

THE NEW YORK SURROGATE COURT

-----X

IN THE MATTER OF:

ESTATE OF JULIA TASCHEREAU

File No.:  
1042/98

-----X

April 1, 2009

HELD AT: THE NEW YORK SURROGATE COURT  
31 Chamber Street, Room 303  
New York, NY 10007

BEFORE: HONORABLE WEBBER,  
Judge

APPEARANCES: MR. WASSERMAN, ESQ.  
Attorney for the Respondent

MR. SCHRAM, ESQ.  
Attorney for the Public Administrator

ELIZABETH COMBIER  
Proponent Pro Se

TRANSCRIBER: LINDA BACHELLER

I N D E X

W I T N E S S E S

<u>PETITIONER:</u>			RE	RE	V.	
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>D.</u>	<u>J</u>

<u>RESPONDENT:</u>			RE	RE	V.	
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>D.</u>	<u>J</u>

E X H I B I T S

<u>PETITIONER:</u>				
<u>IDENTIFICATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>	

<u>RESPONDENT:</u>				
<u>IDENTIFICATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>	

1 THE COURT: This is going to be tape  
2 recorded, so to that end, put your stuff down.  
3 Everybody have a seat please, and give your  
4 appearances for the tape.

5 MS. COMBIERKAPEL: Your Honor, I might have  
6 two assistants with me, because I have heart failure  
7 due to harassment - - these gentlemen, and I have a  
8 heart condition now due to that.

9 THE COURT: So, if you have a physician,  
10 have your physician come into the court room then and  
11 your physician can sit down at the back - - there  
12 are doctors, I assume, cardiologist?

13 MS. COMBIERKAPEL: No, they are my people  
14 who are here to take care of me - - I have a  
15 harassment charge - -

16 THE COURT: Okay. So, if you have medical  
17 personnel, you have a physician, you have doctors who  
18 are here who can assist you, if for some reason you  
19 went into cardiac arrest, that's fine. If these are  
20 not medical personnel, then they cannot be present.  
21 The court officer here is, the court officer is here  
22 to protect you. So, if there are issues in terms of  
23 anyone harassing you, the court officer will spring  
24 into action.

25 [CROSS TALK]

1 MS. COMBIERKAPEL: Your Honor, is this part  
2 of the record, Your Honor?

3 THE COURT: I stated that there is a tape  
4 recorder of these proceedings.

5 MR. WASSERMAN: - -

6 THE COURT: And I think that it was clear to  
7 you that this proceeding, these proceedings will be  
8 tape recorded. You will be given a copy of that  
9 tape, the transcript of that tape - - stated here  
10 today will be recorded. There is a recording  
11 mechanism. Everything is being taped, and it will be  
12 continued. We are not going to stop the tape at any  
13 point and talk. Okay.

14 MS. COMBIERKAPEL: Your Honor, I object. I  
15 believe you are violating my rights to have my people  
16 here. And I will put that on the record, as well. Is  
17 the record on now?

18 THE COURT: It is. It's been on since you  
19 walked into the court room fifteen minutes late.

20 MS. COMBIERKAPEL: Let the record stand that  
21 you have violated my constitutional right by having  
22 me alone in this courtroom with the two men that have  
23 stolen my mother's property. And Mary Santamarina  
24 who for four years I - - her screaming obscenities at  
25 me in order to get this man to steal the property and

1 I have the pictures right there.

2 THE COURT: Okay. So - - what this is, why  
3 don't you have a seat there so we can conclude or  
4 continue with this talk. What this is is a pretrial  
5 conference. I want to ensure that all the issues  
6 have been resolved thus far in terms of discovery  
7 issues, in terms of also - - in terms of the issues  
8 that will be litigated at trial, and finally to set a  
9 date for that trial.

10 So, that's the purpose of this conference.  
11 So, in terms of the discovery that you have, has all  
12 discovery been turned over?

13 MS. COMBIERKAPEL: No.

14 THE COURT: What discovery is missing?

15 FEMALE VOICE: First and foremost, you will  
16 see on the record that I filed a motion, after  
17 motion, after motion to get discovery and inspection  
18 and they are in Ms. Santamarina's office, but have  
19 never even - - on the record as far as I know. She  
20 has kept them secret and hidden. The discovery  
21 motions that I filed were for any evidence to support  
22 whatsoever Mr. Wasserman's claims. He has never  
23 given me any discovery whatsoever.

24 In addition, Mr. Wasserman, between April  
25 and June 1998 stole the properties from the inside of

1 my mother's apartment - -

2 THE COURT: Okay. Ms. - - I am sorry - -  
3 for a second, I do apologize. One thing is that - -  
4 recording this when one person speaks, I ask that you  
5 not speak at the same time, so we have a clear  
6 record. And I do apologize for that. Ms. - - what  
7 I going to do now is to help the record in terms of  
8 what exactly you are talking about in terms of the  
9 issues here.

10 MS. COMBIERKAPEL: Discovery.

11 THE COURT: Okay. So, in terms of any  
12 allegations that monies were stolen, that you were  
13 harassed, etc., those are really not germane to this  
14 conference. What we are trying to do, again, is to  
15 narrow the issues as to trial. So, what I am asking,  
16 when I ask you about discovery, I am asking about  
17 documents that you have requested that - - they can  
18 be turned over to you. Were there any documents  
19 wherein this court directed to be turned over to you  
20 that you have not received?

21 MS. COMBIERKAPEL: Yes, Your Honor.

22 THE COURT: What documents are those,  
23 specifically?

24 MS. COMBIERKAPEL: Specifically?

25 THE COURT: Yes.

1 MS. COMBIERKAPEL: Mr. Wasserman made only  
2 one claim that I exerted undue influence over my  
3 mother that requires, Your Honor, documentation. I  
4 have no documentation whatsoever to support that  
5 claim.

6 THE COURT: Okay. So, you requested  
7 documents as to his claim as to undue influence?

8 MS. COMBIERKAPEL: Absolutely.

9 THE COURT: Is that what you are stating?

10 MS. COMBIERKAPEL: Absolutely.

11 THE COURT: And - - ?

12 MS. COMBIERKAPEL: They said that he had to  
13 give me documentation.

14 THE COURT: And so, Mr. Wasserman, were  
15 there any documents which you were directed to turn  
16 over to her regarding your claim of undue influence,  
17 which you did not turn over to her?

18 MR. WASSERMAN: I am not aware of any such  
19 documents that I have been requested by the court or  
20 by Ms. Combierkapel that I have not submitted to her.

21 THE COURT: Are there any documents in  
22 support of your claim of undue influence?

23 MR. WASSERMAN: There are certainly  
24 deposition testimony. I don't know if you want to  
25 consider that documents or not. There may be

1 additional documents that support that claim. I can  
2 not at the present time specify such documents, but I  
3 don't want to say that there are none other.

4 THE COURT: And what type of documents would  
5 they be?

6 MR. WASSERMAN: Documents relating to the  
7 relationship between Ms. Combierekapel and Ms. Danger,  
8 documents in the form of letters, documents with  
9 respect to the relationship between Ms. Combierekapel  
10 and the decedent.

11 THE COURT: Would these be documents that in  
12 the past were turned over to her?

13 MR. WASSERMAN: There were documents that  
14 were submitted by both sides to one another at  
15 various points in this litigation. I am not aware of  
16 any documents to which I am speaking which has not,  
17 that have not been turned over to her.

18 THE COURT: Okay. And is the testimony  
19 taken during deposition you would have transcripts of  
20 that testimony, is that correct?

21 MR. WASSERMAN: Yes.

22 MS. COMBIERKAPEL: Your Honor, I am sorry.  
23 This man is not, is deceiving you.

24 THE COURT: My question was, whether or not  
25 you have a transcription of the deposition testimony?

1 MS. COMBIERKAPEL: I do, but that's not what  
2 I asked for in my discovery in the - - motion, which  
3 I - -

4 THE COURT: Okay. So - -

5 [CROSS TALK]

6 MS. COMBIERKAPEL: Ms. Santamarina has a  
7 copy of my motion.

8 THE COURT: In terms of deposition  
9 testimony, you have a transcript of that?

10 MS. COMBIERKAPEL: I have all the 1404s  
11 which show that he is completely wrong, yes.

12 THE COURT: Okay. So - -

13 MS. COMBIERKAPEL: That's not what I asked  
14 for.

15 THE COURT: My question was whether or not  
16 you had the transcripts of the deposition testimony  
17 and the answer is yes.

18 MS. COMBIERKAPEL: Absolutely yes.

19 THE COURT: Okay.

20 MS. COMBIERKAPEL: And I have other  
21 depositions. What I wanted was something that proves  
22 his one claim as it stands right now that I exerted  
23 undue influence over my mother. He has never given  
24 any documents responsive to that, that I have asked  
25 for.

1 THE COURT: Mr. Wasserman, do you respond to  
2 that?

3 MS. COMBIERKAPEL: - - for eleven years.

4 MR. WASSERMAN: I am not aware of any  
5 documents which she has requested that has not been  
6 submitted to her.

7 THE COURT: Okay. Good. So, the documents  
8 have been turned over.

9 MS. COMBIERKAPEL: No, Your Honor - -

10 THE COURT: - - what he is stating is that  
11 he is unaware of any documents which go to that  
12 request and go to that claim. That's the - - issue  
13 as to whether or not he is going to be able to prove  
14 that at trial. What he is stating is there are no  
15 such documents that he is aware of that have not been  
16 turned over to you, which means, you have all of the  
17 documents. Whether that proves his case at trial is  
18 another issue. That's a separate issue.

19 MS. COMBIERKAPEL: Your Honor, I am sorry, I  
20 am not an attorney. Respectfully, he is not telling  
21 you the truth.

22 THE COURT: But you are not listening and I  
23 recognize that you are not an attorney, but you are  
24 not listening. What he is saying is that you are in  
25 receipt of all the documents that he has which goes

1 to that claim. Again, whether that is sufficient in  
2 terms of his later proof at trial is another issue.  
3 If, in fact, there are other documents which turn up  
4 at trial, which have not been turned over to you,  
5 then there will be certain consequences and  
6 ramifications of that at the time of trial. Do you  
7 understand what I am saying?

8 MS. COMBIERKAPEL: Yes, just so I am clear.  
9 When I submit to the jury the copy of the discovery  
10 and inspection motion which I filed three times in  
11 this court with Mary Santamarina, and the items that  
12 I asked for deal specifically have never been  
13 supplied by Mr. Wasserman, then you are saying that  
14 that would prove that he did not give me the  
15 documents that I asked for that were responsive to  
16 his claim that I exerted undue influence, is that  
17 correct?

18 THE COURT: No. Depending upon, well, I am  
19 not making a ruling as to whether or not you would be  
20 able to submit that to the jury. That's an issue in  
21 terms of the rules of evidence as to whether or not  
22 you would be able to submit that to the jury. What I  
23 am saying, stating is that if he has neglected to  
24 turn over certain documents to you, and it turns out  
25 at trial that he neglected to turn those items over

1 to you, then there are certain sanctions which would  
2 be imposed on him, and also in terms of his ability  
3 to use those documents at trial. That is what I am  
4 saying.

5 MS. COMBIERKAPEL: All right. And the other  
6 matter, Your Honor, is that Mr. Wasserman has never  
7 allowed me to appraise the value of the property that  
8 was inside my mother's apartment, because Mr. Schram  
9 obtained control of the property by an order of Renee  
10 Roth that my mother's will never existed.

11 THE COURT: I can't - - the issue of undue  
12 influence, we have not - - any other issues, and  
13 that's why I wanted to make sure that we knew exactly  
14 what the trial is going to, what the trial is going  
15 to entail, what issues were going to be resolved at  
16 trial. The issue is undue influence. That is the  
17 claim.

18 MS. COMBIERKAPEL: Okay.

19 THE COURT: In terms of any appraisals of  
20 property - - that is a separate issue at this point  
21 in time - - of the trial.

22 MS. COMBIERKAPEL: Oh, okay.

23 THE COURT: So, we are talking undue  
24 influence. Any other issues to be litigated at trial,  
25 Mr. Wasserman?

1 MR. WASSERMAN: Yes, Judge, I think the  
2 objections include a few issues. One of which is the  
3 lack of competence of the decedent at the time.

4 THE COURT: Right.

5 MR. WASSERMAN: The objections state others  
6 as well, but I believe I may have withdrawn the  
7 others, and I think it's competency and undue  
8 influence.

9 THE COURT: Right, that was the other issue.  
10 I believe you did withdraw the third objection. I  
11 think we are dealing with undue influence - -  
12 papers, undue influence as well as lack of competence  
13 or capacity.

14 MR. WASSERMAN: And Your Honor, may I  
15 respond somewhat to what Ms. Combierekapel has  
16 indicated?

17 THE COURT: Certainly, as long it is  
18 relevant to the issues that we are going to be.

19 MR. WASSERMAN: I think they are.

20 THE COURT: Okay. Go ahead.

21 MR. WASSERMAN: First, she indicated a jury  
22 trial. I am not aware of any jury demand having  
23 properly been made.

24 MS. COMBIERKAPEL: I have the paperwork.

25 THE COURT: Remember what I told you about

1 the record.

2 MS. COMBIERKAPEL: I am sorry.

3 THE COURT: Go ahead, Mr. Wasserman.

4 MR. WASSERMAN: I am unaware of any jury  
5 demand having been properly made, and so I would like  
6 to discuss that issue if I could. In addition,  
7 concerning documents. Your Honor may be aware that  
8 there are a number of documents that are in the  
9 possession of one of Ms. Combierkapel's former  
10 attorneys. The documents are being kept by that  
11 attorney whose name is Jonathan Landsman as a lien, a  
12 retaining lien which he had on the file. There are  
13 voluminous documents, I believe. And one issue that  
14 we, I believe, have to discuss at this conference is  
15 how we can obtain those documents, and what the  
16 procedure should be in order to do so.

17 THE COURT: These are documents I assume  
18 that should be turned over to you?

19 MR. WASSERMAN: Yes. They are documents  
20 that I certainly wish to have access of in order to  
21 submit at the trial of this action.

