

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

CORRECTED TRANSCRIPT

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: UNITED STATES OF AMERICA :  
: :  
: vs : M 4113-03  
: :  
: ELENA R. SASSOWER, :  
: Defendant. :  
-----X

Washington, D.C.

June 1, 2004

The above-entitled action came on for a hearing before the Honorable BRIAN HOLEMAN, Associate Judge, in Courtroom Number 218.

APPEARANCES:

On behalf of the Government:

JESSIE LIU, Esquire  
AARON MENDELSON, Esquire  
Assistant United States Attorneys

On behalf of the Defendant:

ELENA SASSOWER, Pro se  
White Plains, New York

MARK GOLDSTONE, Esquire  
Attorney Advisor  
Washington, D.C

Recorder:  
Jacqueline Hogue  
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Telephone: 879-1757

1 P R O C E E D I N G S

2 THE COURT: We are here for sentencing in the case  
3 of United States versus Elena Sassower. That's case M4113-  
4 03. The case was tried in this court and Ms. Sassower was  
5 convicted of one count of disruption of Congress in violation  
6 of D.C. Code 10-503.16(b)(4).

7 MS. SASSOWER: Excuse me. I can barely hear you,  
8 Your Honor. Is it possible --

9 THE COURT: That I can speak up?

10 MS. SASSOWER: Yes.

11 THE COURT: Yes, I can do that. Very well. As I  
12 previously stated, we are here for sentencing.

13 Why don't I hear from the Government first.

14 MS. LIU: Your Honor, Jessie Liu for the United  
15 States.

16 THE COURT: Good afternoon.

17 MR. MENDELSON: And Aaron Mendelsohn for the  
18 United States.

19 THE COURT: Yes. Ms. Liu, Mr. Mendelsohn.

20 MS. LIU: Your Honor, we had a -- I passed out to  
21 Ms. Franklin today and handed to Mr. Goldstone to give to Ms.  
22 Sassower, which I hope he's done, a memorandum in aid of  
23 sentencing.

24 THE COURT: I see it.

25 MS. LIU: I had intended to file this earlier but

1 decided it would be wiser to wait for the presentencing  
2 report.

3           In this case, Your Honor, we are asking for five  
4 days suspended and six months of probation conditioned on  
5 anger management training or an anger management course. The  
6 reasons are essentially set forth in the memorandum. It's  
7 the Government's view, Your Honor, that Ms. Sassower has  
8 never taken any responsibility for her actions on May 22,  
9 2003 and, in fact, has responded to the charge and to the  
10 conviction with attack, not only on the United States  
11 Attorney's Office, but on Senate Legal Counsel as well as on  
12 an AUSA who formerly worked for defendant's judiciary  
13 committee.

14           We wanted to point out that defendant is not a  
15 first-time offender. She was convicted of obstructing  
16 government in North Castle Town Court in 1994, and received a  
17 conditional release, which we believe is something similar to  
18 probation in that case.

19           Finally, Your Honor, we think that it is clear from  
20 her letters not only to this Court and to the U.S. Attorney's  
21 Office but from her testimony on the witness stand that she  
22 is an extremely angry individual who we think could benefit  
23 from anger management.

24           THE COURT: Very well. Thank you, Ms. Liu. Ms.  
25 Sassower?

1 MS. SASSOWER: At the outset, I'd like to hand up  
2 to the Court letters that were faxed on Friday, May 28, three  
3 letters to the Court, the hard copy, and would like  
4 additionally to provide the hard copies to the U.S. Attorney  
5 to whom they were also faxed on Friday and to which the U.S.  
6 attorney has now made reference as to part of the reason why  
7 sentence should be imposed.

8 At the outset, I refer the Court to the first two  
9 letters, which requested adequate time for me to review the  
10 presentence report with my legal advisor and to submit  
11 written comment and/or other substantiating matter with  
12 respect to that report. I requested an adjournment and I  
13 requested to be advised as to the pertinent statutory or rule  
14 provision governing sentencing proceedings. I received no  
15 response from the Court except for transmittal by fax shortly  
16 thereafter of the pre-sentencing report which I had not prior  
17 thereto received.

