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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DORIS L. SASSOWER,

Plaintiff,

v.

94 Civ.1 4514 (JES)

HON. GUY MANGANO, et al.,

Defendants.

-----x

New York, N. Y.  
September 28, 1995

Before:

HON. JOHN E. SPRIZZO,

District Judge

APPEARANCES

DORIS SASSOWER, pro se

DENNIS C. VACCO,  
Attorney General of the State of New York  
Attorney for Defendant  
BY: JAY WEINSTEIN  
Assistant Attorney General

1 THE CLERK: Sassower v. Mangano.

2 THE COURT: Who is here and who represents whom?

3 MR. WEINSTEIN: Jay Weinstein, representing the  
4 state.

5 THE COURT: Representing whom?

6 MR. WEINSTEIN: The state respondents.

7 THE COURT: Who else is here?

8 MR. WEINSTEIN: I am sorry, the state defendants.

9 THE COURT: You represent all the defendants?

10 MR. WEINSTEIN: They are all state defendants.

11 THE COURT: You represent them all?

12 MR. WEINSTEIN: Yes.

13 THE COURT: You have an application for an  
14 injunction?

15 MS. SASSOWER: Yes, your Honor. May I have a few  
16 minutes to organize my papers.

17 THE COURT: We will take a five-minute recess.

18 MS. SASSOWER: I would appreciate that. Thank  
19 you very much.

20 (Recess)

21 THE COURT: It is your application?

22 MS. SASSOWER: Yes, your Honor.

23 THE COURT: Go ahead.

24 MS. SASSOWER: I wish to speak in support of my  
25 application for a TRO. This is a civil rights action, as

1 you know, in which I am, among other things, asserting the  
2 unconstitutionality of a suspension order that was issued by  
3 the judicial defendants on June 14, 1991, without a petition  
4 setting forth any charges, without any hearing, without any  
5 findings that I was guilty of professional misconduct  
6 immediately threatening the public interest, without any  
7 statement of reasons, as required by law: that there be a  
8 petition, hearing, findings and reasons, not only required  
9 by the Constitution of the United States and the State of  
10 New York --

11 THE COURT: Is this a disciplinary committee  
12 hearing?

13 MS. SASSOWER: No. There was no hearing at all.

14 THE COURT: Who brought the charges?

15 MS. SASSOWER: There were no charges.

16 THE COURT: What are you trying to enjoin?

17 MS. SASSOWER: I am trying to enjoin the  
18 continued enforcement of a blatantly illegal,  
19 unconstitutional, and criminal order suspending me from the  
20 practice of law.

21 THE COURT: Whose order?

22 MR. WEINSTEIN: The order of the judicial  
23 defendants, that is to say, the Appellate Division, Second  
24 Department, of the State of New York, which has operated in  
25 a totally lawless manner, has operated with a complete

1 abandonment of all judicial standards, of all ethical rules,  
2 without jurisdiction either subject matter or personal, and  
3 has maintained this illegal order despite the controlling  
4 law of the highest court of the State of New York.

5 THE COURT: When was it issued?

6 MS. SASSOWER: This order was issued going now  
7 into the fifth year, that is to say, on June 14, 1991, and  
8 it was served on me the day before the last day to file a  
9 notice of appeal in the Court of Appeals in the case of  
10 *Castracan v. Colavita*, which I was handling as *pro bono*  
11 counsel to challenge a corrupt political deal involving the  
12 trading of seven judgeships in the 9th Judicial District of  
13 the State of New York. It was served on me on June 19, the  
14 last day to file being June 20.

15 THE COURT: The order has been outstanding for  
16 five years and now you want me to enjoin it?

17 MS. SASSOWER: What I seek in the papers before  
18 your Honor --

19 THE COURT: Is what?

20 MS. SASSOWER: Is a stay today of --

21 THE COURT: That is an injunction.

22 MS. SASSOWER: No. I am asking this: Under *Nuey*  
23 and *Russakoff*, two cases that I have cited in my papers --

24 THE COURT: I want to know what relief you are  
25 asking for.

1 MS. SASSOWER: The relief I am asking for in the  
2 order to show cause, which I have submitted to your Honor a  
3 couple of days ago, as your rule required of me, that order  
4 to show cause is seeking a preliminary injunction based  
5 on --

6 THE COURT: But what are you asking me to enjoin?

7 MS. SASSOWER: What I am asking you to enjoin,  
8 among other things, is the further enforcement of this  
9 heinous and unconstitutional suspension order that was  
10 issued and perpetuated now for more than four years without  
11 any findings.

12 THE COURT: The question that comes to my mind  
13 is: Why did you wait five years?

14 MS. SASSOWER: I didn't, your Honor. I am living  
15 proof that the state court system in the State of New York  
16 does not work.

