COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 04-CM-760
No. 04-CO-1600

Appellant's Affidavit in Opposition to the Government's Motion to Release Evidence

ELENA RUTH SASSOWER,

Appellant.

v.

UNITED STATES OF AMERICA,

Appellee.

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

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

1. I am the appellant *pro se* in the above-numbered consolidated appeals of my conviction and sentence for "disruption of Congress" and submit this affidavit in opposition to the false, bad-faith, and dilatory "Government's Motion to Release Evidence", signed by Assistant U.S. Attorney Florence Pan[1]. Such is without prejudice to

---

[1] I did not receive the motion until Monday, March 6th. The motion, mailed on February 24th from Washington, D.C., was – as reflected by the affidavit of service -- sent to me at "Box 68, Gedney Station, White Plains, NY 10605-0069" (Exhibit A). This is an incorrect mailing address for the Center for Judicial Accountability, Inc. (CJA), whose address was – until February 21st – Box 69. On that date, I relinquished the keys to Box 69 as CJA's mailing address was moved to Box 8220, White Plains, NY 10602 – located at a different post office. I discussed this on Tuesday, March 7th, with this Court's supervisory case manager, Thomas Abraham, who allowed me to fax this opposition affidavit – giving me until Wednesday morning, March 8th to do so.

my contention, already particularized[2], that this Court is disqualified for pervasive actual bias and interest and that these appeals must be transferred to the U.S. Court of Appeals for the District of Columbia.

2. Ms. Pan seeks to have the Court order that the videotape of the Senate Judiciary Committee's May 22, 2003 confirmation hearing, which the U.S. Attorney introduced into evidence at my trial, be released from the property office of the D.C. Superior Court.

3. Ms. Pan's ¶3 asserts that this videotape is the U.S. Attorney's only copy and asks to obtain it for a two-fold purpose:

> "so that it may be utilized to prepare the government's response to appellant's brief on appeal, and so that the record on appeal may be supplemented with a copy of the videotape." (at ¶3)

4. Her ¶4 then reiterates that it is for "the above-stated purposes" (underlining added), that her motion is made.

5. As for the second purpose of her motion, it is false. The videotape, having been admitted into evidence at trial, is part of the record below and, therefore, part of the record before this Court on appeal. There is no need to "supplement" the record with what it already contains.

6. As for the first purpose of Ms. Pan's motion, it is in bad faith for a variety of reasons. Nowhere does Ms. Pan state that she is unable to obtain a duplicate of the videotape from other sources, readily-available to her. This would include the Senate Judiciary Committee, whose own website, http://judiciary.senate.gov/, contains a webcast

---

[2] This includes, most recently, my February 22, 2006 judicial misconduct complaint against this Court's judges, filed with the D.C. Commission on Judicial Disabilities and Tenure; my unresponded-to January 10, 2006 letter to Chief Judge Washington for supervisory oversight, and my October 14, 2005 motion to disqualify this Court's judges and for transfer to the U.S. Circuit Court of Appeals for the District of Columbia.

of the May 22, 2003 confirmation hearing. A copy of the pertinent webpage, downloaded yesterday, is annexed hereto as Exhibit B.

7. Nor does Ms. Pan state that the property office of the D.C. Superior Court would not accommodate requests from the U.S. Attorney's office to view the videotape under its auspices and/or for a copy of the tape. For that matter, Ms. Pan does even allege that the U.S. Attorney ever made such requests to the property office.

8. Yet, Ms. Pan's motion is not only devoid of a factual basis, it is also devoid of law. Most importantly, she offers no legal authority for this Court to release to a party an original trial exhibit, where the case is not yet concluded, indeed, pending appeal. It should be obvious that the integrity of court exhibits must be protected in original form and not contaminated in any way[3]. Plainly, once released to the U.S. Attorney, there is no assurance that the videotape would not be damaged by replay. Such damage need not be wilful. In fact, my own copy of the videotape – which Assistant U.S. Attorney Aaron Mendelsohn supplied me on June 20, 2003[4], at the first court conference following my arraignment – has inadvertently suffered damage.

9. It is reflective of Ms. Pan's bad-faith that, prior to the making of her motion to release evidence, she did not contact me to inquire as to whether I would be willing to duplicate my copy of the videotape for her – or whether I knew of additional sources from

---

[3] It must be noted that this is a case where the Government allegedly "lost" critical, exculpatory evidence. This is chronicled by my June 28, 2005 supplemental fact statement (pp. 15, 41-2) and June 28, 2005 unexpurgated brief (pp. 42-5) – the originals of which have themselves mysteriously disappeared from this Court's files. [*See* my unresponded-to January 10, 2006 letter to Chief Judge Washington (p. 5); my February 22, 2006 judicial misconduct complaint (p. 4).

As these June 28, 2005 appellate submissions so conveniently compile the substantiating lower court record references, a replacement set is being mailed to the Court with this opposition affidavit.

[4] Recited, with record reference, at page 5 of my supplemental fact statement.

which she could procure the videotape. This, notwithstanding I had responded amicably and with accommodation to all her prior communications (Exhibits C-1 – C-6)[5].

10. As evidenced by these prior communications, all faxed between us, I always responded to Ms. Pan's requests for additional time for the filing of the U.S. Attorney's appellees' brief by stating:

> "I consent...to whatever date will enable you to discharge your professional and ethical responsibilities with respect to these consolidated appeals." (Exhibits C-2, C-4, C-6).

