SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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UNITED STATES OF AMERICA

Notice of Motion for Reargument, Disclosure by, and Disqualification of, Senior Judge Stephen Eilperin, and for Transfer of this Case to a Court Outside the District of Columbia

-against-

No. M-04113-03

ELENA RUTH SASSOWER

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PLEASE TAKE NOTICE that upon the annexed affidavit of Defendant ELENA RUTH SASSOWER, sworn to August 17, 2003, the exhibits annexed thereto, and upon all the papers and proceedings heretofore 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:

(1) Reargument of the undated Order of Senior Judge Stephen Eilperin, which denied, *without reasons*, Defendant's *unopposed* August 6, 2003 motion to adjourn the August 20, 2003 conference for ascertainment of counsel and "further ordered" her appearance at the "August 20, 2003 scheduling conference", and, upon granting of same, for Judge Eilperin to recall and vacate such Order – or, at minimum, to give reasons justifying it;

(2) Disclosure by Judge Eilperin of facts bearing upon his ability to be fair and impartial, pursuant to Canon 3F of the ABA Code of Judicial Conduct and counterpart statutory and rule provisions specifically applicable to judges of the District of Columbia;

(3) Disqualification of Judge Eilperin, pursuant to Canon 3E of the ABA Code of Judicial Conduct and counterpart statutory and rule provisions applicable to judges of the District of Columbia and transfer of this politically-explosive criminal case to a court outside the District of Columbia, whose funding does not come directly from Congress, and, if possible, whose judges are not appointed by the President with the advice and consent of the Senate or one of its committees.

Dated: August 17, 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

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UNITED STATES OF AMERICA

Affidavit in Support of Motion for Reargument, for Disclosure by, and Disqualification of, Senior Judge Stephen Eilperin, and for Transfer of this Case to a Court Outside the District of Columbia

-against-

No. M-04113-03

ELENA RUTH SASSOWER

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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: (a) to reargue the undated Order of Senior Judge Stephen Eilperin, faxed to me by the Senior Judges Chambers on August 14, 2003, and upon granting of same, for Judge Eilperin to recall and vacate such Order – or, at minimum, to give reasons justifying it; (b) for disclosure by Judge Eilperin of facts bearing upon his ability to be fair and impartial, pursuant to Canon 3F of the ABA Code of Judicial Conduct and counterpart statutory and rule provisions specifically applicable to judges of the District of Columbia; (c) for Judge Eilperin to disqualify himself, pursuant to Canon 3E of the ABA Code of Judicial Conduct and counterpart statutory and rule provisions applicable to judges of the District of Columbia and to take steps to transfer this politically-explosive criminal case to a

court outside the District of Columbia, whose funding does not come directly from Congress, and, if possible, whose judges are not appointed by the President with the advice and consent of the Senate or one of its committees.

3. By his undated Order (Exhibit "A-1"), Judge Eilperin denied, *without reasons*, my *unopposed* August 6th motion to adjourn the August 20th conference for ascertainment of counsel and "further ordered" me to "appear in court on August 20, 2003 for the scheduling conference". No fair and impartial tribunal would do such a thing.

4. As a criminal defendant, I have an absolute right to be assisted or represented by counsel -- which right I have invoked. My August 6th motion showed that my request for *pro bono* legal assistance from the American Civil Liberties Union in this important case involving fundamental citizen rights is on the agenda of the next meeting of its Legal Committee on September 18th. For this reason, my motion requested an adjournment of the August 20th court conference for ascertainment of counsel to September 19th. My moving affidavit stated I would be ready to proceed on that date -- if not assisted by the ACLU or other *pro bono* counsel, then by retention of Mark Goldstone, Esq., whose retainer is $5,000.

5. The prosecution, represented by the United States Attorney for the District of Columbia in the person of Assistant U.S. Attorney Aaron Mendelsohn, did *not* file opposing papers -- reflective of the fact that my requested adjournment was reasonable, *by any standard.* Mr. Mendelsohn thereby showed that he could not fashion any argument in opposition – including as to prejudice to the prosecution by the granting of

my motion. Nor could Mr. Mendelsohn dispute that I would be prejudiced by the motion's denial.

6. Under such circumstances, a fair and impartial tribunal – having no interest in this proceeding except doing justice in this case -- would have recognized its duty to grant the motion. Indeed, a fair and impartial tribunal, further recognizing its duty to protect the rights of an unrepresented criminal defendant, would have issued a stern reproach to Mr. Mendelsohn for his oppressive, advantage-taking conduct, particularized at ¶¶12-18 of my moving affidavit[1]. This included burdening me and the Court with an otherwise needless formal motion for an adjournment to which he should have stipulated.