17 THE COURT: The order was issued in 1991. Did  
18 you seek to have it vacated in the Court of Appeals?

19 MS. SASSOWER: Immediately. In fact, this order  
20 was released through the press. What I have been doing for  
21 five years, almost five years, is seeking relief under the  
22 decisional law of the state's highest court, in *Matter of*  
23 *Nuey* and *Matter of Russakoff*, to vacate the suspension.

24 THE COURT: Did you seek to have it vacated in  
25 the New York State Court of Appeals?

1 MS. SASSOWER: Immediately. Four times I have  
2 been to the Court of Appeals. I have four times been denied  
3 review. I have never had any appellate review of this  
4 heinous order.

5 THE COURT: Did you file a petition for  
6 certiorari in the Supreme Court?

7 MS. SASSOWER: I brought an Article 78 proceeding  
8 and went up to the Supreme Court of the United States, and  
9 your Honor has a copy of my petition for cert.

10 THE COURT: What did the Supreme Court do with  
11 it?

12 MS. SASSOWER: The Supreme Court likewise, on the  
13 urging and advocacy of the Attorney General, denied the  
14 petition for review. That, of course, as your Honor knows,  
15 is not an adjudication on the merits. They grant less than  
16 1 percent of all petitions for certiorari. It is a  
17 discretionary review. I did not have a review as a matter  
18 of right, to which I was entitled under the law of the State  
19 of New York, under the Constitution of the State of New  
20 York, and the Constitution of the United States.

21 THE COURT: But I don't have the power and I have  
22 no subject matter jurisdiction to review the correctness of  
23 state court decisions.

24 MS. SASSOWER: I am not asking you to do that,  
25 your Honor. I am asking you to do what the case law of the

1 highest court of our land requires be done when federal  
2 constitutional rights are denied. We have a federal system,  
3 and that is the virtue of having another forum when the  
4 state courts are biased and corrupt and abusing their  
5 powers, as the Attorney General of the State of New York has  
6 done.

7 It is exactly 41 years ago this month that I  
8 started my senior year at NYU Law School as an unpaid law  
9 assistant in the U.S. Attorney's Office, and I continued to  
10 work that senior year, and at the end of the senior year I  
11 remember being invited for the treat, the highlight of the  
12 season, an address by Justice Frankfurter of the Supreme  
13 Court of the United States, who said to all the assembled  
14 Assistant U.S. Attorneys something that I remember today as  
15 if I heard it just now, but it has lived with me all through  
16 these five years, and that statement he made was that the  
17 government wins its points when justice is done in its  
18 courts. Unfortunately, the Attorney General of the State of  
19 New York has not lived by that very sage statement, which  
20 was only the epitome of what the ethical duty of a public  
21 prosecutor is under the Code of Professional Conduct of the  
22 State of New York and the Model Code of Professional  
23 Responsibility of the ABA.

24 I have documented in repeated motions, appeals,  
25 proceedings, and summary judgment motions over and over

1 again the fact that no due process was afforded me. Due  
2 process as it has been interpreted is process which is  
3 meaningful, to be heard in a meaningful way.

4 THE COURT: I don't understand your argument  
5 because you told me you went to the Court of Appeals and  
6 they rejected your application.

7 MS. SASSOWER: Yes. As I set forth, they denied  
8 it, but what I have said is that the state courts are  
9 covering up the misconduct of the Appellate Division.

10 THE COURT: How can I determine that the state  
11 courts are corrupt and did all kinds of terrible things  
12 without passing upon the validity of their decisions?

13 MS. SASSOWER: Because the uncontroverted  
14 evidentiary facts are the following: I never was served  
15 with any charges before my suspension; I never had any  
16 hearing before my suspension; I never had --

17 THE COURT: Did you have one after your  
18 suspension?

19 MS. SASSOWER: No. I have not in more than four  
20 years had a hearing as to the basis of my suspension. And  
21 the Court did not even make --

22 THE COURT: So what you are saying is that the  
23 state courts are wrong. I can't review that.

24 MS. SASSOWER: Wait. Your Honor is overlooking  
25 the very important aspect and beneficent purpose of a



1 federal forum: that those who are aggrieved, who show by  
2 documentary proof that the state courts are biased and  
3 deliberately perverting our constitutional rights, our Bill  
4 of Rights, has, because of a vendetta against me arising out  
5 of the political case that I brought in which judges,  
6 particularly in the Second Department, became the subject of  
7 my complaint, which I was handling as a public interest  
8 matter --

9 THE COURT: It all boils down to your saying that  
10 the state courts have not been correct in denying you a  
11 remedy.

12 MS. SASSOWER: No. I am saying much more than  
13 that. This is not just an error. This is egregious  
14 corruption and abuse.

15 THE COURT: I haven't the power to review even  
16 egregious error and corruption. If the gravamen of your  
17 claim is that the state court has improperly denied you  
18 relief because of corruption or any other reason, stupidity,  
19 corruption, misreading the law, I haven't the power to  
20 review that. The Second Circuit has squarely so held.