18 THE COURT: Before we proceed further on the issue  
19 of your being directed to or apprised of pertinent sentencing  
20 rules, I have informed you from the outset of this case and,  
21 I reiterate here, that you are serving as your own counsel;  
22 therefore, you are held to the same responsibilities as  
23 counsel who would be representing you and it is not the  
24 purview of this Court to educate you as to the relevant  
25 sentencing rules and statutes and cases. That being the

1 case, do you have anything further for this Court?

2 MS. SASSOWER: I have a great deal further for this  
3 Court, but firstly to --

4 THE COURT: Then I would recommend that you get to  
5 the issues.

6 MS. SASSOWER: So you will not hear further my  
7 objection to this proceeding taking place today in view of  
8 the fact that I have not had --

9 THE COURT: Give me the grounds for your objection.

10 MS. SASSOWER: Well, as set forth in the letter, I  
11 believe under Rule 32B3a I am entitled to reasonable time  
12 within which to review the presentence report and indeed with  
13 the assistance of my counsel to submit such written comment  
14 and other substantiating matter as may be necessary. As  
15 already was pointed out in my third letter to the Court,  
16 there are some rather startling factual errors, some are of  
17 not a substantial nature but others are. And obviously the  
18 venue to --

19 THE COURT: And what are the errors in the  
20 presentence report that would warrant the Court granting you  
21 additional time to present additional material that would  
22 assist the Court in its sentencing determination. That's  
23 question one.

24 MS. SASSOWER: Okay. I certainly would maintain --  
25 look.

1 THE COURT: No. I don't have to look. You answer  
2 my question.

3 MS. SASSOWER: I'm not saying look to the Court.  
4 I'm saying look as a manner of expression. I am entitled to  
5 a record that has an accurate presentencing report. There  
6 are a multitude of errors throughout the --

7 THE COURT: What are the errors in the report that  
8 would warrant grant of additional time for your response?  
9 It's a simple question.

10 MS. SASSOWER: Well, the report takes the position  
11 that it's not within its purview to examine my evidentiary  
12 presentation to it or to include my evidentiary presentation  
13 to Court Services that I was denied a fair trial. I was  
14 wrongfully convicted. Their view is they can only recite my  
15 allegations as relates to the bogus and malicious disruption  
16 of Congress charge.

17 THE COURT: --

18 MS. SASSOWER: -- but cannot look at the further  
19 aspects having to do with the manner in which I was brought  
20 to trial and convicted.

21 THE COURT: Very well. Is there something else?

22 MS. SASSOWER: I did want to make a record as to my  
23 right, what I believe to be my right, citing to the rule and  
24 also to reflect on the fact --

25 THE COURT: No, no. Just a minute. We are dealing

1 here solely with the inadequacies of the report that would  
2 warrant my grant of a continuance. The first matter that you  
3 have brought to my attention is the fact that apparently the  
4 probation services would not take into account the manner by  
5 which you were brought to the Court and the conduct of the  
6 proceedings once you got here, as I understand it. Those  
7 were matters that you wanted laid out in specific detail in  
8 the presentence report and they were not laid out to your  
9 satisfaction. What is the next issue?

10 MS. SASSOWER: Well, just to clarify what Your  
11 Honor has recited, not only were they not included, and by  
12 not included, I mean, specifically the written letter  
13 submission of six pages dated May 25, which I provided to Ms.  
14 Westry for inclusion in her presentence report. Not only was  
15 that not included, but it was represented to me by Ms. Westry  
16 when she apprised me of the fact that it would not be  
17 included, that I could speak to her supervisor Ms. McDaniel  
18 and that the report would not be submitted until I had  
19 reviewed the basis upon which I was contending that it was  
20 properly a part of the presentence report.

21 Now as Your Honor is aware from the correspondence  
22 of May 28, despite numerous phone messages left for Ms.  
23 McDaniel, despite the representations made by Ms. Westry that  
24 I would first have an opportunity to speak with Ms. McDaniel  
25 before the report went in, the report was submitted without

1 Ms. McDaniel discussing with me this serious and substantial  
2 aspect which I contend was rightfully a part of their  
3 evaluation because as has been recognized by the U.S.  
4 Attorney, I am, as they say, I show no remorse whatsoever.