22 THE COURT: Are there alternative ways in  
23 which to obtain these documents, or are there copies  
24 somewhere else or other ways in which to obtain them  
25 other than from the attorney?

1 MR. WASSERMAN: Some documents were copies,  
2 not all documents were copied. I am not aware of  
3 which documents were, in fact, kept by Mr. Landsman.  
4 So, I can't really answer that fully.

5 THE COURT: Have you spoken to him at all  
6 since his signing over these documents? Excuse me.  
7 I am sorry. Had you spoken to him at all?

8 MR. WASSERMAN: I have spoken to him, not  
9 recently. But, I have spoken to Mr. Landsman and my  
10 understanding that upon a proper authorization by the  
11 court, he would, in fact, release those documents in  
12 his possession.

13 THE COURT: And have you spoken to Mr.  
14 Landsman at all concerning the lien and concerning  
15 his turning over those documents?

16 MS. COMBIERKAPEL: Your Honor, for five  
17 years Mr. Wasserman went into the office of Mr.  
18 Jonathan Landsman and my former attorney Eli Uncyk,  
19 and went over every single document, which I have  
20 allowed him to do freely and openly. The records  
21 that he has are a complete record, Your Honor. He is  
22 once again not telling this court - -

23 THE COURT: Well, that's your position. The  
24 long - -

25 MS. COMBIERKAPEL: Your Honor?

1 THE COURT: Let me just state to you what  
2 the law states. The law states that he has a right to  
3 have physical possession of those documents.

4 MS. COMBIERKAPEL: He does.

5 THE COURT: And he - -

6 MS. COMBIERKAPEL: He copied them all.

7 THE COURT: And he is stating that he does  
8 not have full possession of the documents.

9 MS. COMBIERKAPEL: He copied them all, Your  
10 Honor.

11 THE COURT: Well, he is saying that he did  
12 not. Also, my understanding is that Judge Roth - -  
13 that the turn over the documents, that the documents  
14 be turned over if you posted \$7000, \$7000 bond. So,  
15 did you do that?

16 MS. COMBIERKAPEL: Mr. Landsman is being  
17 sued for malpractice.

18 THE COURT: But my question was - -

19 MS. COMBIERKAPEL: No - -

20 THE COURT: So you did not post that?

21 MS. COMBIERKAPEL: No, because he is being  
22 sued.

23 THE COURT: You are suing him?

24 MS. COMBIERKAPEL: For malpractice, yes.

25 THE COURT: You are suing him for

1 malpractice.

2 MS. COMBIERKAPEL: And physical abuse in his  
3 office.

4 THE COURT: Right. So, the point must be  
5 made that Mr. Wasserman must receive copies of those  
6 documents.

7 MS. COMBIERKAPEL: Your Honor, he has the  
8 copies.

9 THE COURT: He states that he doesn't have  
10 the copies.

11 MS. COMBIERKAPEL: That is untrue.

12 THE COURT: Well, I have to go with what he  
13 says. He says he doesn't have the copies. It's like  
14 you say you don't have copies, I have to - -

15 MS. COMBIERKAPEL: It's in the record.

16 THE COURT: Well, do you have copies of  
17 them?

18 MS. COMBIERKAPEL: He has the copies.

19 THE COURT: Do you have copies?

20 MS. COMBIERKAPEL: No, I don't. He copied  
21 them in Mr. Uncyk's office.

22 THE COURT: Well, do you need a copy as well  
23 - - ?

24 MS. COMBIERKAPEL: Mr. Landsman is  
25 withholding them until the law suit is completed.

1 THE COURT: Okay. So, you see how - -

2 MS. COMBIERKAPEL: Yes, I do, Your Honor.

3 THE COURT: - - so if he doesn't have them,  
4 he can't turn them over to you. So, since you then -  
5 - both you and he have the documents?

6 MS. COMBIERKAPEL: Your Honor, I don't have  
7 \$7000. I don't have a penny to my name right now. I  
8 am poor. So, if you would make a ruling that Mr.  
9 Landsman has to hand over these records, with the  
10 understanding that under judiciary law or lawyer's  
11 responsibilities he should have done anyway.

12 THE COURT: I don't really have the  
13 authority to do that, plus the - - previously  
14 ordered you to post the \$7000 bond, plus I don't know  
15 how amenable Mr. Landsman is going to be to this  
16 given the fact that you are suing him and you are  
17 suing him for malpractice, and you are also claiming  
18 physical abuse. So, I don't see that he is going to  
19 be that amenable to it.

20 MS. COMBIERKAPEL: But Your Honor.

21 THE COURT: I also, you said you don't have  
22 a penny to your name, it's a bond, so you are not  
23 paying the entire \$7000. You are paying a percentage  
24 of that \$7000.

25 MS. COMBIERKAPEL: Your Honor, Mr. Wasserman

1 copied the record over a period of four years. I was  
2 there in the room with him, in the lawyer's office on  
3 all of the occasions. Eli Uncyk can testify that he  
4 had full access to all the records at all time for  
5 four years. I willingly allowed him to do that. I  
6 never said no to him, ever.

7 THE COURT: Well, he doesn't have the  
8 documents now.

9 MS. COMBIERKAPEL: He does have them. He  
10 does have them, Your Honor.

11 THE COURT: Okay. He does not have documents  
12 now and in order for him to obtain those documents  
13 you would have to post and get the bond for \$7000,  
14 whatever - -

15 MS. COMBIERKAPEL: Your Honor, I don't have  
16 it.

17 THE COURT: Well.

18 MS. COMBIERKAPEL: I don't have \$7000 to my  
19 name right now.

20 THE COURT: But - - as I stated that if it  
21 turns out that he has documents which he has not  
22 turned over to you at trial, there will be certain  
23 sanctions on him. If there are documents on your side  
24 which you have not turned over to him at trial, there  
25 will be sanctions to you.

1 MS. COMBIERKAPEL: Absolutely. The issue.

2 THE COURT: So, you recognize therefore,  
3 that if you don't obtain these documents from Mr.  
4 Landsman, then you also will be subject to sanction.

5 MS. COMBIERKAPEL: I understand that. And I  
6 do intend on going to the US attorney about this.

7 THE COURT: Well, I don't know what the US  
8 attorney can do, but if the US attorney can get the  
9 documents - -

10 MS. COMBIERKAPEL: No, it's about this  
11 court, Your Honor. I understand you want to sanction  
12 me. I do.

13 THE COURT: No, that's not what I stated.  
14 See, I think that's one of your problems. You don't  
15 listen. I did not say that I want to sanction you. I  
16 do not want to sanction you. I am telling you that  
17 if you do not turn the documents over to him, then  
18 you also would be subject to sanction. I did not  
19 state that I will sanction you or that I want to  
20 sanction you. I am simply telling you what the law  
21 states. That is all I stated to you.

22 MS. COMBIERKAPEL: Okay. Your Honor, every  
23 single document that he has asked for that applies  
24 itself to the undue influence claim has been turned  
25 over to him and I do have copies of them.

1 THE COURT: Okay, good.

2 MS. COMBIERKAPEL: So, I will gladly give  
3 him all the documents that are on this table.

4 THE COURT: Excellent.

5 MS. COMBIERKAPEL: Proving he is lying.

6 THE COURT: Well.

7 MS. COMBIERKAPEL: - -

8 THE COURT: Well, what it proves is that  
9 documents are being turned over.

10 MS. COMBIERKAPEL: Absolutely I will - -

11 THE COURT: Okay. So, you will make copies.  
12 You will make copies of those documents and they will  
13 be turned over.

14 MS. COMBIERKAPEL: Absolutely. Absolutely,  
15 Your Honor.

16 THE COURT: Okay. Any other.

17 MS. COMBIERKAPEL: Except that I request,  
18 Your Honor, that the documents that I have asked him  
19 to give me and it's in my discovery and inspection  
20 motion be also mandated from him to give to me.

21 THE COURT: I think he already stated that  
22 he has turned those documents over to you.

23 MS. COMBIERKAPEL: But, I already stated  
24 that I have handed mine over to him. And you have  
25 asked me to give it to him again.

1 THE COURT: Fine.

2 MS. COMBIERKAPEL: Would you please?

3 THE COURT: Sure. As - - turned these  
4 documents over, but when you turn documents over  
5 there should be some type of index and statement as  
6 to exactly what documents are being turned over.

7 MS. COMBIERKAPEL: Absolutely. I am.

8 THE COURT: Okay. So, whatever - -

9 MS. COMBIERKAPEL: I am very good about  
10 that. I have indexed. I have colored paper to show  
11 differences.

12 THE COURT: Excellent.

13 MS. COMBIERKAPEL: I am really good about  
14 that.

15 THE COURT: So, we are going to go through  
16 this again.

17 MS. COMBIERKAPEL: Would you please order  
18 him to give me?

19 THE COURT: I was doing that when you  
20 interrupted me.

21 MS. COMBIERKAPEL: Thank you. Thank you.

22 THE COURT: Okay. So, we are going to go  
23 through this again - - of documents. Anything  
24 else, Mr. Wasserman?

25 MR. WASSERMAN: Well, Your Honor, I do not

1 know what documents Mr. Landsman is retaining and  
2 it's, I would like to be able to know what documents.

3 THE COURT: I think what we are going to  
4 have to do in terms of Mr. Landsman is contact him  
5 and find out what documents he has in his possession.  
6 And then determine whether or not those are the same  
7 documents that you have copies of. I think he should  
8 be able to tell us that regardless of the lien on the  
9 file.

10 MR. WASSERMAN: Judge, we are talking about  
11 voluminous documents. I mean, I don't, I have seen  
12 documents in Mr., another one of Ms. Combierekapel's  
13 attorneys, a Mr. Uncyk's file. I don't know whether  
14 the documents that were, I saw in Mr. Uncyk's office  
15 are still in Mr. Uncyk's office. I don't know if Mr.  
16 Landsman has all those documents, some of those  
17 documents, different documents. I just know that he  
18 does have documents. And it's something that I feel  
19 in representing my client that I have to know what  
20 those documents are.

21 THE COURT: Yes, I mean, the documents, they  
22 should be in the possession of all parties. The  
23 attorney, Mr. Uncyk, do you think, is there an  
24 impediment to obtaining those documents from him?

25 MS. COMBIERKAPTEL: Your Honor, may I speak?

1 THE COURT: I am talking to Mr. Wasserman.

2 MR. WASSERMAN: I am not aware of what  
3 documents Mr. Uncyk does or does not have. I just  
4 know.

5 THE COURT: So, is it possible to get  
6 whatever documents Mr. Uncyk has? Can you get the  
7 documents from him?

8 MS. COMBIERKAPEL: May I speak?

9 THE COURT: Yes.

10 MS. COMBIERKAPEL: Your Honor, all the  
11 documents that Mr. Uncyk had in his office that Mr.  
12 Wasserman has seen, were moved to Mr. Landsman's  
13 office. There are no other documents.

14 THE COURT: Okay. So, Mr. Landsman has all  
15 the documents.

16 MS. COMBIERKAPEL: No, he does not. I have  
17 the documents. Mr. Wasserman has been on a fishing  
18 expedition for something for eleven years. I can  
19 prove it. I taped all his conversations on the  
20 phone. And what he wants to do, Your Honor, which I  
21 feel is unfair to me and prejudicial to me is to once  
22 again swing his fishing rod into an attorney's office  
23 and again, he has gone over all of these records. He  
24 made an allegation. What did he base his allegation  
25 on?

1 THE COURT: I understand what you are  
2 saying, but again, two things. One, if he is not  
3 entitled to these documents then the documents would  
4 not be turned over to him. The problem we have is  
5 that we do not know exactly what those documents are.

6 MS. COMBIERKAPEL: We do, Your Honor.

7 THE COURT: I do not know exactly what those  
8 documents are, because I have not been privy to those  
9 documents. I have not seen those documents and  
10 because of your current relationship with Mr.  
11 Landsman it's becoming a problem now for me to see  
12 those documents. So, what would normally happen  
13 would be if there is some dispute as to whether  
14 documents should be turned over or not, the court  
15 would take a look at the documents. The court would  
16 make a determination as to whether the documents  
17 should or should not be turned over. If the  
18 documents should be turned over, the court would then  
19 direct the documents to be turned over.

20 Since I don't have those documents, I cannot  
21 make that determination. That's one. Two, regardless  
22 of whether the documents are turned over or not,  
23 regardless of whether you believe it's a fishing  
24 expedition in terms of his possession of those  
25 documents, that is totally separate issue as to

1           whether or not those documents or testimony regarding  
2           those documents would be admissible at trial. So, we  
3           are dealing with two separate issues. The mere fact  
4           that he is in possession of the documents, or he has  
5           the documents does not necessarily mean that those  
6           documents would or would not be admissible at trial.  
7           Okay. But, the problems is and I understand you keep  
8           saying he has the documents, he has the documents. I  
9           cannot make a determination as to whether he should  
10          or should not have documents if I don't know what the  
11          documents are.

12                        MS. COMBIERKAPEL: Your Honor, this is a  
13          prejudicial instance against me.

14                        THE COURT: Why is it prejudicial incident?

15                        MS. COMBIERKAPEL: My documents that I  
16          intend on using against this man and Mr. Schram are.

17                        THE COURT: Or against the client that they  
18          represent.

19                        MS. COMBIERKAPEL: They don't represent any  
20          client. However, that's another matter.

21                        THE COURT: Okay.

22                        MS. COMBIERKAPEL: The issue is Mr.  
23          Wasserman came up with a claim.

24                        THE COURT: On behalf of his client.

25                        MS. COMBIERKAPEL: Okay.

1 THE COURT: If there is no client, if you  
2 are telling me there is no client, then there is no  
3 dispute and therefore, the case is over. Are you  
4 telling me he is representing himself in this and he  
5 doesn't have a client?

6 MS. COMBIERKAPEL: Yes.

7 THE COURT: That your sister is not involved  
8 in this, then let her come forward and say that. And  
9 this case is over. Is that what you are saying?

10 MS. COMBIERKAPEL: I have certain sources  
11 that yes, that is what I will be saying at trial.

12 THE COURT: So, we'll bring her in. You  
13 will say there is no claim against the estate. She  
14 has dropped all claims against the estate and the  
15 case is over.