21 MS. SASSOWER: Unfortunately, I don't know if  
22 your Honor has read the memorandum of law that I have  
23 submitted in support of my summary judgment motion, but it  
24 is very clear --

25 THE COURT: That is an argument for another day.

1 MS. SASSOWER: No, no, it is very clear from the  
2 cases that the overriding concern in regard to all of the  
3 defenses that were put forth is that there be a fair playing  
4 field, a level playing field, in the state court system, and  
5 for that reason the federal court will abstain or the  
6 federal court will have the various considerations of *res*  
7 *judicata* and --

8 THE COURT: We are particularly restricted from  
9 conducting a hearing concerning bar proceedings.

10 MS. SASSOWER: Of course. I have an undisputed  
11 factual situation, where I am entitled to relief as a matter  
12 of controlling law. And it cannot be gainsaid by the  
13 Attorney General. There are no cases to the contrary.  
14 Consequently --

15 THE COURT: Is there a case you cite in your  
16 brief where a federal court has interfered with a suspension  
17 order of the Bar Association?

18 MS. SASSOWER: Where there is --

19 THE COURT: If there is, let me know on what page  
20 of your brief you have it and I will read it. My  
21 understanding of the law is that no court has ever done  
22 that.

23 MS. SASSOWER: Yes, where there is a showing of  
24 bias or due process violation or fundamental lack of  
25 jurisdiction, which is being deliberately disregarded.

1 THE COURT: What is your best case on this issue?

2 MS. SASSOWER: Let me show you a case that --

3 THE COURT: Just give it to me now. Give me your  
4 best case on this issue and I will read it. Then I will  
5 hear from your adversary.

6 MS. SASSOWER: I would like to just, while I am  
7 having my assistant get the case for you, make reference to  
8 a case I read on Sunday in the paper, which was very apt --  
9 and I will give the Court a copy (handing) -- about a man in  
10 the system who was jailed for 607 days and finally was  
11 brought into court. The case involved a couple of minor  
12 misdemeanors. And he has already served two years. Now,  
13 your Honor, I have been lost in the state court system for  
14 more than 1,500 days, and there is no state remedy, and they  
15 are refusing to enforce the law that exists, the safeguards  
16 that exist to protect lawyers and to protect me as a lawyer  
17 who was availing herself of First Amendment rights, doing  
18 her ethical duty to report evidence of judicial wrongdoing.  
19 I have served my time. Your Honor has released admitted  
20 criminals for having served time.

21 THE COURT: But I have jurisdiction over them.

22 MS. SASSOWER: But you have jurisdiction over me  
23 and the Attorney General.

24 THE COURT: I may not have subject matter  
25 jurisdiction to review the correctness of state court

1 decisions.

2 MS. SASSOWER: This is not just correctness.  
3 This is a heinous act and a deliberate pattern, and the  
4 Attorney General, by his complicity in refusing to  
5 investigate and refusing to prosecute, has become a named  
6 defendant in this lawsuit.

7 THE COURT: At some point I am sure that the list  
8 will grow, but that is not the point. The point is that  
9 there are two ways to review the correctness of what state  
10 courts do: one is by going to the federal court initially,  
11 and the other is by taking an appeal from the highest court  
12 of the state to the Supreme Court of the United States. The  
13 Supreme Court has jurisdiction to review the correctness of  
14 what state courts do; a District Court does not.

15 MS. SASSOWER: I am not asking for a review. I  
16 am asking for independent enforcement.

17 THE COURT: You are asking me to enjoin them --

18 MS. SASSOWER: No.

19 THE COURT: -- which requires me to find the  
20 suspension order invalid.

21 MS. SASSOWER: There is no fact or law that will  
22 sustain it. It is frivolous for Mr. --

23 THE COURT: So you are asking me to make a de  
24 novo finding on an issue that the state court has already  
25 passed on, and I am telling you I don't think I have

1 jurisdiction to do it.

2 MS. SASSOWER: The state court didn't --

3 THE COURT: It issued the order, didn't it?

4 MS. SASSOWER: But they don't respond to the  
5 issues.

6 THE COURT: They are still enforcing it.

7 MS. SASSOWER: They are enforcing an order  
8 that --

9 THE COURT: So you are asking me to invalidate a  
10 state court order.

11 MS. SASSOWER: I am asking you to invalidate a  
12 state court order that is, on its face, void as a matter of  
13 constitutional law and due process.

14 THE COURT: However wrong, however void you say  
15 it is, it is for the highest court of the state to correct  
16 what lower state courts do, not a federal district court.  
17 It is for the Supreme Court to decide whether the highest  
18 court of the state has protected your constitutional rights.  
19 I don't have the jurisdiction as a district court to review  
20 a state appellate court.

21 MS. SASSOWER: I point out in my papers that I  
22 have amply demonstrated the basis for the relief, the  
23 frivolous nature of the order, and fraud on the part of the  
24 Attorney General.