7. Based on fundamental adjudicative standards and the record before the Court on my August 6th motion, I do not believe there is any legal or factual justification for Judge Eilperin's undated Order denying my *unopposed* motion to adjourn the August 20th conference for ascertainment of counsel. Moreover, as to that portion of the Order which "further order[s]" me to appear for what is conspicuously denominated *only* as a "scheduling conference", I do not believe that anything can properly be scheduled on August 20th -- except for setting the case down for a further conference on September 19th, requiring my appearance with either *pro bono* or retained counsel. Fixing such

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[1] "[F]ailing to respond to a fact attested in the moving papers...will be deemed to admit it.", Siegel, New York Practice, §281 (1999 ed., p. 442) – citing *Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 599 (1975), itself citing *Laye v. Shepard*, 265 N.Y.S.2d 142 (1965), aff'd 267 N.Y.S.2d 477 (1st Dept. 1966), and Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR 3212:16. "If a key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it", *id.* Undenied allegations will be deemed to be admitted. *Whitmore v. J. Jungman, Inc.*, 129 N.Y.S. 776, 777 (S.Ct., NY Co. 1911).

Presumably, such fundamental legal principles, recognized in New York, are also embodied in treatise authority and caselaw for the District of Columbia.

September 19th date should have been the disposition of my adjournment motion – no prior conference being necessary for such purpose.

8. Without counsel to advise me, I cannot give informed consent to potentially prejudicial time parameters at an August 20th "scheduling conference" and, plainly, such parameters would be vulnerable to challenge upon entrance of counsel on September 19th. Of course, if Judge Eilperin's intent is to schedule dates *irrespective of my consent*, my attendance at an August 20th "scheduling conference" is superfluous. His "further order[ing]" me to appear on that date simply burdens me with an exhausting trip which, as my adjournment motion identifies, costs me $175 in roundtrip New York-Washington rail tickets alone.

9. That Judge Eilperin gives NO reasons in his Order for denying my *unopposed* adjournment motion and for requiring my appearance at an August 20th "scheduling conference", at which I believe nothing can be accomplished, suggests he cannot do so because the Order is an exercise of raw power, unrestrained by legal authority and the undisputed facts in the record before him. Judge Eilperin should hardly expect otherwise. As a seasoned judge, he is presumed to recognize that one of the important reasons for a court to give reasons for its dispositions is to "assure the parties that the case was fully considered and resolved in accordance with the facts and law." *Dworetsky v. Dworetsky*, 152 A.D.2d 895, 896 (NY Appellate Division, Third Dept. 1989), cited in *Daniel Nadel v. L.O. Realty Corp*, 286 A.D.2d 130, 131 (NY Appellate Division, First Dept. 2001):

> "[T]he inclusion of the court's reasoning is necessary from a societal standpoint in order to assure the public that judicial decision making is reasoned rather than arbitrary."

10. As Judge Eilperin's subject Order has destroyed my trust and confidence in his fairness and impartiality – and cannot but undermine the trust and confidence of the public whose interests I serve in this criminal case against me -- this reargument motion affords Judge Eilperin the opportunity to repair the damage done by supporting his subject Order *with reasons*, absent which he should recall and vacate it.

11. Should Judge Eilperin not recall and vacate his subject Order, or, at minimum, explain it with reasons, such will understandably reinforce what my fleeting experience with him has led me to believe: that he has a bias, if not an interest, in favoring the prosecution against me in this case. Consequently, this motion respectfully requests that Judge Eilperin disqualify himself.

12. Indeed, as a result of Judge Eilperin's inexplicable disposition of my good and meritorious *unopposed* motion, I have come to question whether this case, whose explosive repercussions would rightfully torpedo the political careers of some of the most powerful members of the Senate, should be tried in a court whose funding is voted upon by these very Senators. Certainly that this court's judges pass through a Senate confirmation process which may be as sham and violative of citizen rights as that for federal judges does not help matters. Consequently, this motion requests that upon Judge Eilperin's disqualifying himself, he take such steps as are necessary to secure a change of venue to a court outside the District of Columbia[2], less vulnerable to congressional pressures.

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[2] It is my view that the U.S. Attorney's Office for the District of Columbia should be disqualified from this case, based, *inter alia*, on the prejudicial involvement of Assistant U.S. Attorney Leah Belaire, signator of the U.S. Attorney's May 23rd letter, which extended no "plea offer" and purported to make "current and comprehensive" discovery. Ms. Belaire was formerly

13. Treatise authority holds that it is the duty of the judge to make relevant disclosure:

> "The judge is ordinarily obliged to disclose to the parties those facts that would be relevant to the parties and their counsel in considering whether to file a disqualification motion", Flamm, Richard E., Judicial Disqualification, p. 578, Little, Brown & Co., 1996

14. In addition to such other disclosure as Judge Eilperin may make, consistent with ethical rules governing judicial conduct, I specifically request that he identify the manner in which he came to preside over this case – and why, as my motion states, I was previously informed that the case had been assigned to Judge John Hess and, thereafter, to Judge Bruce Mencher.

