection. He's not the author of it.

MR. SASSOWER: I understand that.

A I do not personally recall receiving it.

THE REFEREE: But it was addressed to your firm.

THE WITNESS: I presume so.

Q And you have already testified this morning that I was the attorney of record on 21208 until at least the summer of 1985, is that correct?

A My testimony from this morning is my testimony.

Q Was there any motion to disqualify me in 16792?

THE REFEREE: Made by whom?

A Made by anybody?

Q Yes. Show me the motion.

A I don't have it here. You were disqualified in that action.

Q Show me.

A Excuse me?

THE REFEREE: Let him answer the question.

A Excuse me. I believe I heard reference to the order being Exhibit 2 or 3.

Q Wait a second, Mr. Gerstein.

A And, I don't have the notice of motion.

Q Mr. Gerstein, if I give you a summons from Supreme

1
2 Court, Queens County or any court in Queens County and
3 then I take a default in Supreme Court, New York County,
4 because I switched summonses, that's a default but the
5 question is whether it's valid.

6 I'm asking you, was there every any notice of
7 motion served upon me?

8 MR. STRAUS: Objection.

9 Q In 16792?

10 MR. STRAUS: Objection.

11 Q If you know?

12 MR. STRAUS: If we haven't proved --

13 MR. SASSOWER: Judge, I'm trying to prove --

14 MR. STRAUS: You want to prove everything
15 but what you can do on cross-examination.

16 MR. SASSOWER: The next question will show
17 you.

18 THE REFEREE: Ask the next question.

19 MR. SASSOWER: Okay.

20 Q Mr. Gerstein, is it not correct that that this
21 order, notice of motion or cross-motion which is dated
22 July 28 and returnable --

23 THE REFEREE: Of 1981.

24 Q -- and returnable August 4, was received by
25 your office and then your office in consultation with the

Arutt firm made certain changes in the original papers and, I refer you to --

MR. STRAUS: Objection, your Honor, with all due respect.

MR. SASSOWER: Judge --

MR. STRAUS: Now we go to the conspiracy theory again.

MR. SASSOWER: Judge, --

THE REFEREE: They switched papers before whom?

MR. SASSOWER: Before Judge Sinclair. I answered one motion.

THE REFEREE: Did he sign an order?

MR. SASSOWER: I didn't know the case was on.

A The simple answer to all of this --

MR. SASSOWER: Judge --

Q Mr. Gerstein, did your office communicate with --

MR. STRAUS: We have the question. I've objected to it.

THE REFEREE: Overruled. It's a new question. The other question has been withdrawn.

Q Mr. Gerstein, when you received this notice of motion to disqualify me in 21208, and 1816, did you have a discussion with the Arutt firm?

MR. STRAUS: Objection, your Honor.

THE REFEREE: Sustained.

MR. SASSOWER: On what basis, your Honor.

THE REFEREE: Sustained.

MR. SASSOWER: On what basis?

THE REFEREE: Sir, we're interested in the order.

MR. SASSOWER: The order? I'm telling you the order, Judge. It's like taking --

THE REFEREE: I know, but I cannot permit you to go behind the order.

The order speaks for itself, period. That was the final action.

MR. SASSOWER: I never even, I never even knew that there was a motion.

THE REFEREE: So you will testify to that.

MR. SASSOWER: I want to get the date that these guys planned it this way.

THE REFEREE: Sustained.

MR. SASSOWER: Judge, I want to testify.

MR. STRAUS: This is the standard speech that Mr. Sassower has been making every day.

Q There's the original paper.

MR. STRAUS: I would ask that the witness

be excused.

THE REFEREE: Next question.

Q Did your firm receive my opposing papers to this cross-motion, yes or no?

MR. STRAUS: Objection.

THE REFEREE: Overruled.

A I have no recollection. If they were sent, I assume we received them.

THE REFEREE: Next question.

Q I show you this affirmation dated August 2nd, 1981, and ask you if you saw this before.

A I don't recall it. Once again, if it was served, I assume we got it. I have no specific recollection.

MR. SASSOWER: Would you mark it?

THE REFEREE: It will be marked BBB for identification.

MR. SASSOWER: With the approval of the Court, my intention is that rather than rip these records apart, whatever remains of them, I'd like to make a photostatic copy of them and introduce them as single documents.

Is that all right with the Court?

MR. STRAUS: You haven't offered them in evidence.

THE REFEREE: These are all for identification.