25 THE COURT: I will hear from your adversary. Do

1 you want to respond to it?

2 MR. WEINSTEIN: I will reiterate what your Honor  
3 already stated, that this District Court is a court of  
4 original jurisdiction, not appellate jurisdiction, and the  
5 plaintiff's remedy is to appeal to the Supreme Court.

6 THE COURT: She did and that may be it as far as  
7 the game goes. Is there anything more you want to say?

8 MR. WEINSTEIN: I have nothing further to say.

9 THE COURT: What about abstention?

10 MR. WEINSTEIN: Well, all the arguments as to her  
11 original complaint will be made, I am told, October 28.

12 THE COURT: That is a motion for summary  
13 judgment.

14 MR. WEINSTEIN: Right.

15 THE COURT: Is one of the things that she is  
16 asking for in her complaint an injunction of the state court  
17 proceedings?

18 MR. WEINSTEIN: No. Declaratory relief.

19 THE COURT: She wants me to declare it invalid?

20 MR. WEINSTEIN: Yes.

21 THE COURT: So the only question before me is  
22 whether or not I issue -- sit down until I am finished -- in  
23 the interim, until I rule on the motion for summary judgment  
24 that you filed --

25 MR. WEINSTEIN: I haven't filed my motion for

1 summary judgment.

2 THE COURT: She filed.

3 MR. WEINSTEIN: She filed.

4 THE COURT: You responded to it.

5 MR. WEINSTEIN: I haven't responded to it yet.

6 THE COURT: When are you going to respond to it?

7 MR. WEINSTEIN: The 13th of October.

8 THE COURT: Sit down.

9 MS. SASSOWER: His time expired, your Honor,  
10 months ago.

11 THE COURT: We are going to deal with that one in  
12 a minute. The only issue before me today is whether or not  
13 I am going to issue an order which is in the nature of  
14 mandatory injunctive relief, in effect suspending the  
15 suspension order, so to speak, pending a resolution of the  
16 motions; correct?

17 MR. WEINSTEIN: Correct.

18 THE COURT: And whether I should do that.

19 MR. WEINSTEIN: Yes.

20 THE COURT: Correct?

21 MR. WEINSTEIN: Correct.

22 THE COURT: What about this question of your  
23 being untimely in your response, which seems to be a  
24 meritorious argument? When did I fix your time to respond  
25 to the motion?

1 MR. WEINSTEIN: I believe the time you fixed at  
2 the last conference is past. Your Honor is correct.

3 THE COURT: So why should I wait for you to file  
4 a motion response late? Why didn't you file it within the  
5 time fixed by the Court?

6 MR. WEINSTEIN: Because, your Honor, I returned  
7 to the Attorney General's Office on September 11, and I was  
8 told by my predecessor, the Assistant Attorney General who  
9 was handling this case, that we had until, I believe,  
10 September 20.

11 THE COURT: Told by whom?

12 MR. WEINSTEIN: One of the other Assistant  
13 Attorneys General.

14 THE COURT: Why did you rely on that when you  
15 knew exactly the time?

16 MR. WEINSTEIN: I didn't rely on that. In fact,  
17 I called my adversary. She stated that our time has since  
18 elapsed. I then called the clerk of your court, who  
19 corroborated the statements of the Assistant Attorney  
20 General.

21 THE COURT: What statements?

22 MR. WEINSTEIN: That we have until -- I am saying  
23 September 20, but I don't know whether --

24 THE COURT: That time has passed, too.

25 MR. WEINSTEIN: Then we obtained an extension of



1 time until October 13, by your order.

2 THE COURT: But that was before she objected to  
3 it.

4 MR. WEINSTEIN: Right.

5 THE COURT: Now she is objecting to it.

6 MR. WEINSTEIN: She can object all she wants.  
7 She is simply misstating the facts.

8 THE COURT: I don't have to accept your papers.

9 MR. WEINSTEIN: She is misstating the facts to  
10 the Court.

11 THE COURT: In what way? I am asking you, in  
12 what way?

13 MR. WEINSTEIN: Because my time hadn't elapsed.

14 THE COURT: Your time had elapsed.

15 MR. WEINSTEIN: It hadn't.

16 THE COURT: What was the basis for my chambers,  
17 you say, telling you that the time had been extended? Did I  
18 sign a written order?

19 MR. WEINSTEIN: It wasn't in a written order, no.

20 THE COURT: .So?

21 MR. WEINSTEIN: Well, it was oral.

22 THE COURT: It was oral? Who in my chambers told  
23 you that your time was extended?

24 MR. WEINSTEIN: Ms. Dewitt.

25 THE COURT: I will check with her.

1 MR. WEINSTEIN: OK.

2 THE COURT: The other question I have is: Did  
3 you indicate to my chambers that there was an objection to  
4 your extension?