15. Finally, and by way of supplement to my adjournment motion, whose ¶¶16-17 refer to my first July 28th phone conversation with Mr. Mendelsohn wherein I told him that I "did not believe that the Court could properly" "proceed to set a trial date on August 20th, in the absence of counsel" -- 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 did send Mr. Mendelsohn a First Discovery Demand, dated August 12th (Exhibit "B"-1). Thus, even while waiting upon the ACLU's decision at its September 18th meeting, this case is not "on-hold", but is proceeding toward its just resolution.

"Investigative Counsel" to the Senate Judiciary Committee and I chronicled her misfeasance in that capacity in correspondence I sent to her in August 1998, certified mail/return receipt. Comparable misfeasance by successor counsel at the Senate Judiciary Committee, condoned, if not directed, by the Committee leadership and members, led to the chain of events that has culminated in my malicious arrest and prosecution for "disruption of Congress".

16. It may be noted that on August 13th, I made minor, non-substantive corrections to my First Document Demand[3]. After sending it to Mr. Mendelsohn by e-mail as an attached document (Exhibit "B-2"), he e-mailed back (Exhibit "B-3") that I should re-send it as he was unable to access it. He then closed by saying, "I look forward to seeing you on August 20, 2003".

17. Whether simply a taunt or reflective of Mr. Mendelsohn's confidence that *even unopposed*, the Court would decide ***in his favor*** my meritorious adjournment motion, I e-mailed back (Exhibit "B-4"):

> "... I am unaware of any disposition by the Court of my August 6th motion to adjourn the August 20th court conference for ascertainment of counsel to September 19th. Likewise, I am unaware of any opposition by you to that good and sufficient motion.
>
> Please advise by fax (914-428-4994) & e-mail (judgewatchers@aol.com)."

Mr. Mendelsohn did neither, even though sending me a second e-mail at 4:24 p.m. (Exhibit "B-5) that he was unable to access the re-sent e-mail attachment of the superseding First Discovery Demand. It was only when I phoned him shortly before 5:00 p.m. that he told me that he had no knowledge whether my adjournment motion had been decided and that he had not yet submitted opposing papers, but was "looking forward" to doing so.

18. It may be further noted that shortly after 2:00 p.m. the next day, August 14th, immediately after receiving a phone call from Anjuma Goswami, law clerk in the

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[3] The superseded First Document Demand is not annexed, as it is virtually identical to the superseding Demand, e-mailed, faxed, and mailed to Mr. Mendelsohn on August 13th. Exhibit "B-1" herein is the superseding First Document Demand.

Senior Judges Chambers[4], advising me of Judge Eilperin's denial of my motion, *without reasons*, I phoned Mr. Mendelsohn, leaving a message on his voice mail. He returned the call at approximately 3:25 p.m. – at which time he confirmed that he had not yet submitted any opposing papers. Notwithstanding his knowledge that the motion had been decided[5], he nonetheless told me he was still planning to submit opposing papers. I asked him to fax them to me as soon as possible so that I could incorporate a reply in the reargument motion I was planning to make. In response he stated that they would not be ready for faxing to me until the following day, August 15th – to which I answered that he should fax them as early as possible, as time was of the essence in preparing my reargument motion to adjourn the August 20th conference.

19. During that phone conversation I reviewed with Mr. Mendelsohn some of the specific allegations of my August 6th moving affidavit which I expected him to address in his opposing papers. As to my ¶7, wherein I stated that I did not recall seeing the U.S. Attorney's May 23rd letter signed by Assistant U.S. Attorney Leah Belaire in the court file which I reviewed on June 20th, he admitted to me that such letter, which extended no "plea offer" and purported to provide "current and comprehensive discovery", would not have been provided to the Court. As to the further document referred to in ¶7 as having been in the court file on June 20th – but which I had never before seen -- Mr. Mendelsohn stated he did not know anything about it. To assist him

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[4] Ms. Goswami called to obtain my fax number so as to fax Judge Eilperin's Order to me (Exhibit "A-2").

[5] Indeed, Mr. Mendelsohn stated that the Court had called him asking for my phone number so that I might be advised of the denial of my adjournment motion.

in ascertaining whether such document, summarized by that paragraph as "purport[ing] to describe 'acts and events' I had committed at the Senate Judiciary Committee's May 22nd 'hearing' for which I was being charged with 'disruption of Congress'", had been provided to the attorney assisting me at my May 23rd arraignment, I offered to fax it to him, which he requested that I do.