16 MS. COMBIERKAPEL: That's what I understand.

17 THE COURT: Is that what your - - ?

18 MR. WASSERMAN: It is certainly not correct.

19 MS. COMBIERKAPEL: But, may I just get back  
20 to.

21 THE COURT: Well, no, because that's - -  
22 what you are saying is that your information is that  
23 she is - -

24 MS. COMBIERKAPEL: I would like to hear from  
25 her, Your Honor. That's what I am saying.

1 THE COURT: Well, you are saying that you  
2 have heard from her?

3 MS. COMBIERKAPEL: No, I have sources that  
4 make me believe that that is the case. However, I  
5 would like her to come in and state on the record  
6 that she is pursuing this, because it seems from my  
7 sources that this gentleman has taken on her persona  
8 and is pursuing it suesponte, whatever you want to  
9 call that. May I just get back to the issue of the  
10 records for the record, because I need to present  
11 this.

12 THE COURT: Certainly.

13 MS. COMBIERKAPEL: To the authorities that I  
14 am going with. If you allow, Your Honor, to have a  
15 raid of my former attorney.

16 THE COURT: If I could have what?

17 MS. COMBIERKAPEL: A raid, you go in and you  
18 take my records, I will have a claim for violation of  
19 my attorney client privilege.

20 THE COURT: No. That's not what we are  
21 talking about. We are not talking about any  
22 communications that you had with prior attorneys.  
23 What we are talking about are documents which are  
24 germane to this litigation. We are talking about  
25 documents in their possession which are germane to

1 the litigation. We are not talking about any  
2 confidential material. That is not the issue of this.  
3 They would not be allowed to possession of any of  
4 that.

5 MS. COMBIERKAPEL: Your Honor?

6 THE COURT: That is not what we are  
7 referring to. That is clear.

8 MS. COMBIERKAPEL: But, Your Honor, what my  
9 understanding of the law and again, I am not an  
10 attorney, so I apologize for presumputing, even being  
11 presumptuous. I read the law. I am a reporter on the  
12 law cases, and stuff like that, and I am saying for  
13 the record that I will supply Mr. Wasserman with  
14 discovery and inspection of documents he requests and  
15 I request that - -

16 THE COURT: Go ahead.

17 MS. COMBIERKAPEL: I request that he come up  
18 with discovery documents he wants to support his  
19 claims that there was incompetence of my mother, that  
20 there was undue influence, anything to do with those  
21 claims.

22 THE COURT: We just did that. I just did  
23 said a little while ago.

24 MS. COMBIERKAPEL: No.

25 THE COURT: That there would be another

1 exchange of documents. I just stated it. He is  
2 going to turn the documents over to you and you are  
3 going to turn the documents over to him.

4 MS. COMBIERKAPEL: Okay. I ask that this  
5 court leave the discovery at this point right now,  
6 because we do not know where this is going to lead,  
7 because I have given him documents.

8 THE COURT: I am sorry, I did not  
9 understand. We have to resolve all discovery issues  
10 today.

11 MS. COMBIERKAPEL: I want to resolve these  
12 discovery issues. I am saying that any contact with  
13 Mr. Landsman who is being sued and will be sued in  
14 another case involving Mr. Wasserman and Mr. Schram,  
15 he will be unable to give you the documents that he  
16 requests because of the two law suits and Mr.  
17 Wasserman's documentation.

18 THE COURT: But do you not understand that  
19 Mr. Wasserman would be entitled to these documents.

20 MS. COMBIERKAPEL: He is entitled to my  
21 supplying the documents responsive to his request.

22 THE COURT: Yes.

23 MS. COMBIERKAPEL: And I - -

24 THE COURT: And we want you to, we want you  
25 to turn those documents over to him.

1 MS. COMBIERKAPEL: I will give it to him.

2 THE COURT: - - apparently that Mr.  
3 Landsman would not turn documents over to you, so  
4 that you could turn them over to Mr. Wasserman and  
5 therefore, Judge Roth directed you to post the \$7000  
6 bond, because Mr. Landsman has a lien, there is a  
7 lien and therefore, prohibiting his turning the  
8 documents over to you. If you can get these  
9 documents from him, so that they can be turned over  
10 to Mr. Wasserman, then fine. Why you have not done  
11 so, I do not know.

12 MS. COMBIERKAPEL: Your Honor, for the  
13 record, I am sorry. I have given him every document  
14 he has asked for. I have all of them. I have copies  
15 of everything. And I will be glad.

16 THE COURT: You are confusing me.

17 MS. COMBIERKAPEL: I will be glad to answer.

18 THE COURT: Either Mr. Landsman has these  
19 documents and you may get the documents from Mr.  
20 Landsman and turn them over to Mr. Wasserman or you  
21 are telling me that there are no other documents and  
22 you are not going to go to Mr. Landsman for these  
23 documents and turn them over to Mr. Wasserman. So,  
24 what are you telling me?

25 MS. COMBIERKAPEL: For the record, Your

1 Honor.

2 THE COURT: Everything is on the record.

3 You don't have to keep saying that.

4 MS. COMBIERKAPEL: Okay. No, I am putting it  
5 on a website, so I have to say it for the record.

6 THE COURT: What do you mean you are putting  
7 it on a website?

8 MS. COMBIERKAPEL: This proceeding will be  
9 on a website.

10 THE COURT: You can't, the law prohibits you  
11 from doing so.

12 MS. COMBIERKAPEL: Okay.

13 THE COURT: It's a conference. You cannot  
14 put it on a website. The transcription of this  
15 conference is for purposes of trial. It is not the  
16 purposes of a website. You are precluded for the  
17 record, you are precluded from disseminating this on  
18 an website or any other media.

19 MS. COMBIERKAPEL: Okay.

20 THE COURT: Do you understand that?

21 MS. COMBIERKAPEL: I do, Your Honor.

22 THE COURT: Go ahead.

23 MS. COMBIERKAPEL: Your Honor, what I am  
24 saying is, Mr. Wasserman has made a claim, two claims  
25 that will go to trial. I have submitted to him for

1 the last eleven years willingly ever document that he  
2 has asked for responsive to those two claims. In  
3 addition, he went over those two claims and wanted  
4 everything to do with another matter. That is what I  
5 objected to and that is what I am still objecting to.

6 THE COURT: Fine. So, again.

7 MS. COMBIERKAPEL: In terms of the, I am  
8 sorry.

9 THE COURT: Go ahead.

10 MS. COMBIERKAPEL: In terms of what you have  
11 asked for the trial, and the documentation responsive  
12 to that, I am willing and able to supply to Mr.  
13 Wasserman. And as you just ruled, I have asked for  
14 him to give me any supporting documentation which he  
15 has not to support his claim.

16 THE COURT: Right, and that's what we  
17 stated.

18 MS. COMBIERKAPEL: But I do have copies of  
19 everything.

20 THE COURT: So - - of the documents.

21 MS. COMBIERKAPEL: I will willingly,  
22 absolutely.

23 THE COURT: Okay.

24 MS. COMBIERKAPEL: And I ask that he, in  
25 turn, give me the support of his two claims which

1 were just put out there for trial, the incompetence  
2 of my mom at the time of her death and the signing of  
3 the will, because I have all the depositions for  
4 that. I have all the 1404's, the attorney, the - -  
5 all of the depositions that were taken to support the  
6 signing of the will, and the property, the undue  
7 influence.

8 THE COURT: Right, so those documents you  
9 have - -

10 MS. COMBIERKAPEL: Absolutely.

11 THE COURT: Let me just finish. The  
12 documents that you have you are turning them over to  
13 Mr. Wasserman and Mr. Wasserman is turning the  
14 documents over to you.

15 MS. COMBIERKAPEL: Yes, thank you, Your  
16 Honor.

17 THE COURT: Any other issues?

18 MR. WASSERMAN: May I, Your Honor? I would  
19 like to clarify something. First, did Ms. Combier  
20 just indicate as I thought she may have done that all  
21 the documents in Mr. Landsman's possession, she has  
22 copies of? Is that what you are telling the court?

23 MS. COMBIERKAPEL: No, that's not what I  
24 told the court. I told the court that I have every  
25 single copy of every document responsive to this case

1 that will go to trial.

2 THE COURT: But, see, that's not the issue.  
3 If Mr. Landsman may have additional documents, which  
4 are also relevant and germane to this litigation, you  
5 would also have to obtain those documents from Mr.  
6 Landsman.

7 MS. COMBIERKAPEL: I do have that. And as  
8 you said.

9 THE COURT: Well.

10 MS. COMBIERKAPEL: Your Honor, let me just  
11 qualify that.

12 THE COURT: No, don't qualify it. It's  
13 confusing. Clarify it.

14 MS. COMBIERKAPEL: I will clarify it.

15 THE COURT: It's either one or the other.

16 MS. COMBIERKAPEL: Your Honor, I have all  
17 the documents responsive to any matter dealing with  
18 the will contest.

19 THE COURT: That's not the issue. The issue  
20 is.

21 MS. COMBIERKAPEL: He has no documents.

22 THE COURT: Whether or not Mr. Landsman,  
23 listen to me, and then you can respond, because I  
24 want it to be clear. The issue is whether Mr.  
25 Landsman has in his possession any documents which

1 are germane and relevant to this litigation. If Mr.  
2 Landsman has those documents in his possession, they  
3 must be turned over to you and they must be turned  
4 over to Mr. Wasserman. So you have to take the steps  
5 necessary to obtain those documents from Mr.  
6 Landsman.

7 MS. COMBIERKAPEL: Okay. Your Honor, may I  
8 request, I don't know how to do that, because I have  
9 no money right now.

10 THE COURT: The way that you were to do that  
11 was pursuant to Judge Roth's order which was to post  
12 a bond for \$7000, whatever percentage of that \$7000  
13 in order to obtain the bond in order to obtain the  
14 documents from Mr. Landsman.

15 MS. COMBIERKAPEL: Now - -

16 THE COURT: Now, again, since you are in  
17 litigation with Mr. Landsman, I don't know whether or  
18 not a conversation with him would help at all in  
19 terms of his turning these documents over to him. Is  
20 there a bond now that you can post? Do you have any  
21 money with which you can post a bond? Perhaps I can  
22 lower the bond, I don't know. We can try that.

23 MS. COMBIERKAPEL: I have a \$100.

24 THE COURT: That's not going to. I think you  
25 have to come up with more than \$100.

1 MS. COMBIERKAPEL: But, Your Honor, I have  
2 no money right now. I have no savings, I have no  
3 bank account. I have four children. I have a husband  
4 who doesn't make much money. We have three kids in  
5 college, and I have no money right now. I am  
6 completely broke.

7 THE COURT: Well, I don't know how we are  
8 going to get the documents.

9 MS. COMBIERKAPEL: And I have no relatives  
10 and he has no relatives either.

11 THE COURT: I do not know how we are going  
12 to get the documents from Mr. Landsman.

13 MS. COMBIERKAPEL: I will work with the  
14 court to get whatever documents you want at any time,  
15 but I don't have any money.

16 THE COURT: - - you are in financial  
17 straits with the children and the husband and then  
18 the cost of these constant litigations. That also is  
19 costing you a lot of money as well.

20 MS. COMBIERKAPEL: I have no money.

21 THE COURT: I don't know how, you know, I  
22 don't know how we are to work with Mr. Landsman in  
23 terms of obtaining these documents.

24 MS. COMBIERKAPEL: Could you order him to  
25 give me my documents?

1                   THE COURT: I don't have that authority. If  
2 I had the authority to do so, if Judge Roth had the  
3 authority to do so, it would have been done awhile  
4 ago. That was the purpose of the bond. I guess there  
5 was a reason for the \$7000. I guess you spoke to him  
6 or.

7                   MS. SANTAMARINA: May I speak?

8                   THE COURT: Yes.

9                   MS. SANTAMARINA: Just for the record, the  
10 reason why the judge went with the bond issue was  
11 that you had claimed that he was discharged for  
12 cause.

13                   MS. COMBIERKAPEL: Yes.

14                   MS. SANTAMARINA: Which would affect one's  
15 ability to have a retaining lien in the first place.  
16 The problem was that you were having also wanting a  
17 trial. And the concern that Judge Roth had was to  
18 protect you, and to protect you from disclosures that  
19 might be made in the context of a hearing on  
20 discharge for cause that would prejudice you at  
21 trial. And so, what the case is telling you to do in  
22 that circumstance is to post a bond.

23                   Now, at the time you owed him \$22,000,  
24 \$15,000 of it having related to the Supreme Court  
25 action, and \$7000 relating to this court, to the

1 claims here. So, we bifurcated it and we didn't want  
2 to make it so that you had to post a bond for an  
3 amount that was in excess of what was really at issue  
4 in the surrogate court proceedings. So, Judge Roth  
5 decided to bond you and I can't remember what the  
6 exact amount, but it was somewhere south of \$7000, so  
7 that you could post a bond that, what it does is  
8 protect him from in the event that you do owe him  
9 that money, but those decisions were rendered years  
10 ago.

11 And I am a little confused as to why it  
12 hasn't been resolved already, whether you have made  
13 your malpractice claim against him or done anything  
14 to bring this to closure, because as you know, when  
15 you brought the proceedings that you asked Judge Roth  
16 to turn over the documents. When you brought that  
17 proceeding you said it was because you were being  
18 prejudiced that he had the documents that you needed  
19 in your possession.

20 So, I am a little, I am not really  
21 understanding sort of the change of tune today, but  
22 the reason for the bond was actually to protect you,  
23 because Judge Roth didn't want disclosures made in  
24 the context of a hearing that would prejudice you  
25 during the trial. So, that's.