5 MR. WEINSTEIN: Yes. In the letter.

6 THE COURT: You did.

7 MR. WEINSTEIN: Yes.

8 THE COURT: Do you have a copy of your letter?

9 MR. WEINSTEIN: I may. Let me check.

10 (Handed to the Court)

11 THE COURT: This is her letter, not your letter.  
12 Where is your letter?

13 MR. WEINSTEIN: Let me read it first to make sure  
14 I have the right one.

15 OK, I am correct, it was September 20.

16 THE COURT: Let me read your letter.

17 MR. WEINSTEIN: OK (handing to the Court).

18 THE COURT: You indicated here that the time to  
19 file your papers was September 20.

20 MR. WEINSTEIN: Right.

21 THE COURT: What I understand is that it was a  
22 lot earlier than September 20.

23 MS. SASSOWER: July 14.

24 THE COURT: Sometime in July, wasn't it?

25 MR. WEINSTEIN: From the previous conference.

1 THE COURT: Yes. So this is a misrepresentation.

2 MR. WEINSTEIN: No, it isn't.

3 THE COURT: Yes, it is.

4 MR. WEINSTEIN: No. At that conference it was  
5 simply put off.

6 THE COURT: Where is the letter pursuant to which  
7 you requested the adjournment until September 20?

8 MR. WEINSTEIN: Until September 20?

9 THE COURT: Yes, where is that letter?

10 MR. WEINSTEIN: That occurred before I came to  
11 the office.

12 THE COURT: Do you have it in your file?

13 MR. WEINSTEIN: No. I don't even know if it was  
14 memorialized at all. I believe it was an oral  
15 understanding.

16 THE COURT: Normally I do not accept oral  
17 communications requesting extensions. That is why I would  
18 be greatly surprised if we granted one. If we granted one,  
19 it would probably have been upon the understanding that  
20 there was no objection to it.

21 MR. WEINSTEIN: Exactly. That is my  
22 understanding as well.

23 THE COURT: Yes. But if there was an objection  
24 to it, then --

25 MR. WEINSTEIN: I don't believe there was an

1 objection to it at that time. At the time it was made and  
2 granted and agreed to, I don't believe it was objected to at  
3 that time.

4 THE COURT: Do you have a written order extending  
5 your time to September 20?

6 MR. WEINSTEIN: No.

7 THE COURT: Go ahead, I will hear from you.

8 MS. SASSOWER: There are a couple of things.

9 Firstly, just on this aspect, I submitted my  
10 summary judgment papers June 23 pursuant to your Honor's  
11 order, and July 14 was the date you had fixed for his  
12 response. There was never any further discussion with me by  
13 anyone connected with the Attorney General's Office relative  
14 to that. The point is that my 3(g) statement was never  
15 disputed, my summary judgment arguments were never disputed.  
16 The time to do that was by July 14.

17 THE COURT: When is it going to be argued?

18 MS. SASSOWER: I beg your pardon?

19 THE COURT: When is it going to be argued?

20 MS. SASSOWER: You had set that down for October  
21 27, as the oral argument for that. If your Honor please, I  
22 do have some reference to give you in terms of your  
23 jurisdiction to grant relief under the circumstances at bar.

24 THE COURT: Let me see that.

25 MS. SASSOWER: In this memorandum of law, copy of

1 which is before the Court, and I will give you another copy  
2 now, filed by me on June 26, 1995, I made reference at page  
3 16 --

4 THE COURT: Page 16?

5 MS. SASSOWER: Yes. -- made reference, your  
6 Honor, to the long-established exceptions to the abstention  
7 doctrine. These specifically include bias on the part of  
8 the state adjudicators. I cite various paragraphs of the  
9 complaint that bring it within that long-established  
10 exception. As well, I make reference to the exception for  
11 bad faith, and *Dombrowski*-type harassment through multiple  
12 baseless disciplinary prosecution, which is precisely the  
13 case at bar. I cite the various paragraphs in my complaint  
14 that support that exception. I likewise point out the  
15 irreparable injury and loss that result in such an  
16 exception, where there is no monetary amount that could  
17 possibly compensate me for what has been done to me by the  
18 state courts in my suspension. All of the cases that are  
19 discussed in points 3 and 4 establish this Court's  
20 jurisdiction where there is evidence, as there is here,  
21 documented evidence --

22 THE COURT: I don't see any cases cited here. I  
23 see no cases cited here.

24 MS. SASSOWER: The case of *Dombrowski*, and all of  
25 the cases that are discussed in 3 and 4, and 2,

1 Rooker-Feldman and the cases that are discussed in that, to  
2 show that an exception is always made to allow federal  
3 intervention when federal rights are being invaded.

4 THE COURT: I don't see any reason why I should  
5 grant emergency injunctive relief when this issue is going  
6 to be argued on October 27.

