SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA

Affidavit in Opposition to the Prosecution's Motion *In Limine* and in Further Support of Defendant's Motion for Discovery, Disclosure & Sanctions

-against-

No. M-04113-03

ELENA RUTH SASSOWER

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 opposition to the unsworn "Government's motion in limine to preclude reference to defendant's political motivations, political beliefs, political causes, etc.", signed by Assistant U.S. Attorney Aaron Mendelsohn and filed December 3, 2003. Additionally, it is submitted in further support of my October 30, 2003 discovery/disclosure motion, which expressly sought sanctions against Mr. Mendelsohn and the U.S. Attorney for the District of Columbia, entitlement to which was further reinforced by my December 3, 2003 reply affidavit. Both these documents are incorporated herein by reference.

3. As hereinafter demonstrated, Mr. Mendelsohn's motion *in limine*: (a) rests on knowing and deliberate falsification of the facts pertaining to my arrest; (b) is unsupported by any legal authority, other than the statute under which I was arrested,

as to which it is misleading; and (c) is impermissibly and prejudicially vague as to the "political" matter it seeks to preclude by pre-trial order.

4. For the convenience of the Court, a Table of Contents follows:

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Background

5. On December 3, 2003, oral argument was held on my October 30, 2003 discovery/disclosure motion before Senior Judge Stephen Milliken. Judge Milliken agreed that Mr. Mendelsohn had failed to produce documents to which I was entitled by my August 12, 2003 First Discovery Demand pursuant to Rule 16(a)(1)(C) and generously gave him until January 14, 2004 to make production. However, even while chastising Mr. Mendelsohn for flagrantly misrepresenting Rule 16(a)(1)(C) in his November 13, 2003 opposition to my motion, Judge Milliken did not sanction him in any way. This, over my objection that I was entitled to sanctions against Mr. Mendelsohn for his pervasive misconduct, as demonstrated by both my October 30, 2003 motion and my December 3, 2003 reply affidavit.

6. Because of the undeserved lenience he received from Judge Milliken, Mr. Mendelsohn – who, in any event, should have been chastened by my documentary showing of his misconduct -- was not ashamed to present to the Court his December 3, 2003 motion *in limine*. As Mr. Mendelsohn well knew, its false and deceitful factual predicate was already exposed by my October 30, 2003 discovery/disclosure motion.

7. On December 10, 2003, before expending time, energy, and money on these opposition papers, I gave Mr. Mendelsohn a final opportunity to "do the right thing" and mitigate the severe sanctions against him which I had already demonstrated to be warranted. By fax (Exhibit "S-1")[1], I stated:

> "This is to put you on notice of what you should already know – that your motion *in limine*, filed and served on December 3, 2003, rests on sanctionable deceit both as to the basis for my arrest and the meaning of the statute under which I was arrested.
>
> Please advise whether you will meet your ethical duty by withdrawing it – so as to obviate burdening me and the Court with having to address it.
>
> Should you fail to do so, I hereby request that you identify the source of your false ¶1 description of events giving rise to my arrest:
>
> > 'On May 22, 2003, at about 3:40 p.m., the defendant entered a Senate Judiciary Committee for 2nd Circuit Judge Wesley and loudly demanded to testify. The defendant would not stop yelling in the session despite lawful requests from Senate officials. Capitol Police officers who were present at the hearing escorted the defendant out of the session and placed her under arrest for disruption of Congress.'
>
> and that you supply legal authority for your unsupported ¶3 assertion pertaining to 10 D.C. Code 503.16(b)(4):

[1] Such continues the sequence of exhibits from my moving affidavit in support of my October 30, 2003 discovery/disclosure motion and my December 3, 2003 reply affidavit.

'There is nothing in the plain language of the statute that remotely suggests that evidence of the defendant's motivations or political beliefs are inculpatory (or even exculpatory) for this criminal offense.' (emphasis added)

On a different, but related subject, please advise whether you would like me to mail you the wheely-cart which I used to take back to New York the original documentation of Judge Wesley's corruption that I had hand-delivered to the Senate Judiciary Committee on May 5, 2003 – more than two weeks before the Committee's May 22, 2003 public hearing at which – as the video, transcript, and other evidence in your possession establishes -- I rose, at an appropriate point, to respectfully ask:

'Mr. Chairman, there's citizen opposition to Judge Wesley based on his documented corruption as a New York Court of Appeals judge. May I testify?'

