

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

----- x
UNITED STATES OF AMERICA

-against-

Notice of Motion to Adjourn
August 20, 2003 Conference
for Ascertainment of Counsel

No. M-04113-03
(Judge Mildred Edwards)

ELENA RUTH SASSOWER
----- x

PLEASE TAKE NOTICE that upon the annexed affidavit of Defendant ELENA RUTH SASSOWER, sworn to August 6, 2003, the exhibits annexed thereto, and upon all the papers and proceedings heretofor had, ELENA RUTH SASSOWER will move this Court at 500 Indiana Avenue, N.W., Washington, D.C. 20001 as soon as can be heard, for an order granting adjournment of the August 20, 2003 conference for ascertainment of counsel to September 19, 2003.

Dated: August 6, 2003
White Plains, New York



ELENA RUTH SASSOWER
Defendant
16 Lake Street, Apt. 2C
White Plains, New York 10603
(914) 949-2169

TO: U.S. Attorney for the District of Columbia
Assistant U.S. Attorney Aaron Mendelsohn
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-7700 / (202) 514-4991

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

----- x
UNITED STATES OF AMERICA

**Affidavit in Support
of Adjournment**

No. M-04113-03

-against-

ELENA RUTH SASSOWER
----- x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the above-named Defendant, criminally charged with "disruption of Congress" and facing punishment of six months in jail and a \$500 fine.

2. This affidavit is submitted in support of this motion to adjourn the scheduled August 20th conference for ascertainment of counsel to September 19th -- the day after the American Civil Liberties Union's Legal Committee will be meeting and deciding my request for assistance in this important public interest case involving fundamental citizen rights.

3. On June 20th, the date of the first conference following my May 23rd arraignment, I spent \$175 for round-trip NewYork-Washington train tickets to appear before Judge Mildred Edwards (Exhibit "A"). Assisting me at the June 20th conference was Mark Lewis Goldstone, Esq, to whom I paid \$350 for that limited purpose. As Mr. Goldstone's retainer to represent me in this case is \$5,000, I advised Judge Edwards that before spending such substantial sum, I was endeavoring to obtain *pro bono* counsel.

4. In support thereof, I handed-up a June 16th memorandum that I had written and sent to Ralph Nader, Public Citizen, and Common Cause -- to which the

American Civil Liberties Union [ACLU] was an indicated recipient (Exhibit "B-1"). I also handed up a June 20th letter to the ACLU, reflecting my prior telephone conversations with its Staff Attorney, Fritz Mulhauser, Esq., requesting legal assistance (Exhibit "B-2").

5. Judge Edwards granted my request for a two-month adjournment -- over the objection of the Assistant U.S. Attorney handling the case, Aaron Mendelsohn. In so doing, Judge Edwards not only recognized the validity of my assertion that the public interest organizations from which I was requesting assistance are bureaucracies whose decisional processes take time, but made plain that during the summer, everything slows and nothing was going to happen.

6. Upon the conclusion of the June 20th conference, I discussed with Mr. Goldstone the documents I had received at my May 23rd arraignment from the court-assigned attorney who had assisted me, Mitchell S. Baer, Esq. These documents included:

- (a) a May 23rd "Information", illegibly signed by an Assistant U.S. Attorney with no signature by Officer Roderick Jennings, whose name was typed in; and
- (b) a May 23rd letter from the U.S. Attorney for the District of Columbia, signed by Assistant U.S. Attorney Leah Belaire, which extended no plea offer and purported to provide "current and comprehensive discovery".

7. While discussing these two documents with Mr. Goldstone -- the latter of which I do not believe was in the court file that Mr. Goldstone and I had reviewed immediately prior to the conference -- I asked the Court Clerk to provide me with a copy

of a document in the court file which I had not received from Mr. Baer on May 23rd.
Captioned,

"Superior Court for the District of Columbia
Criminal Division

United States
vs
Elena Sassower",

this document purported to be signed and sworn-to by Officer Jennings on May 23rd and purported to describe "events and acts" I had committed at the Senate Judiciary Committee's May 22nd "hearing" -- for which I was being charged with "disruption of Congress".

8. Based upon this May 23rd document which I saw for the first time on June 20th -- and then only because, prior to the conference, Mr. Goldstone had asked to see the court file -- as well as the videotape of the May 22nd "hearing" -- a copy of which Mr. Mendelsohn handed me shortly before the conference began¹ -- I decided to revise my June 20th letter to the ACLU (Exhibit "B-2"), which I had planned to personally deliver on that date.

9. On July 7th, I completed a nine-page, single-spaced memorandum demonstrating, by comparison of the documents underlying the prosecution, the videotape, and the stenographic transcript, that "the charge against me is not just bogus,

¹ Mr. Mendelsohn also provided me with a full copy of the stenographic transcript -- of which I had already independently secured the relevant closing pages. Both the videotape and the transcript excerpt had been requested by my May 28, 2003 memorandum to Senate Judiciary Committee Chairman Orrin Hatch and Ranking Member Leahy (fns. 1 & 3) -- a copy of which I gave to Mr. Mendelsohn prior to the conference. Among the items identified in the memo's RE: clause, "Preserving Exculpatory Evidence".

but malicious". I sent this to the ACLU with a revised letter, by priority mail (Exhibit "C")².