20. At about 4:10 p.m., as I was preparing to fax the May 23rd document of "events and acts" under a coverletter I had prepared, ALL electric power failed. At approximately 4:15 p.m., I phoned Mr. Mendelsohn from my cell phone, advising of the power outage, preventing me from faxing him the document as I had promised.

21. The next day, August 15th, with the resumption of electric power, I sent the May 23rd document reciting "acts and events". It was then 10:35 a.m. – and my transmitting coverletter (Exhibit "C") stated:

> "As discussed, I will be making a motion to reargue the Court's denial, without reasons, of my unopposed motion. Please fax me your belated opposition to my motion as soon as possible (914-428-4994) so that my reargument motion may incorporate a reply to it..." (underlining in the original).

22. I waited expectantly all day. However, I received no fax from Mr. Mendelsohn, nor any phone call or e-mail confirming that he had sent his belated opposing papers to me.

23. In the event Mr. Mendelsohn's belated opposing papers are received by the Court, I request the opportunity to reply thereto.

WHEREFORE, it is respectfully prayed that the reargument relief herein sought be granted and further that Senior Judge Stephen Eilperin make disclosure and/or disqualify himself and take steps to transfer this politically-explosive criminal case to a court outside the District of Columbia.

ELENA RUTH SASSOWER

Sworn to before me this
17th day of August 2003

Notary Public

BETH AVERY
Notary Public - State of New York
NO. 02AVA6056824
Qualified in Westchester County
My Commission Expires 3/11/06

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Customer Copy
Label 11-B September 200

EXPRESS MAIL
UNITED STATES POSTAL SERVICE®

Post Office To Addressee

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PO ZIP Code: 10199	Day of Delivery: ☐ Next ☒ Second	Flat Rate Envelope: ☐
Date In: Mo. 8 Day 17 Year 03	☒ 12 Noon ☐ 3 PM	Postage: $ 13.65
Time In: 6:29 ☐ AM ☒ PM	Military: ☐ 2nd Day ☐ 3rd Day	Return Receipt Fee:
Weight: lbs. 7 ozs.	Int'l Alpha Country Code	COD Fee: $ / Insurance Fee:
No Delivery: ☐ Weekend ☐ Holiday	Acceptance Clerk Initials: AO	Total Postage & Fees: $ 13.65

DELIVERY (POSTAL USE ONLY)

Delivery Attempt: Mo. Day	Time: ☐ AM ☐ PM	Employee Signature
Delivery Attempt: Mo. Day	Time: ☐ AM ☐ PM	Employee Signature
Delivery Date: Mo. Day	Time: ☐ AM ☐ PM	Employee Signature

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Express Mail Corporate Acct. No.

Federal Agency Acct. No. or Postal Service Acct. No.

☐ WAIVER OF SIGNATURE (Domestic Only)
Additional merchandise insurance is void if waiver of signature is requested.
I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

☐ NO DELIVERY ☐ Weekend ☐ Holiday

Customer Signature

FROM: (PLEASE PRINT) PHONE (914) 421-1200

Elena Ruth Sassower
16 Lake Street Apt 2C
White Plains NY
10603

TO: (PLEASE PRINT) PHONE (

Superior Ct of the
District of Columbia
500 Indiana Ave NW
Washington, DC 20001
Clerk's office - Criminal

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Cashier's Name Cashier Y76J00
Stock Unit Id DIAZ
PO Phone Number STADIAZ
USPS # 18002758777
3558250028

1. First Class 1.75
Destination: 20530
Weight: 6.40oz
Postage Type: PVI
Total Cost: 1.75
Base Rate: 1.75

2. First Class 1.52
Destination: 20036
Weight: 5.90oz
Postage Type: PVI
Total Cost: 1.52
Base Rate: 1.52

3. Exp. Mail PO-ADD 13.65
Destination: 20001
Weight: 6.20oz
Postage Type: PVI
Total Cost: 13.65
Base Rate: 13.65
Label#: ER475316092US

Subtotal 16.92
Total 16.92

Credit Card 16.92

Number of Items Sold: 3

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August 17, 2003 mailing for resignation etc

UNITED STATES POSTAL SERVICE

Date: 08/19/2003

Fax Transmission To: ELENA SASSOWER
Fax Number: 914-428-4994

Dear ELENA SASSOWER:

The following is in response to your 08/19/2003 request for delivery information on your Express Mail item number ER475316092US. The delivery record shows that this item was delivered on 08/19/2003 at 10:49 AM in WASHINGTON, DC 20001 to J MILLS. There is no delivery signature on file for this item.

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please take this receipt to your local Post Office or postal representative.

Sincerely,

United States Postal Service