5 And indeed because it is my contention, fully  
6 documented, that I was -- not only subject of a bogus  
7 malicious charge, but railroaded to trial and denied any kind  
8 of fair trial, my position to Ms. Westry was that for the  
9 pre-sentence personnel to understand why I show no remorse,  
10 they have to understand both components here. And Ms. Westry  
11 recited my recitation as relates to the charge, that she did.

12 She reproduced in the presentence report verbatim  
13 virtually the entirety of the memorandum that I prepared for  
14 the American Civil Liberties Union from July 7, 2003. What  
15 she did not include was what took place at trial, why my  
16 version of events did not prevail at trial.

17 THE COURT: Very well. Is there some other  
18 inadequacy with the report that you would seek to use as the  
19 basis for this Court's grant of continuance of this  
20 sentencing?

21 MS. SASSOWER: Yes, Your Honor, and that is the  
22 recognition of the U.S. Attorney that they also wanted to  
23 have the pre-sentence report in hand before they submitted a  
24 memorandum in support -- in aid of sentencing. And that is  
25 reflected by their footnote one, which says that they



1 withheld this memorandum. And indeed they have only  
2 submitted it to the Court today and they have only submitted  
3 it to me today. Whereas the presentence report is, in fact, a  
4 very favorable document to me, to say the least,  
5 notwithstanding, there was no exploration of the specifics of  
6 my contention as to why I was --

7 THE COURT: Then if the report was favorable to you,  
8 if that's the argument that you are making for this Court,  
9 not taking into account the Government's memorandum, then why  
10 would we be continuing this hearing for what you perceive to  
11 be the inadequacies of the exact same report?

12 MS. SASSOWER: Well, as I said, I have a -- there  
13 are a multitude -- and I think it is, with all respect,  
14 because the presentence -- I'm sorry -- because Court  
15 Services tried to rush the report for delivery for today's  
16 sentencing, and because of that there are a multitude of  
17 factual errors which should properly be corrected because  
18 years from now the errors in this report might be somehow --  
19 they seem innocuous now -- might somehow come back to haunt  
20 me or someone else. And I would prefer that not be the case.

21 I would prefer to have the opportunity to have  
22 those factual errors corrected, whether or not they are  
23 material but just so that the record is properly kept.  
24 Additionally, I, as I said, I have a legal advisor and he was  
25 away on vacation from Friday until last night. I did not

1 speak with him until shortly before nine this morning in the  
2 hall. He spent -- at that time he spent a very brief  
3 five/ten minutes cursorily reviewing the report. We had no  
4 opportunity to examine it, to discuss it as to what is  
5 appropriate.

6 The U.S. Attorney has submitted a written  
7 memorandum. The written memorandum, in contrast to the  
8 presentence report, which is very favorable to me, the  
9 Government's memorandum in aid of sentencing is a document  
10 for which the U.S. Attorney's Office should be sanctioned and  
11 a disciplinary referral should be made of them because it is  
12 a false document.

13 THE COURT: Ms. Sassower? Ms. Sassower, you are to  
14 state for me the bases upon which this Court would grant a  
15 continuance, and I will not hear during this hearing any  
16 commentary by you as to your view of the Government's  
17 preparation here.

18 MS. SASSOWER: I wish to have the opportunity, Your  
19 Honor, to document my view in a written submission in aid of  
20 its evaluation of the Government quote memorandum in aid of  
21 sentencing. I would like to have that opportunity both with  
22 respect to recommendation of a five-day incarceration albeit  
23 suspended, and six months of probation conditioned on  
24 completion of anger management course. As to both aspects I  
25 wish to make a written submission.

1           And I believe, Your Honor, with all respect that  
2 should the Court not defer the sentencing so that a proper  
3 submission might be made both with respect to the presentence  
4 report and with respect to this memorandum, that at the very  
5 least the memorandum has to be rejected. If the U.S.  
6 Attorney sought to submit a written memorandum when I  
7 requested in written correspondence on Friday a deferment of  
8 the sentencing, they needed to join. They did not oppose my  
9 application, but they did not join it.