1 THE COURT: So, what's the status now of the  
2 law suit against Mr. Landsman?

3 MS. COMBIERKAPEL: It hasn't actually been  
4 filed, yet.

5 THE COURT: You haven't filed it yet?

6 MS. COMBIERKAPEL: I haven't yet.

7 THE COURT: And this is from what year, you  
8 are precluded now? You are out now?

9 MS. COMBIERKAPEL: I am sorry?

10 THE COURT: You are out.

11 MS. COMBIERKAPEL: What do you mean?

12 THE COURT: You are precluded from filing a  
13 law suit against Mr. Landsman.

14 MS. COMBIERKAPEL: Why would that be, Your  
15 Honor?

16 THE COURT: When did this alleged  
17 malpractice occur?

18 MS. COMBIERKAPEL: It's ongoing to this  
19 date.

20 THE COURT: No, when did it, okay. When.

21 MS. COMBIERKAPEL: It's ongoing right now,  
22 Your Honor. Mary Santamarina and Landsman and Mr.  
23 Wasserman brought a case.

24 THE COURT: In order to bring a malpractice  
25 law suit, you would have to have, you need a date

1 when the alleged malpractice took place. So, when is  
2 it that you are alleging that it first started?

3 MS. COMBIERKAPEL: It first started in 2003  
4 when I hired Mr. Landsman.

5 THE COURT: Okay. So, this is now 2009?

6 MS. COMBIERKAPEL: Yes.

7 THE COURT: Okay. So, you are out in terms  
8 of, the statute of limitations you would be out.

9 MS. COMBIERKAPEL: But.

10 THE COURT: Maybe you are precluded under  
11 the statute of limitations now from bringing this law  
12 suit against Mr. Landsman. That's the law.

13 MS. COMBIERKAPEL: What is the statute of  
14 limitations for fraud?

15 MS. SANTAMARINA: For malpractice I think  
16 it's three, or is it.

17 THE COURT: Three or two for malpractice.

18 MS. COMBIERKAPEL: So, fraud?

19 MR. WASSERMAN: Your Honor?

20 THE COURT: It doesn't really matter. The  
21 statute of limitations now would bar - -

22 MR. WASSERMAN: Your Honor, I believe that  
23 at the time that the bond was set, that part of the  
24 order also included an instruction that Ms.  
25 Combierekapel was to make a claim against Mr. Landsman

1 before the office of - - administration, which is  
2 established for issues of fee disputes. And I think,  
3 she may have had a certain amount of time to do that.

4 THE COURT: Well, that's separate. I mean,  
5 that is separate, and that she would not be able to  
6 do now either. But in terms of the malpractice claim,  
7 the max that, I think she is right. It's either two  
8 or three. If you are going for fraud, then it will be  
9 the same. If it's a contractual issue and if it's not  
10 a contractual issue you would have a little bit more  
11 time. But, the point is, in a court, and again, I am  
12 not bound and you are not bound by what I am stating  
13 in terms of the law, because you can check it  
14 yourself. I don't want you stating that I told you  
15 something that was incorrect.

16 But, what I am telling you is that my  
17 understanding is now that you would be time barred  
18 from bringing this law suit against Mr. Landsman for  
19 malpractice. You check this yourself, but my  
20 understanding is that you are time barred, which  
21 means that the statute of limitations which is the  
22 law on the books would preclude you now from bringing  
23 any lawsuit against Mr. Landsman. But you check it.

24 The point was, however, that Judge Roth has  
25 instituted the bond of \$7000. If you are now time

1 barred from bringing the malpractice suit against Mr.  
2 Landsman, then it becomes another issue in terms of  
3 obtaining those records. But the question, the point  
4 is well taken. Why have you waited all these years  
5 to file this law suit against Mr. Landsman?

6 MS. COMBIERKAPEL: Because it didn't end in  
7 2003. It started in 2003, and it continues.

8 THE COURT: When was the last time that he,  
9 that there was malpractice committed by Mr. Landsman  
10 as to you in this case?

11 MS. COMBIERKAPEL: 2006.

12 THE COURT: There is no theory of continuous  
13 activity in terms of malpractice. There is no  
14 concept that of that malpractice continuing. At some  
15 point in time the malpractice has occurred, and it  
16 ended. So, we don't have that concept.

17 Also, when did you discharge Mr. Landsman?

18 MS. COMBIERKAPEL: In, I don't remember.

19 THE COURT: 2005?

20 MS. COMBIERKAPEL: 2005.

21 THE COURT: Right. We have to deal with the  
22 issue of Mr. Landsman and I am not really clear how  
23 we are going to deal with that.

24 MS. COMBIERKAPEL: Your Honor?

25 THE COURT: Perhaps we no longer need the

1 bond because the malpractice suit is now time barred.  
2 Whether he is going to turn the documents over or  
3 not, I don't know.

4 MS. COMBIERKAPEL: But, Your Honor?

5 THE COURT: If he continues to have a lien.

6 MS. COMBIERKAPEL: Your Honor, may I say  
7 something, Your Honor? I feel that as he was my  
8 attorney and now most probably, I mean, it would make  
9 sense that he is a hostile person, his turning over  
10 documents that he obtained or he got just simply  
11 turning them over other than to me, however way that  
12 would happen, handing all of his documents.

13 THE COURT: We are not discuss that. That  
14 was never discussed.

15 MS. COMBIERKAPEL: Over to him and that  
16 would not allow me.

17 THE COURT: I said in terms of his turning  
18 the documents over, that was turning documents over  
19 to you.

20 MS. COMBIERKAPEL: To me.

21 THE COURT: There was never an issue, I  
22 never stated that he would turn the documents over  
23 directly turn them over to Mr. Wasserman. That was  
24 never an issue.

25 MS. COMBIERKAPEL: Because he and I, he and

1 I have been in touch. So, I will try to get.

2 THE COURT: Well, you have to do more than  
3 try. You have to get the documents from Mr.  
4 Landsman.

5 MS. COMBIERKAPEL: Well, I don't know how to  
6 do that, Your Honor, because I have no money.

7 THE COURT: Well, you are very ingenious and  
8 you are very intelligent. But, I think you should be  
9 able to figure out a way to do it. But, you have to  
10 get those documents from Mr. Landsman.

11 MS. COMBIERKAPEL: But in order, Your Honor,  
12 to - -

13 THE COURT: Well, you figure out a way to do  
14 it.

15 MS. COMBIERKAPEL: But if I can't.

16 THE COURT: Let me finish. If it's  
17 necessitates a lesser bond, if it necessitates no  
18 bond, then you let the court know. You let me know  
19 and I will do that. You figure out a way to get the  
20 documents from Mr. Landsman and I will assist you in  
21 any way I can in terms of your getting those  
22 documents.

23 MS. COMBIERKAPEL: Okay.

24 THE COURT: But you must get the documents  
25 from Mr. Landsman.

1 MS. COMBIERKAPEL: All right, Your Honor?

2 THE COURT: And then after you receive the  
3 documents from Mr. Landsman, they have to be turned  
4 over to Mr. Wasserman, those that are germane and  
5 relevant to this litigation, which my understanding  
6 is that Roth had previously ruled that the documents  
7 held by Mr. Landsman were, in fact, relevant and  
8 germane to the litigation.

9 MS. COMBIERKAPEL: But Your Honor, I am  
10 sorry. Again, I apologize but I feel that this court  
11 has already prejudiced this proceeding.

12 THE COURT: How, how?

13 MS. COMBIERKAPEL: I am saying to you at  
14 this point and I offer this with all honesty.

15 THE COURT: Continue.

16 MS. COMBIERKAPEL: I have all the documents  
17 responsive to Mr. Wasserman's two claims that you  
18 just said will be brought at trial.

19 THE COURT: Is it that you don't listen or  
20 is that you do not understand? I will repeat this  
21 again. Mr. Landsman has in his possession documents  
22 which are relevant and germane to this litigation.  
23 The question was put to you as to whether you have  
24 those documents in your possession. You stated no.  
25 Therefore, we need the documents from Mr. Landsman.

1 MS. COMBIERKAPEL: Okay, Your Honor, I  
2 request in order to be not prejudicial against me,  
3 that Mr. Wasserman give me a bill of particulars,  
4 discovery, exactly the documents that he wants.

5 THE COURT: This was already ruled upon by  
6 Judge Roth. Judge Roth - -

7 MS. COMBIERKAPEL: You just asked him to  
8 give me the discovery that he needs, so I request  
9 that he write down.

10 THE COURT: You, I don't know what you do  
11 this intentionally or not, because you don't pay  
12 attention. You do not listen. Mr. Wasserman is  
13 turning over, you don't have to write it down,  
14 because it's on the record. You will get a copy of  
15 the tape. So, you don't have to write it down. The  
16 record speaks for itself.

17 Mr. Wasserman is directed to turn over to  
18 you all the documents he has which are responsive, if  
19 you stop writing you will be able to hear me, and  
20 understand, okay. I want you to concentrate now, so  
21 that you can understand what I am saying. Okay. Mr.  
22 Wasserman has been directed to turn over to you all  
23 documents responsive to your discovery request which  
24 are germane and relevant to the two issues in this  
25 case, undue influence and lack of capacity or

1 competence on the part of your mother. Okay.

2 MS. COMBIERKAPEL: Right, and I have been so  
3 ordered as well.

4 THE COURT: You understand that, right?

5 MS. COMBIERKAPEL: And I have been so  
6 ordered as well.

7 THE COURT: Let me finish. He has been  
8 directed to turn those documents over to you. He has  
9 those documents in his possession. There is no third  
10 or fourth party who has those documents in their  
11 possession. So, he is going to turn those documents  
12 over to you.

13 You are going to turn over to Mr. Wasserman  
14 those documents which are relevant and germane to  
15 this litigation.

16 MS. COMBIERKAPEL: Yes.

17 THE COURT: And to those two issues. You  
18 have certain of those documents in your possession.  
19 But there are other documents which you do not have  
20 in your possession because those documents are in the  
21 possession of Mr. Landsman. And we know that the  
22 documents in possession of Mr. Landsman are relevant  
23 and germane to this litigation, because Judge Roth  
24 had previously ruled that they are relevant and  
25 germane to this litigation.

1           So, you must now obtain those documents from  
2           Mr. Landsman, make copies of them for yourself and  
3           they will also assist you in this litigation, and  
4           turn those documents over to Mr. Wasserman.

5           MS. COMBIERKAPEL:   Okay, Your Honor, I will  
6           make a good faith effort to do what you say.

7           THE COURT:   Okay.

8           MS. COMBIERKAPEL:   Okay.

9           THE COURT:   You have to do better than good  
10          faith, because your good faith has not worked ion the  
11          past year of this litigation.

12          MS. COMBIERKAPEL:   Could you give me an  
13          example of that?

14          THE COURT:   Because you were directed to  
15          post a bond in 2005 and 2006, 2006 you were directed  
16          to post a bond and it's now 20909 and you have not  
17          done so. Okay.   So, you are, and I stated, the court  
18          will work with you in terms of figuring out a way to  
19          get the documents from Mr. Landsman.

20          MS. COMBIERKAPEL:   Okay.

21          THE COURT:   I will do whatever I can do, but  
22          the other thing is this case has regressed far too  
23          long.   And it has to go to trial.

24          MS. COMBIERKAPEL:   Yes.

25          THE COURT:   And we have to set a trial date.

1 MS. COMBIERKAPEL: Okay.

2 THE COURT: So, the documents have to be  
3 turned over by Mr. Wasserman to you and you to Mr.  
4 Wasserman in enough time so that you can review the  
5 documents and go to trial. Okay. So, that's why you  
6 need to start working on this immediately so that you  
7 can get those documents to Mr. Wasserman and  
8 obviously he will get the documents to you.

9 MS. COMBIERKAPEL: Yes.

10 THE COURT: Do you understand?

11 MS. COMBIERKAPEL: Yes.

12 THE COURT: Okay, good.

13 MR. WASSERMAN: Your Honor?

14 THE COURT: Yes.

15 MR. WASSERMAN: Unfortunately, I do have  
16 some more issues that I think are relevant to this  
17 conference. First of all, I believe I heard Ms.  
18 Combier indicate to you that she had taped several  
19 conversations that she had had with me. I believe she  
20 also said she had taped several conversations or  
21 some, one or more conversations she had with Ms.  
22 Santamarina. I am not sure whether she has indicated  
23 she has taped conversations with Mr. Schram. But, it  
24 appears that those conversations that she has  
25 indicated that she has taped do relate to this

1 proceeding, and certainly with respect to me, I would  
2 like a direction that she turn over to me all tapes  
3 that she has relating to conversations with me  
4 concerning this litigation.

5 THE COURT: What is the other thing? Is  
6 there another matter?

7 MR. WASSERMAN: Yes. There is. Ms.  
8 Combier.

9 MS. COMBIERKAPEL: - -

10 THE COURT: Wait.

11 MS. COMBIERKAPEL: I have a chance to  
12 address him.

13 THE COURT: Wait, wait, wait. Go ahead.

14 MR. WASSERMAN: Ms. Combier also referred to  
15 a deposition of Scott Vanos.

16 THE COURT: Scott?

17 MR. WASSERMAN: Vanos, V-A-N-O-S. Mr. Vanos  
18 is an individual that she had noticed to take a  
19 deposition of, and I was being operated on the day  
20 that she was to take the deposition on. I was in, my  
21 recollection - -

22 THE COURT: Who is Mr. Vanos?

23 MR. WASSERMAN: Mr. Vanos as I understand  
24 it.

25 MS. COMBIERKAPEL: He is my witness, Your

1 Honor, at trial.

2 MR. WASSERMAN: It - -

3 THE COURT: Let Mr. Wasserman finish.

4 MR. WASSERMAN: It's an individual that she  
5 has indicated she wishes to have testify at the  
6 trial. I indicated to Ms. Comber that I was not  
7 able to attend this deposition on the day that she  
8 had stated, and I asked for an adjournment of the  
9 deposition.

10 THE COURT: When was this? Just give me a  
11 year?

12 MR. WASSERMAN: It might have been in 2007.

13 THE COURT: Okay.

14 MR. WASSERMAN: Later I received a supposed  
15 deposition transcript of Mr. Vanos' deposition.

16 THE COURT: Who was present representing  
17 your client?

18 MR. WASSERMAN: No one was present. I was  
19 not aware that the deposition was going to take  
20 place. I had indicated that I was unable to attend. I  
21 am a single practitioner. And clearly any supposed,  
22 my view and my position is and it should be discussed  
23 I think at this conference, that any supposed  
24 deposition that took place of Mr. Scott Vanos cannot  
25 be part of the record of this trial.