Thank you." (underlining in the original).

8. Mr. Mendelsohn's "smart-aleck" response was a two-sentence December 15, 2003 fax (Exhibit "S-2"):

"Please mail the 'wheely-cart' to me at the above address. Thank you for your time and attention to this matter."

9. On December 18, 2003, I decided to try yet again and sent Mr. Mendelsohn a further fax (Exhibit "S-3"):

"The only response I have received from you to my December 10th letter was on December 15th and related to the inconsequential 'wheely-cart'.

If it is not your intention to respond to the first and foremost subject of my December 10th letter, your knowingly false and deceitful motion *in limine*, please advise.

To facilitate your response, a further copy of my December 10th letter is enclosed."

10. Apparently, Mr. Mendelsohn did not want to put in writing his refusal to come forward with the factual and legal basis for the challenged ¶¶1 and 3 of his motion *in limine* because later that day I received a phone call from him that I should file my opposition papers. When I asked Mr. Mendelsohn whether his superiors were aware of his litigation conduct, which I described as "beyond anything permissible", Mr. Mendelsohn stated, "absolutely, absolutely"[2].

The Knowingly False Factual Basis of Mr. Mendelsohn's Motion *In Limine*

11. The factual predicate for Mr. Mendelsohn's motion *in limine* is his ¶1, purporting to summarize the events of May 22, 2003 warranting my arrest on that date. This is then reinforced by his ¶2, which begins,

> "Based on defendant's conduct on the day of her arrest, the government anticipates that defendant will attempt to use this Court as a forum to express her political views." (underlining added).

12. Mr. Mendelsohn's ¶1 is EVEN MORE FALSE than the underlying prosecution documents, whose falsity I have repeatedly brought to Mr. Mendelsohn's attention -- including by my October 30, 2003 discovery/disclosure motion [See ¶18 thereof].

13. ¶¶16-26, 29-42 of my sworn affidavit in support of my October 30, 2003 motion particularizes the facts and circumstances pertaining to my May 22, 2003 arrest, demonstrating that it was NOT – as pretended by the underlying prosecution

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[2] *Cf.* Exhibit "D-1" to my October 30, 2003 discovery/disclosure motion (at p. 2); footnote 3 to my December 3, 2003 reply affidavit (at pp. 6-7).

documents -- a "justified response by Officer Roderick Jennings to what occurred at the [Senate Judiciary Committee] hearing". Rather, it was

> "an unprecedented response by Capitol Police to entirely proper conduct by me, orchestrated by, and in concert with, New York Home-State Senators Hillary Rodham Clinton and Charles E. Schumer, as well as the Senate Judiciary Committee, *in advance of the 'hearing'*, for which Officer Jennings was the 'cover'" (¶17, underlining in the original, italics added).

14. In substantiation, my affidavit cited the videotape of the Senate Judiciary Committee's May 22, 2003 "hearing", the stenographic transcription thereof, and annexed such extensive documentary proof as my May 21, 2003 39-page fax to Capitol Police Detective Zimmerman (Exhibit "I"), my May 28, 2003 memorandum to Senate Judiciary Committee Chairman Orrin Hatch and Ranking Member Patrick Leahy (Exhibit "K-1"), my May 23, 2003 notation in the Capitol Police Prisoner's Property Book (Exhibit "J-1"), and my September 22, 1996 police misconduct complaint (Exhibit "M").

15. Mr. Mendelsohn's unsworn November 13, 2003 opposition did not deny or dispute the accuracy of my detailed, evidence-supported recitation of the material facts and circumstances pertaining to the May 22nd arrest. Instead, he baldly purported that I had presented "no factual... basis" for my October 30, 2003 motion. This, and such similarly flagrant deceits as his misrepresentation of Rule 16(a)(1)(C), compelled me to seek further sanctions against him by my December 3, 2003 reply affidavit, expressly including his referral to disciplinary and other authorities, pursuant to the Court's own disciplinary responsibilities under Canon 3D of the Code of Judicial Conduct for the District of Columbia (¶4, "WHEREFORE" clause).