At the time you're ready to submit them, You'll submit them immediately, provided they are found to be relevant by the Court.

Q Mr. Gerstein, this particular cross-motion, which is AAA, I believe, --

A I don't know which one that is.

THE REFEREE: The notice of cross-motions, AAA for identification.

Q -- a cross motion to disqualify, wasn't that part of a motion made by you for summary judgment?

A May I see it?

MR. STRAUS: I understand that AAA was submitted by Arutt and Nachamie.

MR. SASSOWER: Right.

MR. STRAUS: Object to the question.

THE REFEREE: Overruled.

MR. SASSOWER: Your Honor, two minutes. I overruled the objection.

Q I want to ask you about something else.

THE REFEREE: Let's forget something else.

A I don't know what it was a cross-motion to, but it was prepared and served and submitted by -- it states

by Arrut-Nachamie.

Q Let me ask you this question to refresh your recollection if it needs refreshing, did you make a motion for summary judgment against Hyman Raffé?

A Yes, in 16792, yes.

Q And, did I as, the attorney for Raffé, as a defense, contend that judicial trust assets had been unlawfully dissipated?

MR. STRAUS: Objection.

Q Yes or no.

MR. STRAUS: Objection. We're back to the same thing.

THE REFEREE: Overruled. Yes or no.

A You made that contention on any number of motions.

THE REFEREE: Next question.

Q Also, as part of that contention, did I also make a cross-motion over against the Arutt firm for indemnification for anything that you might recover against me?

A I recall a request for relief not against the Arutt firm but --

Q Their client --

A Excuse me, you haven't let me finish a single answer -- but against Dann, Sorrentino and Puccini.

Q Who were, at that time the Arutt clients.

MR. STRAUS: Objection. Is that a question?

A Dann and Sorrentino were.

MR. STRAUS: Is that a question, Mr. Sassower?

Q Wasn't Puccini represented by the Arutt firm at that time?

A I don't know. It so states on the notice of motion, this notice of cross-motion, AAA.

Q You made a motion for summary judgment against us, we defended and also asked for relief against the third party defendants in the event that you prevailed.

THE REFEREE: Where are we going with this?

MR. SASSOWER: Wait a minute, now comes the question.

Q And the Arutt firm also made a cross-motion to disqualify me, is that correct? Was that the setting?

A I'm not sure, if you are representing to me that AAA was a cross-motion to that, I'll accept your representation.

Q Refresh your recollection.

A I don't know from this cross-motion what the main motion was.

MR. SASSOWER: Give me a moment, your Honor, and I'll get the main motion.

1
2 Have you got the papers that lead to
3 Judge Sinclair's judgment?

4 MR. STRAUS: If you want to, address
5 Judge Potoker, because I'm not interested in
6 providing you with more.

7 THE REFEREE: What is it you wish?

8 MR. SASSOWER: I'd like the notice of motion
9 of 1981, which was again renewed in 1982, which
10 led -- the motion for summary judgment.

11 THE REFEREE: Is it in evidence?

12 MR. SASSOWER: I think Mr. Schneider identi-
13 fied it.

14 THE WITNESS: Your Honor, I have sat here
15 since ten o'clock.

16 Mr. Sassower has had several days to prepare
17 for this and I would respectfully request that
18 unless he has a relevant and proper question, that
19 I be excused because I've sat here and listened
20 to his harrangues, waited while he's garbled
21 for five minutes at a time between questions look-
22 ing for papers.

23 MR. SASSOWER: That's improper for a witness.

24 THE REFEREE: Are you interested in the
25 notice of motion to vacate Judge Klein's order?

Is that what you're looking for?

MR. SASSOWER: No.

THE REFEREE: Next question. We don't have it.

Q Did your firm make a notice of motion --

THE REFEREE: Sir, let's go on with cross-examination.

MR. SASSOWER: I'm asking that --

THE REFEREE: For what purpose?

MR. SASSOWER: For summary judgment.

THE REFEREE: What's the relevance?

Q I show you a few pages --

MR. STRAUS: A few pages, yes, go ahead, Mr. Sassower.

MR. SASSOWER: I asked for subpoenas for the County Clerk's file.

I asked you for a few pages of an affidavit of Charles Sangara and ask you if your office prepared that affidavit?

MR. STRAUS: Objection.

THE REFEREE: Has that been identified?

A I can't identify this. This is three unsigned pages starting with Page 6 of something ending with Page 8 without the beginning order or the end. I don't know what

it is except it has the words Charles Sangara affidavit typed on top.