1 THE COURT: What's Mr. Vanos', what would be  
2 Mr. Vanos' testimony as to the issues? What would Mr.  
3 Vanos' testimony be as to these issues?

4 MS. COMBIERKAPEL: Your Honor, my statement  
5 for the record is if this court denies me one of my  
6 main witnesses.

7 THE COURT: I am not denying you anything. I  
8 am asking you what Mr. Vanos, let me, I'll ask the  
9 questions and then you respond. What would Mr. Vanos  
10 testimony be as to the issues of undue influence and  
11 lack of capacity?

12 MS. COMBIERKAPEL: He worked with my mother  
13 for fifteen years. He knows my sister, my mother, my  
14 entire family. He knows the church where she  
15 volunteered at. He is a main witness.

16 THE COURT: Okay. And so why was it that  
17 when Mr. Wasserman informed you that he would not be  
18 present due to medical reasons at this deposition,  
19 that you just went forward with this ex parti  
20 testimony of Mr. Vanos?

21 MS. COMBIERKAPEL: I notified Mr. Wasserman  
22 in plenty of time in 2004 or 2005, it wasn't 2007,  
23 that Mr. Vanos would be deposed. The day before Mr.  
24 Wasserman sent me an email saying that he would be in  
25 the hospital. I asked him for the hospital records,

1           what was he operated on, what hospital was he at. He  
2           never responded to me. So, we went forward anyway,  
3           even though I was willing to postpone it. But, we  
4           went forward anyway, because I felt that this was  
5           just the sabotage, if you can call it that way, of  
6           Mr. Wasserman to deny Scott Vanos his testimony,  
7           which is very damaging to Mr. Wasserman's case.

8                         THE COURT: Well, it's not a real deposition  
9           if the other side is not present to question the  
10          witness. You really don't have, it's a statement,  
11          it's not a deposition. And therefore, it would not,  
12          you would have real issues in terms of a trial in  
13          terms of the testimony taken. So, under those  
14          circumstances, you would not be able to go forward  
15          with it. And I don't know that Mr. Wasserman would,  
16          you know, make up the surgery and his illness in  
17          order not to be present at the deposition or the  
18          testimony of Mr. Vanos.

19                        But it's very simple. What we are going to  
20          do is just retake the testimony of Mr. Vanos.

21                        MS. COMBIERKAPEL: Okay. Thank you.

22                        THE COURT: We'll just have to reschedule  
23          the deposition of Mr. Vanos.

24                        MS. COMBIERKAPEL: He does not live in New  
25          York State, Your Honor.

1 THE COURT: I am sorry?

2 MS. COMBIERKAPEL: He does not live in New  
3 York State.

4 THE COURT: Okay. So, you'll have to speak  
5 to each other. You'll speak to Mr. Vanos. Figure  
6 out a date that's convenient for Mr. Vanos to come in  
7 and to testify for purposes of the deposition. You  
8 might be able to do a video also. But, you can speak  
9 to each other and arrange for that. And we would  
10 need that deposition with Mr. Wasserman or a  
11 representative present before Mr. Vanos obviously  
12 would be able to testify at trial. So, make sure we  
13 have that deposition done, since we can't.

14 Mr. Wasserman, were there any other issues.  
15 I know the tape recording, anything else?

16 MS. COMBIERKAPEL: May I address the tape  
17 recording?

18 THE COURT: I just want to make. I just want  
19 to question whether there are any other issues he  
20 has.

21 MR. WASSERMAN: I did ask questions about  
22 the jury.

23 THE COURT: That's going to be the last  
24 issue that we are going to deal with. In terms of the  
25 tape recording, the tape recording, do they deal with

1 the issues here of undue influence and lack of  
2 capacity?

3 MS. COMBIERKAPEL: Your Honor, as a  
4 reporter, I understand New York State law, and it's  
5 on my website by the way. That New York State law  
6 you can tape anyone as long as - -

7 THE COURT: As a reporter, you know, I know  
8 many reporters. And they know that when a question  
9 is asked or when they ask a question, they want an  
10 answer that's responsive to the question. My  
11 question to you and I'll repeat it was, does the tape  
12 recording that you made, do they go to the issues of  
13 undue influence or lack of capacity or lack of  
14 competence on the part of your mother?

15 MS. COMBIERKAPEL: They address the yelling  
16 and screaming of Ms. Santamarina.

17 THE COURT: Do they go to the issues at  
18 trial of undue influence?

19 MS. COMBIERKAPEL: They go to the corruption  
20 of this court, Your Honor.

21 THE COURT: Do they go to, I am not  
22 commenting on, I take offense to that.

23 MS. COMBIERKAPEL: I am sorry.

24 THE COURT: Yes, I don't think you are.

25 MS. COMBIERKAPEL: But that's the - -

1 THE COURT: I don't think you are, but I  
2 take offense to that. I am not corrupt. I don't  
3 believe that this court is corrupt.

4 MS. COMBIERKAPEL: The prior court, Your  
5 Honor.

6 THE COURT: So, I don't believe that the  
7 court is corrupt, so I take offense to that, and I  
8 don't see why that's necessary.

9 MS. COMBIERKAPEL: I - -

10 THE COURT: My question was, do these tape  
11 recordings, conversations you had with Mr. Wasserman  
12 or conversations that you had with my law clerk, do  
13 they go to the issues of undue influence or lack of  
14 capacity or competence on the part of your mother?

15 MS. COMBIERKAPEL: No.

16 THE COURT: Then they would not be either  
17 way, they would not be admissible and either way, you  
18 would not be allowed to refer to them or to use them  
19 in any fashion at this trial. Are we clear?

20 MS. COMBIERKAPEL: Yes.

21 THE COURT: Okay. Now we get to the issue  
22 of the trial itself. And you know, since you are  
23 proceeding pro se, and that's your right to do so. I  
24 suggest that you make sure that you are familiar with  
25 the rules of evidence in terms of how do you admit

1 evidence, how evidence is admitted, also that you  
2 familiarize yourself with the conduct of public  
3 trials. And you are very intelligent and you know,  
4 you know the procedures and I don't think it will be  
5 an issue for you. And I think you have done some of  
6 this in the past as well, in terms of familiarizing  
7 yourself with the issues.

8 We don't want there to be any issues in  
9 terms of either your conduct at trial or the conduct  
10 of any of the witnesses, the conduct of the attorneys  
11 at trial. We don't want there to be a situation  
12 where there is going to be a mistrial or anything  
13 like that, or where there is an error or issues on  
14 the record.

15 To that extent, we want to make sure that  
16 there aren't going to be any extraneous comments. For  
17 example, the corruption of this court. Any statements  
18 like that which are, you know, incorrect and also  
19 which are upsetting to this court. So, we want to  
20 make sure that we are going to deal with the issues  
21 and only the issues at hand. Mr. Wasserman mentioned  
22 the fact that there has not been a request for a jury  
23 trial.

24 MS. COMBIERKAPEL: Your Honor?

25 THE COURT: The law states, let me finish.

1 The law state - -

2 MS. COMBIERKAPEL: Your Honor, that's wrong.  
3 That is incorrect. The papers have been filed since,  
4 he filed them first. In his objection to probate he  
5 said jury trial demanded. Then I filed a motion  
6 which I believe I have a copy of right here, twice  
7 for a jury trial along with Mr. Wasserman's demand  
8 for a jury trial. We both asked for it on at least  
9 two occasions, and I have the papers here.

10 THE COURT: But, the law states, however,  
11 that you cannot move for a jury trial in a motion.  
12 That's not the proper procedure.

13 MS. COMBIERKAPEL: But he asked for a jury  
14 trial in his objections, and my attorney at the time  
15 agreed.

16 THE COURT: Mr. Wasserman?

17 MS. COMBIERKAPEL: And it's in the papers.

18 MR. WASSERMAN: At the time.

19 MS. COMBIERKAPEL: And I have copies of the  
20 papers.

21 MR. WASSERMAN: The time to ask for a - -  
22 asking for a jury trial is - - of issue. I did not  
23 request a jury trial.

24 THE COURT: When he filed his notice of  
25 issue, he did not request a jury trial.

1 MS. COMBIERKAPEL: What notice of issue?

2 THE COURT: The documents.

3 MS. COMBIERKAPEL: I don't have a note of  
4 issue, Your Honor.

5 THE COURT: You were served with it.

6 MS. COMBIERKAPEL: Your Honor, I request a  
7 trial by jury.

8 THE COURT: Unfortunately, the law states  
9 that you are not entitled to a trial by jury, because  
10 it was - - not requested - -

11 MS. COMBIERKAPEL: What law is that?

12 THE COURT: - - trial by jury, and he did  
13 not.

14 MS. COMBIERKAPEL: I did. I did and he did.

15 THE COURT: You cannot request it in your  
16 motion. That's what I am saying.

17 MS. COMBIERKAPEL: My attorney asked for it  
18 when he filed the objections to probate.

19 THE COURT: Your attorney, when I say you, I  
20 don't mean, I mean in terms of a litigant. A litigant  
21 cannot request or an attorney cannot request a trial  
22 by jury in a motion. That is not the proper place for  
23 it to be requested.

24 MS. COMBIERKAPEL: But Mr. Wasserman asked  
25 for a jury trial in his papers, and my attorney asked

1 for it as well.

2 THE COURT: But at the time.

3 MS. COMBIERKAPEL: Not in a motion.

4 However, in a petition, I believe.

5 THE COURT: At the, well, no, at the time of  
6 the note of issue, we have the note of issue.

7 MS. SANTAMARINA: We have the note of issue.  
8 The way it's - -

9 MS. COMBIERKAPEL: I don't have the note of  
10 issue.

11 MS. SANTAMARINA: Well.

12 [CROSS TALK]

13 THE COURT: It shows that it was served on  
14 you, Ms. Combiere, but in any event, there is a.

15 MS. COMBIERKAPEL: When?

16 THE COURT: I don't have a copy of it.

17 MS. COMBIERKAPEL: Because I never got it.

18 THE COURT: Well, that's - - I took a look  
19 at it the other day, well, I actually looked at it  
20 some time ago.

21 MS. COMBIERKAPEL: But for some reason - -

22 THE COURT: Let me finish.

23 MS. COMBIERKAPEL: Please, Your Honor, how  
24 can you have a note of issue without discovery.

25 THE COURT: The note of issue was filed.

1           There is no - -

2                       MS. COMBIERKAPEL:   When?

3                       THE COURT:   You did not object to the note  
4           of issue.

5                       MS. COMBIERKAPEL:   I never got it, Your  
6           Honor.

7                       THE COURT:   Well, it was served, the shows  
8           that you were served with the note of issue.

9                       MS. COMBIERKAPEL:   He does that all the  
10          time.

11                      THE COURT:   It shows that you were served.

12                      MS. COMBIERKAPEL:   He does that all the  
13          time.

14                      THE COURT:   - - find the affidavit.

15                      MS. COMBIERKAPEL:   But, Your Honor, how can  
16          you file a notice of issue, because we have been  
17          discussing discovery issues that are still open. You  
18          can't have a note of issue with open discovery.

19                      THE COURT:   Yes, and no.   What happens is,  
20          the note of issue is filed and discovery has not been  
21          completed, then there could be an objection to that  
22          note of issue. You did not object to the note of  
23          issue.

24                      MS. COMBIERKAPEL:   I never received it, Your  
25          Honor.

1 THE COURT: Okay. Well, we'll find the  
2 affidavit of service, but the fact remains that in  
3 the note of issue he does not request a trial by  
4 jury. He specifically does not request a trial by  
5 jury, so therefore, under the law there would not be  
6 a trial by jury.

7 MS. COMBIERKAPEL: Your Honor, I object to  
8 that. I request a trial by jury.

9 THE COURT: It's too late now to request a  
10 trial by jury.

11 MS. COMBIERKAPEL: I have requested it  
12 continuously over the last eleven years.

13 THE COURT: Yes.

14 MS. SANTAMARINA: Did you pay, I think it's  
15 a very simple thing to deal with. In the surrogate's  
16 court when you demand a jury, in other words, the law  
17 states that you can't rely on the other party's  
18 request for a jury. You have to file your own. You  
19 have to pay a fee.

20 MS. COMBIERKAPEL: Yes.

21 MS. SANTAMARINA: So, it's very simple. The  
22 court has no record of a fee having been paid, or no  
23 document that is a demand for jury. The specific  
24 document that's filed after the objections are filed.  
25 There is no, you don't ask for a jury trial in your

1 probate petition, because you obviously don't expect  
2 to have, or at least you didn't, you checked, no  
3 probate contest. So, you would have filed a jury  
4 demand and paid a fee. So, it's very simple. Find  
5 the document that shows that you demanded the jury in  
6 accordance with the FSPA and provide a copy of the  
7 check, which would have been issued to pay for the  
8 jury demand. There is a fee that is associated with  
9 it.

10 There is no record of the fee being in the  
11 court's date base. This is well before my time, but  
12 there is no record of the fee having been paid in the  
13 surrogate's court. So, we don't have any record of a  
14 jury demand having been made by you, notwithstanding  
15 your repeated references to having made one. It's as  
16 simple as that.

17 THE COURT: I would even accept, even if you  
18 don't have the canceled check. If you have the form,  
19 maybe Mr. Landsman has them in his files. If you have  
20 the form stating that there was a request or a demand  
21 for a trial by jury, even if there is nothing in our  
22 data bank showing that the checks, that the fee was  
23 actually paid, I would accept that. But, we have  
24 nothing, absolutely nothing in this file indicating a  
25 proper demand for a jury trial.

1 MS. COMBIERKAPEL: Okay. Your Honor, if by  
2 some chance and I can't assure you that I have that,  
3 because I had an attorney handling this, when he  
4 filed the objections to probate.

5 THE COURT: Yes.

6 MS. COMBIERKAPEL: So, I am sorry, I didn't  
7 know that that was required at the time, because I  
8 thought he was taking care of it.