10. Based upon this memorandum, Mr. Mulhauser responded, by letter dated July 15th, requesting that I provide the ACLU with a copy of the videotape, which they would "review...with interest". This I sent by overnight mail, under a July 21st letter, stating that it would "confirm the analysis which my July 7th memo presents" (Exhibit "D").

11. Two days later, I received the ACLU's response -- a letter from Mr. Mulhauser, dated July 23rd, that no decision could be made as to "whether the ACLU could offer [me] legal help to defend [my] charge":

"until our Legal Committee meets.... The Committee's next session is September 18, and it's impossible to transact any business in the next 6-7 weeks with the start of summer holiday season scattering most Washingtonians. That date of course is after your August 20 court appearance. We imagine the court would readily grant a further continuance if you appeared but explained you were still seeking counsel and would have an answer at least from the ACLU by a date certain."

12. On Monday, July 28th, after notifying Mr. Mulhauser that I was eager and willing to make a personal presentation to the Committee at its September 18th meeting (Exhibit "E"), I telephoned Mr. Mendelsohn to ask his consent to an adjournment of the August 20th court conference to September 19th, by which time I would have an answer from the ACLU.

² My July 7th memorandum and the ACLU's responding July 15th and July 23rd letters are not annexed hereto as they discuss legal issues and strategy. Such can be confirmed from the ACLU, which is being furnished with a copy of this motion.

13. In response to Mr. Mendelsohn's inquiry as to whether I had heard from any of the other organizations I had contacted, I told him that although I had received negative answers from them, I had left numerous messages with the presidents of Public Citizen and Common Cause, as yet, unreturned. I assured him, however, that I would be ready to proceed on September 19th -- if not with *pro bono* counsel, than by my retention of Mr. Goldstone.

14. Mr. Mendelsohn, who had agreed at the outset of the conversation that mine was an important case, seemed to consent to my adjournment request -- as long as I made the \$175 round-trip from New York to appear in court on August 20th. However, when I told him that I wished to obviate such expensive, exhausting trip by his consent to a written application for adjournment of the conference to September 19th, he told me he would consent only if I stipulated that the case would come to trial within 30 days thereafter. I believe he stated such condition after he put me on "hold" -- which he did at least twice during our conversation, seeming to confer with his office colleagues.

15. My response was immediate. It would be inappropriate for me to enter into a stipulation which would bind prospective incoming counsel -- and especially as there were significant preliminary issues that would need to be resolved before trial.

16. Mr. Mendelsohn then told me that he would not consent to the adjournment -- and that I would have to come to court on August 20th to request one. In so doing, he denied that the Court would most likely grant a continuance if I came before it on August 20th -- as set forth in the above-quoted portion of the ACLU's letter, which I read him. Indeed, Mr. Mendelsohn purported that the Court might proceed to set a trial date on August 20th, in the absence of counsel.

17. I told Mr. Mendelsohn that I did not believe that the Court could properly do such a thing -- and that, lest I be rushed to trial, I would be sending him a discovery demand, as this would establish that the criminal case against me was "not just bogus, but malicious". I further told Mr. Mendelsohn that if he had viewed the videotape, he would have seen for himself that it did not support his clients' recitation of "events and acts".

18. Shortly thereafter, I again telephoned Mr. Mendelsohn. I asked him to clarify his position so that I could properly represent it in my formal motion papers. Specifically, I asked him to identify what prejudice there would be to him by the Court's adjourning the August 20th conference for ascertainment of counsel to September 19th. He responded by stating that he did not need to identify any prejudice and would not do so until I had made my motion. I also asked Mr. Mendelsohn if he disputed that I would be prejudiced by the Court's denying the adjournment. However, he refused to respond and hung up the phone on me as I asked him to give me some reason that would justify his burdening me and the Court with a formal motion.

19. Immediately, thereafter, I telephoned the court to ascertain proper procedure for making this motion -- and the name of the judge to whom it should be directed in light of Judge Edwards' retirement. Among the persons I spoke with was Ms. Algenia Ross, secretary to Judge John Hess, who I was told had been assigned Judge Edwards' cases,³ and Arlington Sellers, supervisor in the case management criminal division.

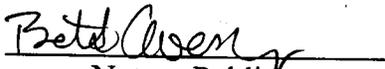
³ I asked Ms. Ross to note in the file that I had called and would be making a motion to adjourn the August 20th conference.

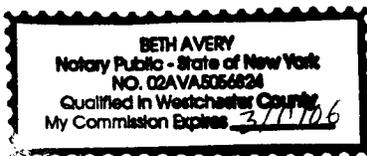
20. Yesterday, I again called the court to verify procedure -- and was told by Judge Hess' law clerk that the case would be before Judge Bruce Mencher. However, Judge Mencher's law clerk, Kelly Guglielmi, stated that it was possible that Judge Mencher might not be handling the case -- and that I should indicate Judge Edwards' name on the motion⁴.

WHEREFORE, it is respectfully prayed that this motion for an adjournment of the scheduled August 20, 2003 conference for ascertainment of counsel be adjourned to September 19, 2003.


ELENA RUTH SASSOWER

Sworn to before me this
6th day of August 2003


Notary Public



⁴ I also asked Ms. Guglielmi to note the file that I had called and would be making a motion to adjourn the August 20th conference.