MR. STRAUS: This witness --

THE REFEREE: That will be Respondent's CCC for identification.

(So marked)

THE REFEREE: Let's go on with cross-examination.

MR. STRAUS: He has to mark it as CCC for identification.

If your Honor pleases, we now have some fifty-five exhibits marked for identification by Mr. Sassower.

I think possibly four have been received in evidence.

The cross-examination has in no way related to the witness' direct examination nor has it in any way related to any areas which would reflect on his credibility.

I think your Honor has been more than fair and patient in permitting Mr. Sassower incredible latitude to roam all over the earth in search of some question that may be related to the charges but thus far he's been unable to focus

1
2 on the examination of this witness which is
3 what a witness is put on the stand for; not any
4 of this cross-examination relates to the direct
5 examination nor does it go in any way to the
6 witness' credibility.

7 THE REFEREE: Mr. --

8 MR. STRAUS: Mr. Sassower doesn't seem to
9 have a concept of what he's supposed to do on
10 cross-examination nor does he have any recollect-
11 ion of your rulings precluding him from areas
12 which he just goes in and follows up time after
13 time with this witness, with the prior witnesses.
14 Either he has a cognitive difficulty, he has cot-
15 ton in his ears or is deliberately refusing to
16 abide by your rulings and I can understand
17 the witness' feelings about being subject to this
18 nonsense since 11 o'clock this morning.

19 THE REFEREE: Go ahead, Mr. Sassower.

20 MR. SASSOWER: Thank you, your Honor.
21 Would your Honor remind me in about two or three
22 minutes before we close because I want to say
23 something.

24 Q I draw your attention to these words and ask
25 you if you ever heard them before?

1
2 MR. STRAUS: Objection. He's reading from --

3 THE REFEREE: What's the relevance?

4 MR. SASSOWER: Judge, I --

5 THE REFEREE: No, no, you will tell me what
6 the relevance is.

7 MR. SASSOWER: Because I'm going to say
8 that all these motions, so-called motions were
9 based upon the perjurious statements made by
10 the Kreindler firm and their clients.

11 THE REFEREE: I'm not interested in any
12 statements made by them.

13 I'm interested in the finished document.

14 MR. SASSOWER: Which the court relied upon.

15 THE REFEREE: Sir, Charge 6 speaks for it-
16 self.

17 MR. SASSOWER: Fine and Charge 6 says --

18 THE REFEREE: In or about January '85 you
19 were instructed by Mr. Raffae, et cetera.

20 MR. SASSOWER: How about Charge 5?

21 THE WITNESS: We're not interested in
22 matters --

23 MR. SASSOWER: Charge 5. He's being brought
24 here for Charge 5.

25 THE REFEREE: Yes, it refers to violations

of the orders of Judge Schwartz, Sinclair,
Judge Greenfield, Judge Riccobono.

MR. SASSOWER: No, then it's Charge 7.

THE REFEREE: You told me it was 5, you
have the charges in front of you.

MR. SASSOWER: Let me get the charges. Here,
it says Charge 6, your Honor.

THE REFEREE: What? That's what I said.
Charge 6. And then you attempted to correct me.

MR. SASSOWER: Let me read you which one.

THE REFEREE: It's less than a page.

MR. SASSOWER: It is, your Honor.

THE WITNESS: Your Honor this is a filibuster.

THE REFEREE: Sir, you're a witness, sir.

MR. SASSOWER: It is Charge 4. I'm sorry.
I moved everything up one.

THE REFEREE: Go ahead.

Q Did your office have Charles Sangara of Citi-
bank --

MR. SASSOWER: Withdrawn.

Q Do you know who Charles Sangara is?

A Yes.

Q Who is he?

1
2 A He's one of the -- he's the person at Citibank
3 involved in the administration of Mr. Kaufman's estate
4 as an executor.

5 Q Did he submit an affidavit in 1981, as part of
6 a motion for summary judgment by your firm which states as
7 follows, "The unsupported and baseless charge that the
8 estate has dissipated the assets of Puccini Clothes,
9 Limited, is totally false. The estate has received no
10 monies whatsoever from Puccini Clothes, Limited."