11. The U.S. Attorney's appellees' brief is due March 10th. Inasmuch as the appellate division of the U.S. Attorney's office was personally served over eight months ago with my June 28, 2005 appellant's brief, supplemental fact statement, and three-volume appendix – and was served, by mail, four months ago with my essentially identical, though sharply expurgated, November 6, 2005 "conforming brief on the merits", it had more than ample time to recognize that the May 22, 2003 videotape was critical evidence on this appeal, which it might wish to view. These appellate papers made evident that the videotape was completely exculpatory in proving that the "disruption of Congress" charge against me should have been thrown out "on the papers". This, because the videotape established: (1) that the underlying prosecution documents were materially false and misleading[6]; and (2) that what I actually did, as captured by the videotape, could never

---

[5] The annexed exchange of correspondence consists of: Ms. Pan's November 30, 2005 letter (Exhibit C-1) and my November 30, 2005 response (Exhibit C-2); Ms. Pan's December 5, 2005 letter (Exhibit C-3) and my December 6, 2005 response (Exhibit C-4); Ms. Pan's January 6, 2006 letter (Exhibit C-5) and my January 6, 2006 response (Exhibit C-6).

[6] The U.S. Attorney *never* denied or disputed pre-trial that the underlying prosecution documents were materially false and misleading and so-exposed by the videotape. Likewise, at trial and post-trial, the U.S. Attorney *never* denied or disputed the accuracy of my written analysis of the videotape, comparing it to the prosecution documents **[A-1565-73, A-1574-77]**. *See* my supplemental fact statement: pp. 5-6, 24, 57, 90-3, 144; and unexpurgated brief : pp. 53-4, 85, 108.

support a "disruption of Congress" charge, *as a matter of law*[7]. Indeed, the record shows that the U.S. Attorney's appellate division was apprised of the dispositive nature of the videotape nineteen months ago, when I sought release from incarceration. This, by my July 16/August 12, 2004 reconsideration motion[8], which unequivocally asserted:

> "There is a videotape of the Senate Judiciary Committee hearing showing my respectful request to testify made after Presiding Chairman Saxby Chambliss announced the 'hearing' adjourned. The videotape, constituting celluloid DNA, is incontrovertible evidence, not supplanted by an adverse jury verdict." (¶22, underlining in the original).

Such "incontrovertible evidence" particularly underlay my challenge to the constitutionality of the "disruption of Congress" statute, *as written and as applied* – as to which my reconsideration motion put before the Court (as Exhibit D) a memorandum of law in substantiation of my "Likelihood of Success on the Merits"[9]. As pointed out by my September 13, 2004 reply affidavit (¶¶8-9, 41-2)[10] – and reflected most recently by my

---

[7] *See* my supplemental fact statement: pp. 90-93 (motion for judgment of acquittal #1), pp. 135-6 (motion for judgment of acquittal #2); and my unexpurgated brief: pp. 87-90 ("Judge Holeman's Conclusory Denials of Sassower's Motions for Judgment of Acquittal"), pp. 90-93, ("Judge Holeman's Failure to Properly Charge the Jury, Especially with Respect to the 'Defense Theory of the Case"), pp. 93-94 ("Judge Holeman's Response to Sassower's Motion to Set Aside the Verdict as Against the Weight of the Evidence and Contrary to Law").

[I take this opportunity to note that the videotape – and my substantiating analysis **[A-1564-73; A-1574-77]** -- belie the assertion in the National Lawyers Guild's *amicus curiae* brief, written by Jonathan Katz, Esq., that "insufficient evidence was presented at trial to show that there was disorder or disruption caused by Appellant, other than the chairperson hitting his gavel." (at p. 4, underlining added). As the videotape and my analysis establish, Chairman Chambliss hit the gavel only to signify his announced adjournment of the hearing, not in response to any "disruption" on my part.

[8] A typed copy of my handwritten July 16/August 12, 2004 reconsideration motion is Exhibit F to my October 14, 2005 disqualification/transfer motion.

[9] *See* ¶29 of my Exhibit C affidavit to my July 16/August 12, 2004 reconsideration motion.

[10] A typed copy of my handwritten September 13, 2004 reply affidavit is Exhibit I-2 to my October 14, 2004 disqualification/transfer motion.

October 14, 2005 disqualification/transfer motion (¶¶40-41) -- the U.S. Attorney's response was simply to ignore this memorandum of law[11] – and the videotape.

12. Under such circumstances, the Court might properly view the U.S. Attorney's newly-discovered "need" for the videotape as a stratagem to secure an extension of time for filing its appellees' brief.

13. Although Ms. Pan's instant motion does not request an extension, such would be the predictable result of the Court's granting of this motion wherein she seeks the videotape "so that it may be utilized to prepare the government's response to appellant's brief on appeal".

14. Should the U.S. Attorney make a procedural motion pursuant to Rule 27(b)(1)(A) for an extension of time beyond March 10th, I will not oppose it. The U.S. Attorney should be given as much time as it requires to satisfy itself that it has NO legitimate opposition to these consolidated appeals and that its professional and ethical duty is to join with me in seeking reversal, if not vacatur, of the conviction and sentence – and in urging that such fair and impartial tribunal as ultimately hears these appeals render a reasoned adjudication of each of my four transcendingly important appellate issues.[12]

Elena Ruth Sassower

ELENA RUTH SASSOWER

Sworn to before me this
8th day of March 2006

LAURA MARJI
Notary Public, State of New York
No. 01MA6049278
Qualified in Westchester County
Term Expires Oct. 10, 2006

Notary Public

---

[11] The text of this memorandum of law is embodied, virtually whole, in my third appellate issue, challenging the constitutionality of the "disruption of Congress" statute, *as written and applied*. [*see* my "conforming brief on the merits": pp. 37-46; my unexpurgated brief: pp. 104-114].

[12] As to this Court's disqualifying self-interest in the issues presented by my appeal, *see* my October 14, 2005 disqualification/transfer motion, ¶¶33-46.