9 THE COURT: Yes.

10 MS. COMBIERKAPEL: But, I request, Your  
11 Honor, due to the massive amount of documentation  
12 that I have in this case showing illegal and  
13 fraudulent, please let me finish, fraudulent activity  
14 in this court prior to you taking over, that we have  
15 at this point a consideration of me now going forward  
16 pro se and I want a jury trial, because I feel that  
17 any judgment against me with, I am sorry to say this  
18 again, Mary Santamarina is about to be sued, will be  
19 prejudicial.

20 THE COURT: She is not, she is not the  
21 judge. She would not be hearing this case.

22 MS. COMBIERKAPEL: I know, but Your Honor,  
23 there has been.

24 THE COURT: The problem is.

25 MS. COMBIERKAPEL: Could I just finish?

1                   THE COURT: Let me finish. Let me tell you.  
2                   The problem is that this demand for jury trial is not  
3                   in - - Mr. Wasserman, did you ever receive anything  
4                   or do you have anything in terms of a demand for a  
5                   jury trial?

6                   MR. WASSERMAN: I do not.

7                   THE COURT: - - do you have anything in  
8                   your file there which shows any demand for a jury  
9                   trial?

10                  MR. WASSERMAN: I believe I have a motion  
11                  for a jury trial, Your Honor. But, not a demand for  
12                  a jury, not a specific demand for a jury trial.

13                  THE COURT: Right, so the thing is, even if  
14                  you are stating that this is grand conspiracy on the  
15                  part of surrogate court in terms of denying you a  
16                  jury trial, somehow this paper was taken out of the  
17                  court file. Mr. Wasserman would have a copy of it,  
18                  Mr. Schram would have a copy of it. A copy of it  
19                  would exist somewhere. Do you think Mr. Landsman or  
20                  your attorney who was prior to Mr. Landsman - -  
21                  whether or not they have a copy of it. As Mr. Schram  
22                  mentioned, there is a notice of motion or a motion  
23                  for a jury trial, and that may be what you are  
24                  referring to, or what you believe was filed. But as  
25                  I have stated, that is insufficient.

1                   At this point in time we don't have the  
2                   basis, I don't have the basis to go forward with a  
3                   jury trial. However, if you wish to file a motion  
4                   now, putting forth the basis of the reasons why you  
5                   believe that there can be, withdrawn, that there  
6                   should be a jury trial, based upon whatever equities,  
7                   etc. you can certainly do so. And then, Mr. Wasserman  
8                   and Mr. Schram would respond to that. So, that, you  
9                   know, you can speak to your prior attorney and see  
10                  whether or not they filed the necessary paperwork.  
11                  And then, if you wish go forward and file a motion  
12                  for a jury trial.

13                   MS. COMBIERKAPEL: Okay. Thank you, Your  
14                   Honor. Because I believe that without a jury trial I  
15                   will be prejudiced by this court.

16                   THE COURT: You keep talking about being  
17                   prejudiced by this court and again, I take umbrage to  
18                   that. I am fair. I don't know you. I don't know  
19                   anything about this particular case. But I have taken  
20                   an oath and also I consider myself a fair jurist.  
21                   So, I don't appreciate this constant references to  
22                   being prejudiced by this court. It is not our intent  
23                   to prejudice you or prejudice any litigant in this  
24                   court.

25                   I don't know you as I have stated. So,

1           therefore, there is no reason for me to be  
2           prejudicial towards you. I treat all litigants with  
3           respect, assuming they treat me with the respect to  
4           be afforded me. So, I do not appreciate your  
5           constant references to being prejudiced by this court  
6           or this court being corrupt, etc. And also, you keep  
7           making references to various law suits that you are  
8           filing as to various members of my staff. That is  
9           your right I guess, depending upon the substance of  
10          that law suit.

11                         However, let us be clear, that your  
12          statement that you are filing law suits against  
13          members of my staff is in no way going to affect my  
14          ability to render a decision on any of the motions  
15          presented to me.

16                         MS. COMBIERKAPEL: Your Honor?

17                         THE COURT: Now - - you must contact Mr.  
18          Landsman, you must get copies of the documents to be  
19          turned over to Mr. Wasserman. We keep leaving Mr.  
20          Schram out of this, I guess he should be.

21                         MR. SCHRAM: That's actually all right by  
22          me, Your Honor. Peter Schram for the public  
23          administrator. I do represent the client here, Your  
24          Honor. The public administrator if you would just  
25          indulge me for a couple of minutes. I just want to

1           respond to a couple of things that have been said  
2           today.

3                         THE COURT:   Yes, sorry, I didn't mean to  
4           leave you out.

5                         MR. SCHRAM:   That's oaky.   The public  
6           administrator was appointed, I believe, in June of  
7           2006 as temporary administrator for the limited  
8           purpose of taking possession of any properties of the  
9           estate and safeguarding it pending the disposition of  
10          the probate contest.   When the public administrator  
11          was appointed, I wrote to both sides at the table. I  
12          asked them about what property or funds or money they  
13          had in their possession belonging to the estate that  
14          should be turned over to the public administrator.

15                        I was told by both sides that they did not  
16          have any.   Ms. Combier at one point was supposed to  
17          have filed an accounting with the court. She never  
18          did file a formal judicial accounting. I explained  
19          to both sides that I did not view the public  
20          administrator's role as the enforcer for either side,  
21          and I wrote a letter to Mr. Wasserman that if he had  
22          any problems with Ms. Combier not filing her  
23          accounting, he should, he had appropriate remedies  
24          and he should bring an appropriate application. And  
25          he never did that.

1                   Ms. Combier mentioned that either I or my  
2                   client have stolen property belonging to the estate.  
3                   The fact is, that no property belonging to the estate  
4                   has ever come into the possession of either me or my  
5                   office. The closest the public administrator got was  
6                   some property, personal property that is in  
7                   possession of a Mr. and Mrs. Lawrence Marks in Croton  
8                   on Hudson, New York. They had some memorabilia that  
9                   belonged to the decedent. Ms. Combier asked the  
10                  public administrator not to take possession of the  
11                  property because it was very valuable. There was a  
12                  manuscript that I believe she says is worth \$80,000.  
13                  Toscanini manuscript, some other property.

14                  I asked both sides to work together to get  
15                  an appraiser up there to appraise the property,  
16                  because if these were valuable and fragile items, the  
17                  public administrator wanted to make sure that she  
18                  employed the proper movers and art experts to take  
19                  care of this property. Neither side has ever done  
20                  anything to get an appraiser up there to value this  
21                  property.

22                  The bottom line is the public  
23                  administrator's role here has been very limited. We  
24                  did not take part in any, we have not taken part in  
25                  any of the discovery or any of the depositions. We

1 did not intend to take part in the trial whether it  
2 be by jury or bench trial, since as just he keeper of  
3 any property, we don't, I don't view and my client  
4 doesn't view herself as having a role in the probate  
5 contest itself.

6 MS. COMBIERKAPEL: Your Honor, first and  
7 foremost, Your Honor, what Mr. Schram respectfully  
8 accounted to you is untrue.

9 THE COURT: Isn't it interesting how  
10 everybody, whatever anyone else states is untrue and  
11 only you speak the truth? I find it so interesting.

12 MS. COMBIERKAPEL: I find it interesting  
13 that - -

14 THE COURT: What is that, what statements  
15 made by Mr. Schram were untrue?

16 MS. COMBIERKAPEL: Here are documents.

17 THE COURT: Excuse me - - go ahead.

18 MS. COMBIERKAPEL: Here are documents  
19 showing that in order to take possession of the  
20 property in my mother's apartment which were removed  
21 by Mr. Wasserman between April and June 1998, he  
22 placed them in the possession of Larry and Martha  
23 Mark in Croton and here are the pictures.

24 THE COURT: So, what was stated by Mr.  
25 Schram that was untrue?

1 MS. COMBIERKAPEL: In order to take control  
2 officially, Jane Passenant signed an order on June  
3 21<sup>st</sup> and I have it right here, stating that my mother  
4 died intestate without a will. Unfortunately, I have  
5 it right here, Your Honor.

6 THE COURT: I know that, but what I am  
7 saying is, what did Mr. Schram say that was untrue.  
8 He stated that - -

9 MS. COMBIERKAPEL: Could I just - -

10 THE COURT: What - - to look at the  
11 property - -

12 MS. COMBIERKAPEL: Okay. So, any reasonable  
13 person, which I think I am, would say how does a  
14 court say a will doesn't exist when it was filed  
15 seven years earlier and it was used in all the  
16 motions and all of the, I mean, it was constantly  
17 being copied.

18 THE COURT: When was that signed?

19 MS. COMBIERKAPEL: June 19<sup>th</sup>, 2006.

20 THE COURT: Go ahead.

21 MS. COMBIERKAPEL: Unfortunately, when I got  
22 a copy of that with a copy of a letter sent to Mr.  
23 Schram from this court I had heart failure and I was  
24 put into the hospital for three days. I almost died.

25 THE COURT: You are not going to get an

1 appraisal on the property.

2 MS. COMBIERKAPEL: When I got out of the  
3 hospital I called Mr. Schram up and we went over the  
4 will piece by piece, page by page.

5 THE COURT: Can we get an appraisal of the  
6 property?

7 MS. COMBIERKAPEL: I asked Martha Mark and  
8 Larry Mark, I went to Croton with a cameraman and I  
9 took pictures of the property that they withheld and  
10 Larry Mark refused to give it to me at that point in  
11 time. I said I wanted it appraised. I wanted to get  
12 the value of it because I did submit an accounting.

13 THE COURT: So, Mr. Schram, the public  
14 administrator - - make arrangements to have the  
15 property appraised?

16 MR. SCHRAM: We don't have any funds, Your  
17 Honor with which to hire an expert appraiser to get  
18 up there and appraise this property. Mr. and Mrs.  
19 Mark, the property, I don't know what condition. They  
20 have had this property a long time, several years. I  
21 think it's in their barn, or garage. Garage. It  
22 hasn't been stored in a climate controlled  
23 conditions. I don't think.

24 MS. COMBIERKAPEL: And that will related to  
25 damages, Your Honor. I tried to get it back.

1 MR. SCHRAM: That's certainly.

2 THE COURT: Wait, let her finish.

3 MR. SCHRAM: That's certainly part of why  
4 the public administrator wanted to be very careful in  
5 taking possession of this property, because her  
6 office did not want to be blamed for any  
7 disintegration of the property.

8 MS. COMBIERKAPEL: And I wanted you to have  
9 the property. And I have a letter from Mr. and Mrs.  
10 Mark saying take this property, please. We don't want  
11 to be in the middle of this. I went up there to get  
12 the property so that it could be appraised. And I  
13 have the pictures of this. He, Mr. Mark told me that  
14 he would never allow me to come back ever again,  
15 ever.

16 THE COURT: Why was it moved to the Croton  
17 on Hudson in the first place? Do we know, Mr.  
18 Wasserman?

19 MR. WASSERMAN: Yes. There was an  
20 agreement between the parties, I believe it's in  
21 writing, a long time ago.

22 MS. COMBIERKAPEL: No there was not, Your  
23 Honor.

24 MR. WASSERMAN: If I may finish?

25 THE COURT: Let Mr. Wasserman finish

1 please.

2 MR. WASSERMAN: Concerning the movement of  
3 the items to Croton on Hudson. I did not take any  
4 items to Croton on Hudson.

5 MS. COMBIERKAPEL: Yes, you did.

6 MR. WASSERMAN: But there is, my  
7 recollection it's several years ago now. But my  
8 recollection it was done pursuant to a writing  
9 between the parties, myself, probably myself and  
10 perhaps Mrs. Combiere's attorney at the time. But it  
11 was done clearly with the understanding of both  
12 sides.

13 MS. COMBIERKAPEL: No, Your Honor, that's  
14 totally incorrect. I was there in my mother's  
15 apartment the day that Mr. Wasserman had this big  
16 metal thing. He had ransacked my mother's apartment.

17 THE COURT: So, how, we need to do  
18 something to safeguard the property.

19 MR. SCHRAM: Well, Your Honor, the property  
20 has been there eleven years.

21 THE COURT: Right.

22 MR. SCHRAM: I don't know that another few  
23 months would hurt.

24 THE COURT: That's true.

25 MR. SCHRAM: I just.

1 MS. COMBIERKAPEL: I want the property - -

2 THE COURT: Let him finish.

3 MS. COMBIERKAPEL: Back.

4 THE COURT: Let him finish.

5 MR. SCHRAM: Just because we are on the  
6 record, I would just like to read briefly since I  
7 have been called a liar for perhaps the fifth or  
8 sixth time today, a letter that I wrote on August  
9 10<sup>th</sup>, 2006 to both Ms. Combier and Mr. Wasserman. I'll  
10 be quick, Your Honor.

11 It's dear Ms. Combier and Mr. Wasserman,  
12 Lawrence Mark responded to my letter of July 27<sup>th</sup>,  
13 2006 a copy of which was sent to both of you. Mr.  
14 Mark has confirmed that he is holding the items  
15 referred to in my letter. He is ready and willing to  
16 turn the items over to the public administrator.  
17 Papers filed by Ms. Combier with surrogate court  
18 states that the Toscanini manuscript alone is valued  
19 at \$80,000 and she values the remaining property at a  
20 total of \$160,000. The public administrator without  
21 an appraisal of the items must assume the accuracy of  
22 these valuations. I have discussed the storage of  
23 these items with the public administrator. She does  
24 not believe it is appropriate to store such  
25 potentially valuable and presumably fragile property

1 in her warehouse. She believes that these items  
2 should be treated with special care and stored in a  
3 controlled environment.

4 At this time there are no funds available  
5 to the public administrator to pay for such storage.  
6 Please advise whether you are willing to contribute  
7 to the cost of storage or whether you have any  
8 alternative suggestions.

9 I then sent two or three more letters  
10 concerning arranging for an appraiser. I had a  
11 conversation at one point with Mr. Wasserman and his  
12 client was going to pay for an appraiser. As far as  
13 I know she never did get an appraiser up there to the  
14 Mark's house. I would submit at this point the  
15 property has been there eleven years. However safe  
16 it is, it is. Whatever deterioration there has been  
17 has been, damage has been done.