7 MS. SASSOWER: But, your Honor, I have shown --  
8 and, by the way, there is just another one I wanted to  
9 mention --

10 THE COURT: This issue is all going to be aired  
11 on October 27.

12 MS. SASSOWER: But, your Honor, I came to you --

13 THE COURT: Why should I order --

14 MS. SASSOWER: I will tell you why.

15 THE COURT: Why should I order what amounts to  
16 mandatory injunctive relief in your favor when you have not  
17 sought that relief for five years?

18 MS. SASSOWER: Because it is an anathema, your  
19 Honor. I have sought release consistently in the state  
20 courts for the last four and a half years.

21 THE COURT: What I am saying to you is that a  
22 factor on a preliminary injunction application, which is  
23 what yours is, is laches.

24 MS. SASSOWER: There is no possible laches when I  
25 have exhausted myself and my --

1 THE COURT: It is the first you have asked me for  
2 preliminary injunctive relief.

3 MS. SASSOWER: But, your Honor, I have not sought  
4 to burden the federal courts. I have used every avenue of  
5 redress in the state court, including Article 78  
6 proceedings.

7 THE COURT: But you are asking for preliminary  
8 injunctive relief.

9 MS. SASSOWER: I am not asking for that now. I  
10 am asking only for the TRO.

11 THE COURT: A TRO is preliminary injunctive  
12 relief. If that is what you are asking for, that is denied.

13 MS. SASSOWER: If I came to your Honor, I am in  
14 jail, and I say to your Honor, on a *habeas corpus* writ,  
15 there was no indictment, and there was no hearing, and there  
16 were no --

17 THE COURT: I have heard your argument. I am  
18 prepared to rule on your application for a temporary  
19 restraining order now.

20 MS. SASSOWER: But would you not release me from  
21 jail if I showed you that?

22 THE COURT: I am going to rule on that one right  
23 now.

24 MS. SASSOWER: Would you please --

25 THE COURT: I have heard your argument. That's

1 it.

2 MS. SASSOWER: Would you please read the papers,  
3 your Honor.

4 THE COURT: I have to be at a meeting at 5  
5 o'clock. I have heard you for twenty minutes. That is long  
6 enough. I am ready to rule.

7 MS. SASSOWER: I am in a jail, a --

8 THE COURT: I am ready to rule. We have had this  
9 problem once before. I am telling you that I don't want any  
10 further argument on this issue. The other issue will be  
11 resolved when my law clerk gets down here.

12 The posture of this case is that the order  
13 complained of was issued, as I understand it, in June of  
14 1991. It is continuing. The matter has been litigated in  
15 the state courts, as I understand the facts. The issue of  
16 the Court's subject matter jurisdiction to issue the relief  
17 requested is going to be heard on October 27. The only  
18 issue before me is whether I should issue an injunction or a  
19 TRO, a temporary restraining order, between now and the time  
20 the Court hears oral argument on the merits. On that issue,  
21 since the application being made is in the nature of  
22 mandatory injunctive relief, the law in this circuit is that  
23 a higher showing is required for that relief to be ordered  
24 by this Court than would be the case in an ordinary  
25 injunction. I am not satisfied that a sufficient showing



1 for preliminary injunctive relief has been made, especially  
2 since this order has been in effect since 1991 and four  
3 years have elapsed. I see no reason for emergency relief of  
4 that sort between now and October 27. Moreover, since it  
5 is, in effect, mandatory injunctive relief and will give up  
6 the benefit of what she is seeking by way of ultimate relief  
7 here without having to resolve the merits of the underlying  
8 controversy, including the issues of the Court's subject  
9 matter jurisdiction and my powers with respect to  
10 abstention, all of which require a full argument on October  
11 27, I see no basis to find that you have come close to  
12 establishing what the Circuit Court has required for this  
13 Court to order interim mandatory injunctive relief. For the  
14 reasons given, the application for a temporary restraining  
15 order is denied.

16 To give you the benefit of an appeal to the  
17 Second Circuit, if you would like to have one, if I were to  
18 treat your application as one for preliminary injunctive  
19 relief to, in effect, suspend the state's suspension order  
20 between now and the time the matter is first heard, that  
21 would also be denied. While you may not appeal from a  
22 mandatory injunction denial, you may appeal from a decision  
23 seeking preliminary injunctive relief. So if you want to, I  
24 will sign a written order that you can take to the Circuit  
25 Court to seek that relief from them. I have ruled.

1 Now let's get to the other question.

2 MS. SASSOWER: But, your Honor --

3 THE COURT: I don't want to hear any more  
4 argument. I have ruled. I am giving you a direction that I  
5 want no further argument on this issue. I will issue a  
6 written order. You can appeal that order in the appropriate  
7 way to the United States Court of Appeals for the Second  
8 Circuit. I have heard your argument, and I am not persuaded  
9 you come close to meeting the standard for what amounts to  
10 preliminary injunctive relief, be it called a TRO or a  
11 preliminary injunction. If the Court of Appeals feels  
12 differently, they will reverse me.