11 MR. STRAUS: Objection. Now we're going
12 to litigate the question of whether --

13 MR. SASSOWER: No.

14 MR. STRAUS: I object. You're reading
15 from --

16 MR. SASSOWER: Let me finish the sentence.

17 MR. STRAUS: I object.

18 THE REFEREE: Let him finish it.

19 MR. SASSOWER: Let me finish.

20 THE REFEREE: Go ahead, go ahead, finish the
21 sentence.

22 Q -- his additional defense Raffe argues that
23 plaintiffs failed to allege --

24 THE REFEREE: Are you picking words here
25 and there? You said you wanted to finish the
sentence.

1
2 Q Raffe claims that the plaintiffs and the third
3 party defendants have entered into some unspecified agree-
4 ment allegedly to discontinue a multi-million dollar law-
5 suit --

6 THE REFEREE: What's the relevance? This
7 goes right back to your original contention which
8 I say has no place in this proceeding.

9 Next.

10 MR. SASSOWER: Let me finish the sentence.

11 THE REFEREE: No, I won't. Next. Any further
12 cross-examination?

13 MR. SASSOWER: Sure, quite a bit.

14 THE REFEREE: Let's go because I'm about to
15 excuse the witness.

16 MR. SASSOWER: You will let me know two
17 minutes before. I want to ask one question before
18 I continue, may I, your Honor, of your Honor?

19 THE REFEREE: Yes.

20 MR. SASSOWER: Mr. Straus has stated that
21 Mr. Gerstein is not available next Thursday and
22 rather than interrupt witnesses which I find
23 extremely difficult, if he cannot be here next
24 Thursday, let us cancel next Thursday. I
25 don't want Mr. Raffe until I finish with Mr.

Gerstein.

MR. STRAUS: I'm afraid, your Honor, I don't think it's appropriate. First of all --

THE REFEREE: It's five minutes to four. Let's continue with your cross-examination.

MR. SASSOWER: Could I have a ruling, your Honor?

THE REFEREE: Not now. At the end of the session, I'll rule. Let's complete the cross-examination. You have an hour and five minutes and he's been on the witness stand all day.

MR. SASSOWER: May the record show --

THE REFEREE: Let's have cross-examination, not speeches.

MR. SASSOWER: I don't want to make speeches. I want to make an offer of proof.

THE REFEREE: No. Cross-examination. Next question.

MR. SASSOWER: I'm getting the exhibit.

THE REFEREE: Next question.

MR. SASSOWER: I'm getting the exhibit.

Q I show you Respondent's Exhibit M and ask you --

MR. STRAUS: This is for identification.

Q -- for identification, and ask you whether this

1
2 was one of two similar orders issued by Judge Shorter,
3 one a motion made by you and one made on behalf of the
4 Feltman firm.

5 A It appears to be by Judge Shorter. It appears
6 that there is an obliteration on the copy that I have
7 been shown, white-out.

8 Q It was an exhibit number and I took it out.

9 A It refers to a motion by the receiver.

10 Q Was there a similar order against you where you
11 made the motion, the same motion based on the same arguments,
12 yes or no?

13 A I believe, but I'm not positive, that there was
14 an order by another, another order by Judge Shorter at or
15 about the date of this order.

16 Q And, did you contend -- was this a voluminous
17 submission to Judge Shorter and an oral argument?

18 MR. STRAUS: Objection. This is not an
19 order which is in any related to the charges.

20 MR. SASSOWER: Judge Shorter held --

21 MR. STRAUS: I'm not asking for your
22 testimony. It has nothing --

23 MR. SASSOWER: I want to show where it is
24 relevant.

25 THE REFEREE: Continue.

1

2

Q Was that order preceded by oral argument?

3

A I think so but I'm not sure.

4

5

Q Was there a rather healthy submission by your firm?

6

7

A I don't know what that means. There are some numbers on the side which identify the papers submitted.

8

9

10

Q Do you recall arguing to Judge Shorter that the court could not consider motions that were made, as you contended, in violation of Referee Diamond's rules?

11

12

A The motion before Judge Shorter, according to this decision, was to vacate notices of motion.

13

14

Q Made by?

15

16

A Excuse me. I believe the underlying point was that the motions were made by you or Mr. Raffé in violation of Judge Diamond's rules.

17

18

19

Q And Judge Shorter said that is not a ground --

MR. STRAUS: Objection. First of all, it's not evidence.

20

21

22

23

MR. SASSOWER: I offer it in evidence.

24

25

MR. STRAUS: No, I object. We had the same offer when Mr. Schneider testified. It was ruled not relevant.

MR. SASSOWER: No, it was not.