10           And if they were planning -- if they felt that they  
11 too were relying on the presentence report to prepare a  
12 memorandum, they needed to say, and Your Honor we also were  
13 waiting to put in a written submission. Ms. Sassower should  
14 also have that opportunity, assisted by her legal advisor.

15           THE COURT: Well, again, it seems you've  
16 overstepped the bounds that I set for you in terms of the  
17 address that you are to make to me at this point in the  
18 proceedings.

19           MS. SASSOWER: I'm sorry. I didn't understand.

20           THE COURT: The Government -- the Government can  
21 certainly make whatever argument it chooses when it comes to  
22 continuing or not the sentencing. The Government could  
23 choose not to have submitted the report this morning. It  
24 chose to do so after having received the presentence report,  
25 as that presentence report was faxed from my chambers. The

1 Government chose nevertheless to proceed in the manner in  
2 which it has.

3 MS. SASSOWER: And I also --

4 THE COURT: It has submitted the report and it has  
5 allocuted.

6 MS. SASSOWER: Okay.

7 THE COURT: Now with regard to your -- do you have  
8 any other bases for grant of a continuance here?

9 MS. SASSOWER: Yes -- oh, on the continuance?

10 Excuse me one moment, Your Honor. I could go on at further  
11 length but -- well, I will identify for the record, yes. I  
12 think it appropriate that not only does the presentence  
13 report not reflect, in deed conceal, that it was not supposed  
14 to issue, I was told it would not issue until I had first  
15 spoken to the supervisor Ms. McDaniel which you will see if  
16 you look at the list of contacts, there is no contact  
17 information for me for May 27 where I left repeated messages  
18 and did speak with Ms. Westry.

19 But, further, the other issues that were to be  
20 discussed included my request that there be a stay of the  
21 sentence pending appeal. That albeit sentencing because of  
22 my contention, documented for them that I had been wrongfully  
23 convicted, I was asking for a separate recommendation that  
24 whatever sentence the Court saw fit to impose be stayed  
25 pending my appeal.

1           The last issue was for discussion with Ms. Westry,  
2 also not reflected in the report and should rightfully have  
3 been, was my inquiry as to what my rights were with regard to  
4 the presentence report insofar as time within which to  
5 respond. Ms. Westry asserted she did not know what rule or  
6 statutory provision governed as far as my rights to make a  
7 responsive to submission and she said that Ms. McDaniel her  
8 supervisor, would have that information. That was yet the  
9 third area for discussion with Ms. McDaniel. I think that  
10 covers it.

11           THE COURT: Very well. All right. Does the  
12 Government wish to respond?

13           MS. LIU: Your Honor, on the issue of continuance we  
14 defer to your judgment.

15           THE COURT: Very well. Under Rule 32 of the  
16 Superior Court Rules of Criminal Procedure, at subsection B  
17 which deals with the presentence investigation, clearly in a  
18 misdemeanor case the Social Services Division will make a  
19 report available upon the request of the Court. And in this  
20 case I did request the report.

21           That rule also governs disclosure. At subpart 3 it  
22 states that the Court shall make available to the defendant  
23 through defendant's counsel and to counsel for the Government  
24 a copy of the report of presentence investigation a  
25 reasonable time before imposing sentence.

1 In this case the current question for the Court is  
2 whether the submission of the report on last Friday at 11:35  
3 a.m., when it was faxed from my chambers to -- faxed from my  
4 chambers immediately following receipt to the Government and  
5 to defense counsel, whether the period between defendant's  
6 receipt and this morning's hearing which commenced some ten  
7 or fifteen minutes ago was adequate time for review of the  
8 report.

9 It is my view that a sufficient basis has been  
10 stated for the grant of a continuance. The matter will be  
11 continued until Monday, June 28.

12 MS. SASSOWER: Thank you, Your Honor.

13 THE COURT: Now having said that, I will address  
14 certain particulars so that there is no time wasted during  
15 the period between now and sentencing. I have reviewed the  
16 presentence, such as it is, and to my -- in my view it is  
17 adequate for its intended purpose. The presentence report  
18 contains several pages of material from a July 7, 2003  
19 memorandum from Ms. Sassower to the American Civil Liberties  
20 Union. That's found at pages 4, 5, 6, 7, 8, 9, 10 and 11 of  
21 the presentence report.