13 Now let's get to the second issue. Our notes  
14 indicate that you had a conversation with my secretary on  
15 June 15 in which you indicated, Ms. Sassower, that you would  
16 not be able to respond to their cross-motion until August  
17 20.

18 MS. SASSOWER: I don't know what that reference  
19 means. There was no cross-motion. So I don't know --

20 THE COURT: They were going to file a  
21 cross-motion. Did we fix the time? Do you have the  
22 original order?

23 MS. SASSOWER: The point is that no cross-motion  
24 was ever made.

25 MR. WEINSTEIN: Oh, no, they were going to

1 cross-move.

2 MS. SASSOWER: But it appears that there was an  
3 ex parte conversation between Mr. Weinstein --

4 THE COURT: Weren't you going to cross-move for  
5 summary judgment?

6 MR. WEINSTEIN: No. I moved for judgment on the  
7 pleadings, she submitted her summary judgment motion, and  
8 then I was going to reply or respond somehow.

9 MS. SASSOWER: I submitted a response. I did not  
10 seek to avail myself of any extension whatsoever, because  
11 the motion that was made for dismissal was so patently  
12 frivolous.

13 THE COURT: The notes of my law clerk say here,  
14 "Orally advised Mrs. Sassower" -- that is you?

15 MS. SASSOWER: Yes.

16 THE COURT: -- "per her call that the judge would  
17 give her until August 20, 1995."

18 MS. SASSOWER: If I wanted it. I did not avail  
19 myself of it.

20 THE COURT: But you asked for it. Then we  
21 extended his time. So he is correct.

22 MS. SASSOWER: No, Mr. Weinstein was never  
23 notified, there is no indication of any notification, and  
24 that was only optional with me if I chose to make a  
25 cross-motion, which I did not.

1 THE COURT: If he understood that he had until  
2 September 20, his belief was not unreasonable.

3 MS. SASSOWER: When did he have such an  
4 understanding? He wasn't even in the case until September  
5 12, according to his letter. That is a total lie. His  
6 whole case is a total lie.

7 THE COURT: You asked for an extension of some  
8 time.

9 MS. SASSOWER: Excuse me, your Honor --

10 THE COURT: Sit down. I have checked our notes.  
11 There may have been a misunderstanding. As far as I am  
12 concerned, I will give you two weeks' additional time to  
13 file your papers.

14 MS. SASSOWER: May I be heard, your Honor? I  
15 would like to have him on the stand and I would like to have  
16 an opportunity to question, because this is a totally  
17 unjustified --

18 THE COURT: Who cares? It is just a matter of an  
19 extension of time.

20 MS. SASSOWER: But my papers were timely filed,  
21 and --

22 THE COURT: If you had not called to inquire as  
23 to extending your time, there would have been no confusion.  
24 You called. My notes reflect that you called and you asked  
25 for more time. If you chose not to avail yourself of more

1 time --

2 MS. SASSOWER: There was never any notification  
3 by me. I never made the motion.

4 THE COURT: We have a memo in our file, which is  
5 a business record, which I will accept as credible. In the  
6 meantime --

7 MS. SASSOWER: Do I have a right to question?

8 THE COURT: It is not worth the time of the Court  
9 to spend any time worrying about that.

10 MS. SASSOWER: But, your Honor --

11 THE COURT: It is within my discretion. I will  
12 give you until October 6 to file your papers. Since the  
13 matter is going to be heard on October 27, I need at least  
14 three weeks to review the papers. You can file your papers  
15 on October 7.

16 MS. SASSOWER: Will your Honor do this, then, if  
17 that is the case: Will your Honor be good enough to reserve  
18 decision on my application, inasmuch as you are going to be  
19 reviewing the papers and you have not --

20 THE COURT: If you want me to reserve decision,  
21 that is fine. If you want me to reserve decision, I will  
22 reserve decision until the 27th.

23 MS. SASSOWER: I believe that it would be better  
24 for your Honor to read the papers, inasmuch as your Honor is  
25 unfamiliar with my arguments --

1 THE COURT: You should understand that, since you  
2 asked me to reserve decision on it, you can't appeal.

3 MS. SASSOWER: I am not going to appeal, your  
4 Honor, until your Honor makes the decision on the 27th.

5 THE COURT: I ruled so that I could give you the  
6 opportunity to appeal between now and the 27th. If you  
7 don't want that, it is fine with me.

8 MS. SASSOWER: I have no ability to do that, your  
9 Honor. I am without counsel, I am physically handicapped,  
10 as you see by my cane.

11 THE COURT: Then I will reserve decision on your  
12 application for a preliminary injunction until I rule on the  
13 merits on October 27.

