

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

UNITED STATES

Appellee,

v.

Case No. 04-CM-760  
M4113-03

ELENA R. SASSOWER,

Appellant.

**Affidavit in Support  
of Defendant's Pro  
Se Motion**

Mark Goldstone

----- X  
DISTRICT OF COLUMBIA )  
UNITED STATES OF AMERICA ) ss.:

I, Mark Goldstone, being duly sworn, deposes and says the facts herein support my contention that not every person who speaks in a public congressional hearing is jailed for six months.:

1. Since 1985, I have been engaged in the practice of criminal law in the District of Columbia. I have concentrated my practice in the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. I am a member of the Criminal Justice Act panel in both the Superior Court and the Appeals Court. I have "specialized" in the representation of people who seek to express themselves under the First Amendment freedom of speech clause. I have written articles on free speech, testified before City Council on free speech issues,

Ex "G"

and giving speeches, lectures and briefings on freedom of speech issues on numerous occasions.

2. For more than ten years, I have chaired the Demonstration Support Committee of the DC Chapter of a national progressive legal organization, the National Lawyer's Guild. The National Lawyer's Guild has provided legal services to activists for more than 60 years. In that role, I counsel individuals and organizations about the rules governing free speech in the District of Columbia, and am often called upon to represent individuals who are arrested and charged with unlawful conduct at a demonstration.

3. I would estimate that I have defending thousands of activists since 1985. I have been on the scene with the activists during their demonstrations, and served as court appointed counsel in numerous cases. I have handled numerous bench trials in the Superior Court involving arrests at demonstrations, as well as many jury trials. In addition, I have appealed many convictions, and this has resulted in reported opinions by the Court of Appeals in several of my cases, including, Markowitz, Smith-Caronia, Farina and Berg.

4. In the thousands of free speech cases that I have been counsel of record, I have never seen a sentence remotely approaching the sentence of six months in jail in addition to the \$250 fine to the Victims Fund and a \$500 fund. In only one case that I can recall did I witness a sentence of jail time for non-violent speech-related conduct, and that involved four activists who got sentenced to a few days in jail in the late 1980's after they disrupted the Supreme Court while it was in session, and

during sentencing allocution, told the Judge that they would continue to disrupt the Supreme Court, until it changed its position on abortion rights.

To my knowledge, no one in the last 20 years who has been arrested for speaking in a public Congressional hearing has served a minute of jail time. This affidavit is being submitted in support of pro se Elena Sassower's motion for release from jail.

WHEREFORE, it is respectfully prayed that the relief requested in the accompanying motion be granted.

*Mark Goldstone*

MARK GOLDSTONE

Sworn to before me this  
19<sup>TH</sup> day of July 2004

*Carole A. Bardeck*

Notary Public

CAROLE A. BARDECK  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires January 3, 2005