18 Frankly, the public administrator just  
19 wants out of this case. And the less she needs to  
20 do, and the sooner the case can be tried, the sooner  
21 either Ms. Combier can take over the administration  
22 of the estate or presumably if the will not admitted  
23 to probate, you know, Ms. Danger or someone else.

24 MR. WASSERMAN: I would like to just  
25 briefly comment that Mr. Schram's statement of this

1 limited role of the public administrator is his  
2 statement. I am not myself a hundred percent certain  
3 that he rightly states the role of the administrator  
4 and I respond to that just briefly and because he  
5 stated his understanding.

6 MR. SCHRAM: I would love to have an  
7 argument with Mr. Wasserman on that issue.

8 THE COURT: - -

9 MR. SCHRAM: He tempt to do that, Your  
10 Honor, because we have letters going back and forth  
11 where I have asked Mr. Wasserman whether he intends  
12 to take any action, what his client, what action his  
13 client intends to take concerning his allegations  
14 against Ms. Combier. We are now three years down the  
15 road. Mr. Wasserman has never done anything and  
16 until this statement on the record, has never  
17 indicated that he thinks the public administrator has  
18 done anything improper.

19 MS. COMBIERKAPTEL: And Your Honor, I have  
20 never - -

21 THE COURT: Well, wait - -

22 MS. COMBIERKAPTEL: - - received a copy of  
23 these letters.

24 THE COURT: What is it you are saying, Mr.  
25 Wasserman? I didn't understand what is the statement.

1 MS. COMBIERKAPEL: I would like a copy of  
2 the letters.

3 THE COURT: I am sorry, I was speaking to  
4 Mr. Wasserman.

5 MR. WASSERMAN: What my thought was is that  
6 Mr. Schram and I have respect for Mr. Schram - - as  
7 little potential conflict as possible. Mr. Schram  
8 indicated, however, that no formal accounting for  
9 example was filed. An order for an accounting had  
10 been issued and Ms. Combier did, in fact, file an  
11 accounting that she understood was an accounting. It  
12 was a very unprofessionally put together document.

13 THE COURT: And everything was  
14 administrator cost? And everything was distributed to  
15 the administration of the estate, was it not?

16 MR. WASSERMAN: She had indicated, my  
17 recollection is that there was nothing.

18 THE COURT: Right, there is nothing left.

19 MR. WASSERMAN: Nothing left.

20 MS. COMBIERKAPEL: That's incorrect, Your  
21 Honor.

22 THE COURT: What's left?

23 MS. COMBIERKAPEL: I am sorry?

24 THE COURT: What's left?

25 MS. COMBIERKAPEL: These letters are still

1 outstanding as well as the property.

2 THE COURT: I am talking that the cash is  
3 gone, right? Is there is?

4 MS. COMBIERKAPEL: No, there is no cash.

5 THE COURT: Correct. The cash, that's what  
6 I said, there was nothing left.

7 MS. COMBIERKAPEL: There is no cash, but I  
8 need to address these letters.

9 THE COURT: What letters?

10 MS. COMBIERKAPEL: In 2004 when my sister  
11 was deposed she brought with her copies of very  
12 valuable letters. I have them here, copies here, to  
13 the deposition. She said she had no idea how she  
14 obtained control of these. She, I understand from my  
15 mother and there is a note from my mother saying my  
16 sister stole these letters from her apartment.

17 THE COURT: Okay. Can - - complaint, I am  
18 sorry?

19 MS. COMBIERKAPEL: This is the property  
20 that I needed - -

21 THE COURT: Let me just stay on - - Mr.  
22 Schram, what I would like you to do is to just notify  
23 Mr. Mark in Croton, just make sure that he is still  
24 there, still has the property and that will just  
25 continue to keep that property in his possession

1           until he is notified by this court.

2                     MR. SCHRAM: Your Honor - -

3                     THE COURT: Then, your involvement in this  
4 case will end.

5                     MR. SCHRAM: Thank you, Your Honor.

6                     THE COURT: Okay. So, just copy the court  
7 on the letter and make sure I get a copy of that.

8                     MR. SCHRAM: I'll copy both sides as well.

9                     MR. WASSERMAN: But, Your Honor, just as a  
10 legal issue doesn't there have to be an administrator  
11 of the estate.

12                    THE COURT: Well, I mean, legally he is  
13 still.

14                    MR. SCHRAM: My client, Your Honor - -

15                    THE COURT: His involvement, excuse me, his  
16 line duty - -

17                    MR. SCHRAM: My client's.

18                    THE COURT: Yes.

19                    MR. SCHRAM: Still the administrator.

20                    THE COURT: Right, his client will still be  
21 the administrator, but there really won't be any  
22 further use of them at this point in time.

23                    MS. COMBIERKAPEL: But Your Honor?

24                    THE COURT: Now, in terms of the estate,  
25 you are talking about these letters. Where, you made

1 reference to two items, letters and what was the  
2 other thing?

3 MS. COMBIERKAPEL: Well, I have the  
4 pictures of the property.

5 THE COURT: This is the property in Croton?

6 MS. COMBIERKAPEL: This is some of the  
7 pictures, yes.

8 THE COURT: Okay. Now, what letters are  
9 these that you are referring to?

10 MS. COMBIERKAPEL: My sister stole letters  
11 from my mother's apartment.

12 THE COURT: Okay. Now, what is important  
13 and we have to remember this, you cannot make an  
14 extraneous statement, my sister stole, he is a liar.  
15 They did this. You can't make these conclusory  
16 statements.

17 MS. COMBIERKAPEL: Okay. My sister removed  
18 letters from my mother's apartment and my mother  
19 wrote me a letter and I have it here, a copy of it.  
20 Please get these letters back.

21 THE COURT: Okay. So, where are these  
22 letters now?

23 MS. COMBIERKAPEL: I assume that they are  
24 still with my sister who lives in Paris, France.

25 THE COURT: And it is your contention?

1 MS. COMBIERKAPEL: Here is a copy.

2 THE COURT: Your contention I understand is  
3 that they are part of the estate?

4 MS. COMBIERKAPEL: Absolutely.

5 THE COURT: Mr. Wasserman, do you know  
6 whether your client is still in possession of these  
7 letters?

8 MR. WASSERMAN: I think we had a, I had a  
9 response to Ms. Combier when she raised this earlier.

10 THE COURT: Yes.

11 MR. WASSERMAN: That my client has not had  
12 and does not have any of the letters that she  
13 indicates that my client had or has.

14 THE COURT: Okay.

15 MS. COMBIERKAPEL: Your Honor, that is not  
16 a sufficient response.

17 THE COURT: But, except that's not an issue  
18 right now. That will be an issue later on in terms  
19 of exactly what is in the estate. That will become an  
20 issue in terms of the property, the fact that there  
21 is no money left in the estate. What happened to the  
22 money, the property that is in Croton and these  
23 alleged letters which were in possession of your  
24 sister. That's a separate issue.

25 MS. COMBIERKAPEL: So, just so I am clear

1 for the record. The property that was in the estate  
2 that must be part of an accounting should there be an  
3 official accounting of the estate.

4 THE COURT: At some point in time there has  
5 to be an official accounting.

6 MS. COMBIERKAPEL: Right.

7 THE COURT: Of the estate.

8 MS. COMBIERKAPEL: Okay. So, as these  
9 letters are not appraised I have copies of them, and  
10 the property that was removed and is being withheld  
11 from the estate has never been appraised.

12 THE COURT: Property has not, is not being  
13 withheld from the estate. The property is in Croton.  
14 The property has to be maintained. The property has  
15 to be appraised. The public administrator does not  
16 have the money to either take the property to a safe,  
17 to a secure or safe location to have it appraised.  
18 You apparently don't have the money to do so. And  
19 Mr. Wasserman's client does not have the money to do  
20 so.

21 So, since the property has been in Croton  
22 for eight or eleven years, it going to remain there  
23 and once it is resolved in terms of exactly who is  
24 entitled to the monies of the estate, then we will  
25 deal with it.

1 MS. COMBIERKAPEL: But, Your Honor, the  
2 manner at which Mr. Schram entered this case through  
3 Jane Passenant and Renee Roth.

4 THE COURT: Jane Passnet is a clerk of  
5 surrogate court.

6 MS. COMBIERKAPEL: She signed an order - -

7 THE COURT: She is a clerk.

8 MS. COMBIERKAPEL: She signed an order of  
9 Renee Roth issued on June 19<sup>th</sup> saying that my mother  
10 died intestate.

11 THE COURT: I think.

12 MS. COMBIERKAPEL: And to let Mr. Schram  
13 take over the - -

14 THE COURT: No.

15 MS. COMBIERKAPEL: Yes, yes.

16 THE COURT: No, no. Judge Roth brought the  
17 public administrator into the case.

18 MS. COMBIERKAPEL: No, I have the order  
19 right here, Your Honor.

20 THE COURT: Oh. What is the document - -  
21 what does it matter?

22 MS. COMBIERKAPEL: Ethel Griffin cannot  
23 take control of the - -

24 THE COURT: She is the public  
25 administrator.

1 MS. COMBIERKAPEL: Julie Taschereau died  
2 with her daughters. Her will says that I am the  
3 executor of the estate.

4 THE COURT: Well, that's what we are going  
5 to, that's the whole issue.

6 MS. COMBIERKAPEL: The public  
7 administrator.

8 THE COURT: - - or not.

9 MS. COMBIERKAPEL: The public administrator  
10 cannot take - -

11 THE COURT: The public administrator does  
12 not have possession of the property. The property is  
13 in Croton.

14 MS. COMBIERKAPEL: But, it shouldn't be in  
15 Croton.

16 THE COURT: Where should it be?

17 MS. COMBIERKAPEL: I would like to take the  
18 property - -

19 THE COURT: Your - - were suspended, were  
20 they not?

21 MS. COMBIERKAPEL: But, in order to get Mr.  
22 Schram and Ethel Griffin to take over control for  
23 four days? Jane Passenant signed an order for four  
24 days to allow - -

25 THE COURT: Let me - - again.

1 MS. COMBIERKAPEL: To take over.

2 THE COURT: You do not have the authority  
3 to take possession of the property. The property was  
4 in Croton. The property remains in Croton. What we  
5 were attempting to do, what Judge Roth was attempting  
6 to do, this court was attempting to do was to - -  
7 that property. The property is valuable. Still is  
8 valuable, I assume. The property also is not in a  
9 secure location in terms of any damage to the  
10 property. In an attempt to secure the property, the  
11 public administrator and they have the authority to  
12 do so, was appointed to secure that property. Okay.

13 Someone has to be able to secure the  
14 property. You were unable to secure the property  
15 because your letters were suspended.

16 MS. COMBIERKAPEL: But, Your Honor.

17 THE COURT: So, you could not do so.

18 MS. COMBIERKAPEL: Your Honor, it is very  
19 important that this court realize that I am not being  
20 disrespectful to you.

21 THE COURT: So, what is that you want? I  
22 am curious. What is it that you are saying should  
23 occur?

24 MS. COMBIERKAPEL: I am saying that, of  
25 course, my position is and I have the documentation

1 to prove that the will was done correctly. And I  
2 think if you see the 1404s - -

3 THE COURT: That is the subject of trial.  
4 That's why we are going to have a trial.

5 MS. COMBIERKAPPEL: Okay. But, to order a  
6 will out of existence on June 20.

7 THE COURT: She didn't do that. She did not  
8 do that. The clerk of the court signed the letters of  
9 administration. That is what you are referring to.  
10 There was no, there has not been any determination as  
11 to the will.

12 MS. COMBIERKAPPEL: What does the word  
13 intestate mean?

14 THE COURT: Without a will.

15 MS. COMBIERKAPPEL: Well, that's what's in  
16 the order dated June 19<sup>th</sup>.

17 THE COURT: It is not of no consequence to  
18 these proceedings. It has no effect as to these  
19 proceedings. What we were discussing is the property  
20 in Croton and the public administrator's role in  
21 securing that property.

22 MS. COMBIERKAPPEL: But the public  
23 administrator has no role in this case, Your Honor.

24 THE COURT: So, what, again, my question  
25 to you is what is it that you want done? What do you

1 want with that property done? Are you in a financial  
2 position to make arrangements to have that property  
3 placed in a secure location in terms of temperature  
4 controls. Are you in a financial condition to have  
5 the appraiser look at the property, appraise the  
6 property. If you are in a financial situation to do  
7 so, then we can discuss it. Are you in a financial  
8 condition to do so?

9 MS. COMBIERKAPEL: No, I am not.

10 THE COURT: Exactly.

11 MS. COMBIERKAPEL: Okay.

12 THE COURT: So, that is why the property is  
13 remaining in Croton where it has been for the past  
14 eleven years. We are asking that they continue to  
15 maintain it in Croton, and at such time that it is  
16 the issue are resolved as to whether there is a will,  
17 who takes under the will, who takes under the estate,  
18 then we will have the property appraised. We'll be  
19 able to appraise the property. All other properties,  
20 and we'll make a determination as the accounting of  
21 this property.

22 MS. COMBIERKAPEL: Your Honor? The will  
23 was filed in 1998, March of 1998, copies of it have  
24 been submitted to this court in every motion. I made  
25 sure of that. I have a - -

1 THE COURT: That's not the issue - -

2 MS. COMBIERKAPEL: You said if there was a  
3 will. I just want to - -

4 THE COURT: If there was a valid will.

5 MS. COMBIERKAPEL: Oh, okay.

6 THE COURT: If there was a valid will.

7 MS. COMBIERKAPEL: I thought I heard you  
8 say if there was a will.

9 THE COURT: I don't believe I did, I  
10 believe I said if there was a valid will. That's the  
11 issue for this court and - -

12 MS. COMBIERKAPEL: Thank you.

13 THE COURT: - - issue in terms of the  
14 trial.

15 MS. COMBIERKAPEL: I just want to qualify  
16 that. In deed, I just want to say that at no point in  
17 time do I want to be disrespectful to you ever.  
18 Unfortunately, I have had to take action against  
19 Renee Roth, and Mary Santamarina.