14 MS. SASSOWER: Yes, and that will give your Honor  
15 an opportunity to read the papers and the files and also to  
16 consider the other branch of my application, which is to  
17 enjoin the judicial defendants from adjudicating my cases,  
18 because they have been continuing to demonstrate their  
19 bias --

20 THE COURT: You are really stretching federal  
21 judicial power to the breaking point.

22 MS. SASSOWER: It is all documented, and if you  
23 read it, I think your hair will stand on end to see what has  
24 been done.

25 THE COURT: I think on that issue of enjoining

1 state court judges from deciding your cases, I may wait for  
2 some guidance from the 17th floor. See you on the 27th.

3 MS. SASSOWER: I ask you to read the *Dombrowski*  
4 case.

5 THE COURT: I will look at the *Dombrowski* case,  
6 but I don't know of any case in which a federal judge has  
7 ever enjoined a state judge from sitting on a case.

8 MS. SASSOWER: I have submitted with my papers  
9 the full --

10 THE COURT: I am sure *Dombrowski* doesn't say  
11 that. In any event, I will hear you on the 27th, and you  
12 will both be given fifteen minutes to argue, no more and no  
13 less.

14 MS. SASSOWER: Will I be given an opportunity  
15 to --

16 THE COURT: You will be given fifteen minutes.

17 MS. SASSOWER: -- respond to Mr. Weinstein's  
18 papers?

19 THE COURT: No. No reply papers, because he is  
20 responding to a cross-motion.

21 MS. SASSOWER: There is no cross-motion, your  
22 Honor.

23 THE COURT: You made a cross-motion, right?

24 MS. SASSOWER: I did not, your Honor.

25 THE COURT: He is replying to your cross-motion.

1 MS. SASSOWER: I did not make a cross-motion.

2 THE COURT: What are you replying to?

3 MR. WEINSTEIN: I made a motion on the pleadings.  
4 She made a summary judgment motion. I am going to reply to  
5 that.

6 THE COURT: Now I am going to start losing  
7 patience. Did you ask for summary judgment in response to  
8 his motion to dismiss?

9 MS. SASSOWER: I asked, your Honor --

10 THE COURT: Did you? Yes or no.

11 MS. SASSOWER: I asked for a conversion of his  
12 Rule 12 motion.

13 THE COURT: Did you ask for some affirmative  
14 relief in response to his motion?

15 MS. SASSOWER: As authorized by Rule 12, I asked  
16 for conversion. Your Honor has not read my papers.

17 THE COURT: You asked for affirmative relief?

18 MS. SASSOWER: I asked for --

19 THE COURT: Wait a minute. My question will be  
20 answered yes or no, and it had better be answered truthfully  
21 because otherwise you may not be in this court either. Now,  
22 my question to you is --

23 MS. SASSOWER: Your Honor, I would like the  
24 penalties of perjury be imposed on --

25 THE COURT: Don't talk while I am talking. Did



1 you seek affirmative relief in your responding papers?

2 MS. SASSOWER: It is not by way of cross-motion,  
3 your Honor. It is by way of the relief authorized under  
4 Rule 12, which is the motion that he made.

5 THE COURT: You are seeking affirmative relief.  
6 He gets a reply under my rules; you don't. I will see you  
7 on the 27th.

8 MS. SASSOWER: His is in opposition, not a reply.

9 THE COURT: I will see you on the 27th. He is  
10 responding to your action for injunctive relief. Are you  
11 not seeking injunctive relief in your papers?

12 MR> WEINSTEIN: Summary judgment.

13 THE COURT: Are you not seeking injunctive  
14 relief?

15 MS. SASSOWER: That is this order to show cause  
16 which your Honor hasn't signed yet.

17 THE COURT: And you are seeking a declaratory  
18 judgment, right? That is affirmative relief. He gets a  
19 reply.

20 MS. SASSOWER: Your Honor, in my order to show  
21 cause that is returnable the 27th, what is your Honor's  
22 disposition? I have an order to show cause.

23 THE COURT: Your order to show cause is  
24 returnable today.

25 MS. SASSOWER: You had not signed it.

1 THE COURT: I have adjourned it at your request  
2 to October 27.

3 MS. SASSOWER: Where are his papers?

4 THE COURT: I don't need any papers on this  
5 issue. I don't need a response. I looked at your papers.  
6 I am not required to take a response from him. But if he  
7 wants to respond to the issues raised, he can. The issue of  
8 whether or not you are entitled to preliminary injunctive  
9 relief will be moot on October 27, so why should he respond  
10 to it?

11 MS. SASSOWER: You have made up your mind  
12 already.

13 THE COURT: No. I have ruled already.

14 MS. SASSOWER: I thought you were reserving --

15 THE COURT: Wait a minute. I ruled already.  
16 Then you asked me to defer a ruling and I did, right?

17 MS. SASSOWER: And you said you will.

18 THE COURT: I don't need a response from him on  
19 the issue of preliminary injunctive relief or TRO, because  
20 that would be moot on October 27, because I will rule on the  
21 merits on that day. So there is no need for injunctive  
22 relief between now and then.

23

24

25