22 To state for the record that there is somehow an  
23 inadequate presentation of the defendant's position is simply  
24 at odds with the content of this report. The purpose for  
25 this sentencing hearing is not to re-review evidentiary

1 matters, as those matters were already decided by a jury, and  
2 upon their review a finding of guilty was made. That being  
3 the case the continued hearing will not be a forum for any  
4 further discussion of your dissatisfaction with the manner in  
5 which the events developed that brought you to court or the  
6 proceedings that took place once you got here.

7           The sole matter for this Court's consideration is  
8 having been convicted of a misdemeanor which in this  
9 jurisdiction carries a maximum sentence of six months, \$500  
10 fine, or both, the question for this Court is what factors  
11 should be considered in its sentencing determination. And I  
12 will tell you now so that you are well prepared on June 28,  
13 there will be no further discussion of the evidence  
14 previously presented, previously reviewed and considered and  
15 upon which a jury rendered its verdict.

16           MS. SASSOWER: The jury did not have the evidence.

17           THE COURT: Second -- be quiet. Second, with  
18 regard to the presentence report, it is foreign to me and I  
19 invite you and your legal adviser to obtain authority for the  
20 proposition that the Social Services Division requires your  
21 permission before submission of a report to the Court that  
22 the Court ordered. I don't expect to hear from you during  
23 this ruling.

24           Next, with regard to any further inclusion of  
25 materials into the report that you have determined were

1 either by oversight or intent not included in the report, to  
2 the extent that these matters involve your interpretation of  
3 the evidence or the Court proceedings, there is no need for  
4 Social Services to include such matters in this report.

5 MS. SASSOWER: Your Honor?

6 THE COURT: Just a minute.

7 (Pause)

8 THE COURT: Finally, in my view there is sufficient  
9 information of record in this case and in the presentence  
10 report to enable me in the exercise of meaningful sentencing  
11 discretion to render sentence in this case. And the only  
12 reason that this matter is being continued is because of your  
13 stated basis for having an inadequate time to prepare, given  
14 the submission of the report on May 28, 2004.

15 MS. SASSOWER: Indeed, I would not say something  
16 that was not true.

17 THE COURT: Well, Ms. Sassower, I'm not asking you  
18 to say anything right now. That being the case, this matter  
19 is continued for sentencing to June 28, 2004, at 11 p.m.  
20 (sic).

21 MS. SASSOWER: Thank you.

22 THE COURT: Thank you.

23 THE DEPUTY CLERK: Ms. Sassower, if you fail to  
24 appear on --

25 THE COURT: June 28.



1 THE DEPUTY CLERK: -- June 28 at 11 o'clock, a  
2 warrant will issue for your arrest. If you are convicted of  
3 failing to appear, you face five years in jail or \$5000 fine  
4 or both for failing to appear for sentencing, which is a  
5 felony. Do you understand?

6 MS. SASSOWER: Yes --

7 THE DEPUTY CLERK: Please sign your notice --  
8 signature --

9 [Thereupon, the proceedings were concluded.]

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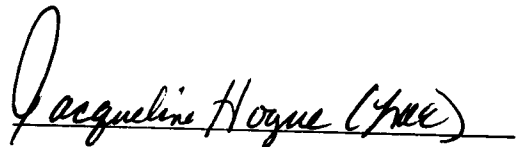
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I, Jacqueline Hogue, an Official Court Transcriber for the Superior Court of the District of Columbia, do hereby certify that in my official capacity I prepared from electronic recordings the excerpt proceedings had and testimony adduced in the matter of UNITED STATES OF AMERICA versus ELENA R. SASSOWER, Docket Number: M 4113-03, in said Court, on the 1st day of June 2004.

I further certify that the foregoing 17 pages were transcribed to the best of my ability from said recordings.

In witness whereof, I have subscribed my name this the 7th day of June 2005.



Official Court Transcriber