16. It is in face of my sworn, uncontested recitation in my October 30, 2003 motion pertaining to my arrest that Mr. Mendelsohn's unsworn, three-sentence ¶1 omits anything prior to May 22, 2003, and, as to May 22, 2003, makes it ambiguously appear as if the Senate Judiciary Committee was engaged in some private meeting relating to "2nd Circuit Judge Wesley", by his omission of the material words "public hearing" – let alone, of the single word, "hearing". Tellingly, Mr. Mendelsohn provides no source for his ¶1: not the videotape, not the stenographic transcript, not any of the underlying prosecution documents -- nor any other documentary or testimonial source.

17. Mr. Mendelsohn's refusal to answer my reasonable request for the source of his ¶1 (Exhibits "S-1", S-3") reflects his knowledge that it is materially false and concocted. Dispositive of this – beyond the videotape and stenographic transcript in his possession -- are the underlying prosecution documents annexed to Assistant U.S. Attorney Leah Belaire's May 23, 2003 letter, *to wit*, U.S. Capitol Police's "Arrest/Prosecution Report", "Event Report", and two "Supplement Reports" – appended to my October 30, 2003 motion as Exhibit "F". None of these underlying prosecution documents, each dated May 22, 2003, assert, as does Mr. Mendelsohn's ¶1, that "at about 3:40 p.m., the defendant entered", "demanded to testify", and "would not stop yelling in the session despite lawful requests from Senate officials." (underling added) Their version is that at approximately 3:37 p.m., I stood up (because I was sitting) and "stated [I] wanted to testify". [See, Exhibit "F", pp. 9, 10-11, 12, 13]. There

is nothing in these underlying prosecution documents about my continuing to "yell[]" after being requested to "stop".

18. Nor do Mr. Mendelsohn's aforesaid ¶1 fabrications appear in the typed recitation of "events and acts" in the "Gerstein", dated May 23, 2003 (Exhibit "H-1"), which I discovered in the court file on June 20, 2003 – and which, unlike Ms. Belaire's letter, I did not receive at my May 23, 2003 arraignment[3]. Indeed, the only antecedent for Mr. Mendelsohn's fabrication that I "would not stop yelling...despite lawful requests from Senate officials" is in the hand-written last sentence of the "Gerstein", "After the Senator called for order, the defendant continued to shout"[4]. That this antecedent and Mr. Mendelsohn's claim are BOTH FALSE is proven by the videotape.

19. Not shown by the videotape – because it occurred in the hallway outside the "hearing" room – is who arrested me. It is not, as Mr. Mendelsohn's ¶1 infers, "Capitol Police officers". Rather, as stated by ¶¶40-41 of my October 30, 2003 motion, without dispute from Mr. Mendelsohn, it was Sergeant Bignotti who had a "one-track, irrational fixation" to arrest me, which she did "unilaterially and without the slightest consultation of rookie officer Jennings", who is falsely transformed by the underlying prosecution documents into the "arresting officer" so as to cover-up the true facts pertaining to my May 22, 2003 arrest.

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[3] *See* footnote 7 to my October 30, 2003 discovery/disclosure motion.

[4] This hand-written final sentence was the basis upon which Judge Milliken referred to the "Gerstein" as "amended" at the December 3, 2003 oral argument.

20. As the ¶1 factual predicate for Mr. Mendelsohn's motion *in limine* is a demonstrated deceit, the motion must fail – even apart from consideration of its legal baselessness.

The Unsupported and Knowingly False Legal Basis of Mr. Mendelsohn's Motion *In Limine*

21. Despite the presumably substantial experience of the U.S. Attorney's office in making motions *in limine*, Mr. Mendelsohn's motion cites NO LAW – not statutory or rule provisions pertaining to motions *in limine* nor interpretive authorities such as decisional case law and treatises setting forth the legal standards applicable.

22. Instead, Mr. Mendelsohn's ¶3 quotes from the "disruption of Congress" statute under which I was arrested, 10 D.C. Code 503.16(b)(4), following which he baldly proclaims:

> "there is nothing in the plain language of the statute that remotely suggests that evidence of the defendant's motivations or political beliefs are inculpatory (or even exculpatory) for this criminal offense." .