MR. STRAUS: It was not received in evidence

1
2 when Mr. Schneider was on the stand. In any
3 event, I make the objection now. What's the
4 difference? If there were one hundred fifty
5 and there may well have been other motions and
6 orders, they are not in these charges.

7 THE REFEREE: The Court rules, having been
8 shown this earlier, and again, it is irrelevant.

9 The objection is sustained.

10 MR. SASSOWER: May the record show --

11 THE REFEREE: The record has already shown
12 it. Next question.

13 MR. SASSOWER: Your Honor, on the basis of
14 liability against Hyman Raffé in 16792, was it
15 based on the same document as 21208, the same
16 instruments, yes or no?

17 A You are referring to the guarantees.

18 Q Right.

19 A I believe so.

20 Q So it was the same instruments, 21208 as 16792,
21 right?

22 MR. STRAUS: He just answered that.

23 Q Right?

24 A I just answered it, although I'm not sure what
25 the relevance is to the proceeding here as I understand it.

Q Let's ask you something. In 21208, you also testified that you made no claim for attorney's fees. Did you make a claim for attorney's fees in 16792, yes or no?

MR. STRAUS: Objection. What difference does it make?

THE REFEREE: Sustained.

MR. SASSOWER: Judge, let me show the --

THE REFEREE: Sustained.

MR. SASSOWER: Your Honor, may I just make a statement or two and then can we conclude? I have a lot more to go.

THE WITNESS: Your Honor --

THE REFEREE: Please withhold your statements.

Continue with your cross-examination. If you don't have anymore --

MR. SASSOWER: I have plenty more.

THE REFEREE: -- I'll excuse the witness and he's to return here only at my direction.

MR. SASSOWER: Judge, I have much more.

THE REFEREE: You heard me, sir.

MR. SASSOWER: All right, Judge. Let me take a moment of the Court's time then.

THE REFEREE: You have already taken hours

of my time. I'll give you a moment.

MR. SASSOWER: Mr. Gerstein, as a partner in Kreindler and Relkin, pursuant to Section 140-30, I place you under arrest for grand larceny, perjury.

THE REFEREE: Sir, do you want to make a speech?

MR. SASSOWER: I want to finish.

THE REFEREE: The witness is excused, the witness is excused.

MR. SASSOWER: He's under arrest.

THE REFEREE: Counselor, you are to return here --

MR. SASSOWER: He's under arrest.

THE REFEREE: The witness is to return here at my direction only.

MR. SASSOWER: You are under arrest, Mr. Gerstein.

THE WITNESS: I think I'll accept the Judge's ruling rather than yours.

MR. SASSOWER: You are under arrest right now.

THE REFEREE: He's excused by the Court.

MR. SASSOWER: You are under arrest.

1
2 THE REFEREE: He's excused by the Court.

3 MR. SASSOWER: I'm allowed to use --

4 THE REFEREE: He is excused by the Court.

5 MR. SASSOWER: I'm placing him under arrest.

6 THE REFEREE: What's the next date?

7 MR. STRAUS: The 20th, your Honor.

8 THE REFEREE: The hearing is continued to
9 March 20th. All right.

10 MR. STRAUS: I think you better keep this on
11 the record since Mr. Sassower is making represen-
12 tations that he is going to physically assault
13 or restrain the witness.

14 MR. SASSOWER: I didn't say that.

15 MR. STRAUS: I think you better keep a re-
16 cord of this.

17 THE REFEREE: Mr. Sassower --

18 MR. SASSOWER: Excuse me -- the case is
19 over.

20 MR. STRAUS: Take your hands off him.

21 MR. SASSOWER: I didn't put my hands on him.

22 THE REFEREE: He has my permission to leave.

23 MR. SASSOWER: Judge, --

24 MR. STRAUS: Step aside, Mr. Sassower.

25 MR. SASSOWER: I'll arrest him outside.

(short pause)

MR. STRAUS: If your Honor pleases, Mr. Sassower at this moment is standing in front of the exit to this building and has made several statements that he will physically restrain and place Mr. Gerstein under arrest.

THE REFEREE: I'll escort Mr. Gerstein out of the building.

MR. STRAUS: Thank you.

THE WITNESS: Thank you, your Honor.

oOo

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
Michael Gerstein	933	979

RESPONDENT'S EXHIBITS

YY. id.	P. 1054
ZZ. id.	1075
AAA id.	1079
BBB id.	1086
CCC id.	1092