20 THE COURT: You can take whatever action  
21 you deem necessary.

22 MS. COMBIERKAPEL: I know, but Your Honor,  
23 Your Honor?

24 THE COURT: And which is legal. And that is  
25 not my determination to make.

1 MS. COMBIERKAPEL: But Your Honor, I have  
2 never, I have no desire to be disrespectful to you.  
3 But, I will try my best to assert my rights under the  
4 law entirely legally. I believe that I have never  
5 violated the law.

6 THE COURT: That is, there is no dispute.  
7 That's your right. There is no dispute. All I am  
8 saying is - - you should not be disrespectful to Mr.  
9 Wasserman and Mr. Schram or to any members of my  
10 staff, or to this court. You should refrain from  
11 referring to individuals as thieves or as liars.  
12 That's all I am saying. Just be respectful, that's  
13 all I am saying.

14 MS. COMBIERKAPEL: I would never do that.

15 THE COURT: Well, you have done it on I  
16 don't know how many occasions - - you called Mr.  
17 Schram a liar.

18 MS. COMBIERKAPEL: If I didn't have the  
19 proof.

20 THE COURT: But you don't have the proof.

21 MS. COMBIERKAPEL: Okay.

22 THE COURT: So - -

23 MS. COMBIERKAPEL: Yes, Your Honor.

24 THE COURT: What do you have to do? You  
25 have to get the documents from Mr. Landsman. You

1 have to arrange for the deposition of Mr. Vanos as  
2 well. You have to also secure a - - in front of the  
3 request for the jury trial. And if you are unable to  
4 find that form, then you have to and you still wish  
5 to proceed with a jury trial, then you have to file a  
6 motion. That has to be accomplished within the next  
7 30 days, because Mr. Wasserman has to respond to that  
8 motion, so that we can proceed to trial.

9 MS. COMBIERKAPEL: Your Honor?

10 THE COURT: Initially.

11 MS. COMBIERKAPEL: Your Honor? May I say  
12 that I have the motion for a jury trial in my  
13 documents that I filed. Can I - -

14 THE COURT: You have to refile and reserve  
15 it. And if there are any additional, I mean, I don't  
16 know what your motion for a jury trial states, but  
17 you may want amend it or change it because you were  
18 not entitled, apparently, you were not entitled to  
19 that jury trial, because of the failure to request  
20 one. So, there may be other arguments which you are  
21 going to make in terms of why, despite the fact that  
22 the statute does not allow the jury trial at this  
23 point in time, you should be, withdrawn. There should  
24 be a jury trial in terms of the equities, etc. But,  
25 that's upon you in terms of how you are going to make

1 your - -

2 MS. COMBIERKAPEL: Thank you, because my  
3 previous motion has the paperwork that you say does  
4 not exist.

5 THE COURT: Your previous motion includes  
6 the form from this court wherein you pay the fee and  
7 requested a jury trial?

8 MS. COMBIERKAPEL: No, it has the request  
9 for a jury trial by my attorney.

10 THE COURT: And we just discussed, remember  
11 we discussed how you can't do it in a motion.

12 MS. COMBIERKAPEL: And it has Mr.  
13 Wasserman's request for a jury trial.

14 THE COURT: And remember we discussed that  
15 you cannot do it in a motion. And therefore, since  
16 you cannot do it in a motion, you would not be  
17 entitled to the jury trial. And therefore, if you  
18 wish to file the motion stating that there are other  
19 reasons why or there are reasons why the court should  
20 disregard the statutes, equities, etc., fairness that  
21 you would file this motion. Remember that?

22 MS. COMBIERKAPEL: May I ask you a  
23 question? In his objections to probate he asks for a  
24 jury?

25 THE COURT: No, we are off, you cannot do

1 that. That's something separate.

2 MS. COMBIERKAPEL: Okay.

3 THE COURT: Okay?

4 MS. COMBIERKAPEL: And in the surrogate  
5 court's act, at no point in time do I read, I didn't  
6 read it so I might have might missed it.

7 THE COURT: What's the section?

8 MS. COMBIERKAPEL: What section does it say  
9 that you have to pay a fee and provide a form to the  
10 court in order to get a jury trial?

11 THE COURT: It doesn't. It states that you  
12 have to request one. It's section 502.2a. Look at  
13 STPA 502, where it talks about making demands for a  
14 jury trial.

15 MS. COMBIERKAPEL: Okay, because I believe  
16 I did that based upon that.

17 THE COURT: No, you didn't. Okay, but - -

18 MS. COMBIERKAPEL: But - - that you have  
19 to file a certain form and pay a fee?

20 THE COURT: Yes, it does.

21 MS. COMBIERKAPEL: And pay a fee?

22 THE COURT: And also keep in mind that each  
23 court has its own rules, as well, in terms of what is  
24 necessary. But, it does talk about filing a separate  
25 demand for a jury trial. And that it cannot be done

1 in a motion. The - - so keep in that mind, but it  
2 does talk about filing the papers for it.

3 MS. COMBIERKAPEL: So, when I made, when I  
4 filed a petition to get a jury trial, and it's in my  
5 petition - -

6 THE COURT: A petition - - must serve and  
7 file on his or her own behalf a jury demand within  
8 six days after the service upon him or her of an  
9 answer or objections. That's 502(2) subsection 1.

10 MS. COMBIERKAPEL: And that is what I  
11 believe my attorney did. So, I will try to find that  
12 paper.

13 THE COURT: Okay. But there is no  
14 indication of that in the file. So, if you believe  
15 that your - -

16 MS. COMBIERKAPEL: Not having been able to  
17 see the file.

18 THE COURT: Okay, so again, I am not  
19 telling you how to litigate the case. I am telling  
20 you that it's not in the file. If you believe that  
21 your attorney did so and we don't have the documents,  
22 and he doesn't have the documents, then I assume you  
23 would get a request and affidavit from the attorney  
24 attesting to the fact that he did so, and you would  
25 attach that to your motion.

1 MS. COMBIERKAPTEL: All right. Thank you.

2 THE COURT: Okay. We need, we have to  
3 arrange for the deposition of Mr. Vanos. You were  
4 going to obtain the documents from Mr. Landsman and  
5 turn them over to Mr. Wasserman. Mr. Wasserman is  
6 going to turn over the documents to you.  
7 Additionally, you are going to file whatever motion  
8 you are filing now for a jury trial. You are going  
9 to do that within 30 days.

10 Mr. Schram, you are going to contact the  
11 Mark family in Croton, make sure they are still  
12 there. Make sure they still have the property. And  
13 request that they not dispose of the property or do  
14 anything with the property until they are notified by  
15 this court. And also, I mean, you know how to draft  
16 the letter, obviously, if for some reason they have  
17 to move or what have you, they will notify your  
18 office and this court immediately.

19 MR. SCHRAM: Yes, Your Honor.

20 THE COURT: Initially, I was looking at a  
21 July trial date. I don't know whether or not we  
22 would be able to accomplish all of this by July. What  
23 do you think?

24 MR. WASSERMAN: Judge, if there is a motion  
25 in April, first, my client is in France. So, her

1 availability on a particular date I would, I am happy  
2 to make a submission that, of a date, but I have to  
3 determine.

4 THE COURT: Well, I understand, and also  
5 that is - - the other issue was in terms of  
6 witnesses, and I am not holding either side to this,  
7 but Mr. Wasserman, approximately how many witnesses  
8 do you believe you should have for purposes of trial?

9 MR. WASSERMAN: Approximately six.

10 THE COURT: And how many witnesses do you  
11 believe you would have for trial?

12 MS. COMBIERKAPEL: Fifteen.

13 THE COURT: Okay. Now, he said six and you  
14 said fifteen. I want it to be clear. These are  
15 witnesses who are not going to be what we call  
16 collateral, meaning they are going to say, agree with  
17 or repeat what another individual has to say. These  
18 are witnesses who will present testimony which is  
19 relevant to the two issues, undue influence and lack  
20 of capacity for competence on the part of your  
21 mother?

22 MS. COMBIERKAPEL: Yes.

23 THE COURT: Prior to the witness taking the  
24 stand, there will be what's called an offer of proof,  
25 and you'll have to state what that witness is going

1 to testify to. And if that witness' testimony and  
2 this goes obviously to Mr. Wasserman's client,  
3 witnesses as well, if the testimony is going to be  
4 collateral or the testimony is not going to be  
5 relevant, that witness will not be allowed to  
6 testify. Okay? Do we understand each other?

7 MR. WASSERMAN: Correct.

8 THE COURT: So you say fifteen and he says  
9 six. So, I think that would take about two weeks.  
10 So, we need a chunk of time in July. We are looking  
11 at the week of July 13<sup>th</sup> and the week of July 20<sup>th</sup>.

12 MR. WASSERMAN: As an initial matter,  
13 Judge, that's fine with me.

14 THE COURT: Okay. So, why don't we try for  
15 the 13<sup>th</sup>.

16 MS. COMBIERKAPEL: Your Honor?

17 THE COURT: I know - -

18 MS. COMBIERKAPEL: Your Honor?

19 THE COURT: Yes.

20 MS. COMBIERKAPEL: I know I am going to be  
21 doing jury duty in July. I signed up to do jury duty  
22 in July.

23 THE COURT: When in July?

24 MS. COMBIERKAPEL: Either the first or  
25 second week.

1 THE COURT: Have you had a postponement in  
2 the past?

3 MS. COMBIERKAPEL: Yes.

4 THE COURT: And what would this be, your  
5 second postponement?

6 MS. COMBIERKAPEL: No, it's my third.

7 THE COURT: Oh, I see.

8 MS. COMBIERKAPEL: And I worked it out with  
9 them just two weeks ago.

10 THE COURT: So, you are saying that it's  
11 either when?

12 MS. COMBIERKAPEL: It's the first, it's  
13 probably the first two weeks of July.

14 THE COURT: Okay. So, that's the 20<sup>th</sup> then,  
15 July 20<sup>th</sup>.

16 MS. COMBIERKAPEL: But that won't give me a  
17 chance, if I am on jury duty, that won't give me a  
18 chance to prepare.

19 THE COURT: I doubt very seriously that  
20 they would select you for a jury. And, you know what,  
21 I'll make a call over there, and if we are  
22 proceeding, because a lot depends upon the  
23 availability of the 21 witnesses. So, I'll make a  
24 call over there to see whether or not they can at  
25 least push you to perhaps, push you to August for

1 jury duty. Because you said you are not working,  
2 right? So, you are relatively free.

3 MS. COMBIERKAPEL: Well, I have part time  
4 jobs here or there, but if you want to do that,  
5 that's fine.

6 THE COURT: Yes, why don't I, I can call  
7 over there and see if they can push you to, well, I  
8 won't call, but we'll have someone call over there  
9 and see if we can push you to August for purposes of  
10 your jury duty. So, you can perform your civic duty.  
11 So, we are back then to July 13<sup>th</sup>. Okay.

12 So, you'll contact - - whether the 13<sup>th</sup> is  
13 a good day, 14<sup>th</sup> or whatever.

14 MR. WASSERMAN: Should we have a date  
15 before then just to determine how things are going?

16 THE COURT: We can do a conference call  
17 probably before then if there are any issues in terms  
18 of what has not been turned over. We can do a  
19 conference call. Or if you want a face to face,  
20 that's fine.

21 MS. COMBIERKAPEL: Your Honor, I also do  
22 not know, Mr. Vanos, I spoke to him the other day. He  
23 is in Alabama and I know his mother is extremely ill,  
24 so I am just saying that I'll make whatever  
25 arrangements possible to have him deposed.

1 THE COURT: Yes, why don't you see if you  
2 can have him deposed in no later than mid June then,  
3 right? Is that enough time, Mr. Wasserman?

4 MR. WASSERMAN: Yes, Judge.

5 THE COURT: Okay.

6 MS. COMBIERKAPEL: I will try, but as I  
7 said.

8 THE COURT: You and Mr. Wasserman discuss  
9 this, if you can have him deposed by late June and  
10 we'll go forward with the July 13<sup>th</sup> date. And then 30  
11 days for your, or earlier, for your motion for the  
12 jury trial.

13 MR. WASSERMAN: Judge, one request. Since  
14 it may be necessary for me to speak with Ms. Combier  
15 relating to the directions that you have made, can it  
16 be determined that our communications - -

17 THE COURT: Are not taped. You do not have  
18 permission to tape conversations concerning this  
19 litigation. So, you are not to tape any  
20 conversations with him, nor with any conversations  
21 with members of my staff.

22 MS. COMBIERKAPEL: That's fine. I have  
23 enough tapes.

24 THE COURT: Excellent. Thanks. Good bye.

25 MR. WASSERMAN: Thank you, Your Honor.

1 THE COURT: That concludes, we are turning  
2 off the tape recorder.

3 MS. COMBIERKAPEL: I request a copy of the  
4 complete proceedings today. How do I do that?

5 THE COURT: I believe that you go down to  
6 202 and I believe we are going to make arrangements  
7 for that. But, remember what I stated in terms of  
8 dissemination of this tape on any website or any  
9 other media. Print, written or anything else. Do you  
10 understand?

11 MS. COMBIERKAPEL: I understand.

12 THE COURT: And so you are precluded from  
13 doing so. Do you understand?

14 MS. COMBIERKAPEL: I understand.

15 THE COURT: And you will not do so, do you  
16 understand?

17 MS. COMBIERKAPEL: Well, Your Honor.

18 THE COURT: You will not do so, do you  
19 understand?

20 MS. COMBIERKAPEL: - -

21 THE COURT: Do you understand?

22 MS. COMBIERKAPEL: I understand what you are  
23 saying.

24 THE COURT: You understand also that if you  
25 do so, and I certainly will find out, then you will

1 be in contempt of this court, do you understand that?

2 MS. COMBIERKAPEL: I understand.

3 THE COURT: Excellent. Turn the tape off.

4 [END OF HEARING]

C E R T I F I C A T E

I, Linda Bacheller certify that the foregoing transcript of proceedings in the Surrogate Court of Estate of Julia Taschereau, Docket No. 1042/98 was prepared using standard electronic transcription equipment and is a true and accurate record of the proceedings.

Tape # \_\_\_\_\_

Counter #s \_\_\_\_\_ to \_\_\_\_\_

Signature Linda Bacheller \_\_\_\_\_

Date April 24, 2009 \_\_\_\_\_