23. Yet, there is nothing in the language of the statute to entitle Mr. Mendelsohn to a pre-trial motion *in limine*, as opposed to a ruling at trial and, if necessary, an instruction to the jury to disregard anything deemed inadmissible -- where, as here, he has not remotely specified the "motivations" he regards as so "highly prejudicial" as to warrant a pre-trial preclusion order. Black's Law Dictionary (7th edition, 1999, p. 1033, "motion in limine").

24. Moreover, in defining "motive", Black's Law Dictionary (p. 1034) lists "ulterior intent" as its single synonym. It also cites John H. Wigmore, A Students'

Indeed, although Mr. Mendelsohn's ¶1 purports that I was "yelling" in the Senate Judiciary Committee's "session", he does NOT say that I was "yelling" anything "political". This, he leaves to be inferred from the balance of his motion, especially his ¶2. Such inference, as Mr. Mendelsohn knows, is false.

Mr. Mendelsohn's Motion *in Limine* is Impermissibly and Prejudicially Vague

27. Mr. Mendelsohn has long been aware of the words I spoke at the Senate Judiciary Committee's May 22, 2003 "hearing", as well as the material facts, circumstances, and arguments relating thereto that I plan to present at trial. These are reiterated and amplified by my October 30, 2003 discovery/disclosure motion, which is nothing short of a "road-map" to my defense. Consequently, if Mr. Mendelsohn had a genuine factual basis for his motion *in limine*, he could easily have specified what he deemed "political" and of such prejudice as to warrant a pre-trial preclusion order.

28. Instead, Mr. Mendelsohn's motion *in limine* offers not a single example of what "political motivations and beliefs", "political issues", "political views", "political beliefs", "political agenda", "political speeches" he is talking about in his completely boiler-plate ¶¶4-6. Indeed, Mr. Mendelsohn fails to even define his meaning of the term "political".

29. As such, even were Mr. Mendelsohn's motion *in limine* not factually false and legally unsupported and misleading, which it demonstrably is, it would have to be denied as impermissibly and prejudicially vague.

Conclusion

30. Repeatedly, at the December 3, 2003 oral argument before Judge Milliken, I asserted my entitlement to the sanctions sought by my October 30, 2003 discovery/disclosure motion and December 3, 2003 reply affidavit and stated that I would renew same before the judge to be permanently assigned this case in the new year. I hereby make such renewal application.

31. Mr. Mendelsohn's December 3, 2003 motion ***in limine*** further reinforces my entitlement to sanctions. Indeed, it provides a vivid example of what happens when a lawyer, whose flagrant and repeated transgressions are brought before the Court, is allowed to get off "scott free", without even a warning as to the consequences of future misdeeds. He immediately continues his unethical conduct, "without skipping a beat".

32. ¶3 of my December 3, 2003 reply affidavit put before Mr. Mendelsohn the pertinent District of Columbia Rules of Professional Conduct -- including those pertaining to the "Special Responsibilities of a Prosecutor". Consequently, there is simply NO EXCUSE for him to have burdened me – and this Court – with this knowingly, false, deceitful, and altogether deficient December 3, 2003 motion ***in limine*** – and for arrogantly refusing to withdraw it when given the opportunity to do so.

33. That Mr. Mendelsohn's superiors at the Office of the U.S. Attorney are, according to him, knowledgeable and approving of his conduct, makes the situation all the more dire and disgraceful.

WHEREFORE, it is respectfully prayed that Mr. Mendelsohn's December 3, 2003 "motion in limine to preclude reference to defendant's political motivations, political beliefs, political causes, etc." be denied, and that, consistent with Canon 3D of the Code of Judicial Conduct for the District of Columbia, the Court take the "appropriate action" against him and his superiors at the Office of the U.S. Attorney shown to be amply warranted by defendant's October 30, 2003 discovery/disclosure motion, her December 3, 2003 reply affidavit, and now by these instant opposing papers.

Elena Ruth Sassower

ELENA RUTH SASSOWER

Sworn to before me this
31st day of December 2003

Beth Avery

Notary Public

BETH AVERY
Notary Public - State of New York
NO. 02AVA5056824
Qualified in Westchester County
My Commission Expires 2/11/06