

34 Franklin St.
Lyons, NY 14489
August 4, 2005

Honorable Gustav J. DiBianco
US Magistrate Judge
RE: United States v. Murtari
P.O. Box 7396
100 S. Clinton Street.
Syracuse, NY 13261-7396

Dear Judge DiBianco:

I submit the attached motion for your review and action. I must be quite honest over my concern over the direction events have taken at the Federal Building in the last several months as I attempt to get Senator Clinton's attention regarding Family Law reform. It would appear that officials are being very selective at enforcement and are forcing me to take more 'dramatic' steps in my peaceful actions.

I sense there is a desire to protect Senator Clinton from 'embarrassment' by having a peaceful parent arrested. Some may want me to escalate my conduct to a more serious incident so they can say, "I told you so!." The physical power of government is overwhelming and they appear ready to expend considerable resources on this.

My commitment to Family Law Reform and the peaceful methods of NonViolent Action has not wavered. It was never my goal to turn this effort into a Court battle or a struggle with building security, but to keep government effort to a minimum. I hope the Court will act to establish a sense of order and also protect my rights.

Respectfully yours,

CC: Asst. US Attorney Richard Southwick, Esq.
P.O. Box 7198
100 S. Clinton Street
Syracuse, NY 13261-7198

CC: Senator Clinton, Syracuse & Washington off.

John Murtari
635-1968, x-211
<http://www.AKidsRight.Org/>

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

United States of America,

vs.

John Murtari,

Defendant

Index No.

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the attached affidavit and upon all prior pleadings and proceedings heretofore had herein, a Motion will be made as follows:

DATE, PLACE AND TIME OF MOTION: In front of the Honorable Gustave J. DiBianco at the United States Courthouse in Syracuse, New York as soon as both sides may be heard.

TYPE OF MOTION: Defendant seeks an Order of the Court:

- a) Vacating a 'stay away' order, dated December 13, 2002.
- b) Dismissing all charges resulting from an arrest that occurred on April 7, 2005 and are presently pending trial.
- c) Ordering local officials not to use physical force on the Defendant while he is performing peaceful civil rights related activities, unless they plan on arrest.

Dated: August 4, 2005

Respectfully submitted,

John Murtari, *pro se*
34 Franklin St.
Lyons, NY 14489
(315) 635-1968, x-211

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

United States of America,
vs.
John Murtari,
Defendant

Index No.

Affidavit in Support of
Motion.

JOHN MURTARI, being duly sworn, deposes and states:

1. I am the defendant in this action, and I make this statement in support of my motion dated August 4, 2005.

Vacate 'stay away' order

2. The order issued on December 13, 2002 is now almost three years old. Events since then have shown the Defendant has always been polite, respectful, and peaceful in all his activities and is quite sincere in his desire to promote the issue of Civil Rights protection for the parent/child bond. The order gives a clear impression this person is some type of threat and incapable of civil behavior.
3. The order has been upheld on Appeal, but the Defendant has always asserted that its factual basis - that the Defendant was involved with other in creating a disturbance in the building hallways - never occurred.
4. Recent trial decisions have supported the Governments assertion that existing Building Rules & Regulations give them the authority to arrest the Defendant (if desired) for his peaceful petition activity outside Senator Clinton's offices on the 14th floor. No additional enforcement or penalty authority is needed.
5. This order has been misused by officials to completely block Defendant's access to the building without an 'appointment'.

Dismiss pending charges

6. After being repeatedly pushed away from the building the Defendant, on January 20th, 2005, did take children's chalk and write on the ground, "Dom I Love You - Senator Clinton help us!" He was arrested and arraigned by Judge Lowe for 'destruction of government property'. The Government moved for a speedy trial and conviction.
7. On the next Court appearance, Jan 24th, the US Attorney moved for dismissal of the charges, but stated the government would have prevailed but wanted to save expenses.
8. On January 25th Defendant returned to the building with another parent, Ms. Cathy Hughes. They both engaged in writing messages on the ground in chalk. No action was taken. On March 3rd, 8th, 10th the Defendant returned and performed similar conduct, no action was taken. He was returned on April 21st, 26th, and 28th and attempted similar conduct. Once building maintenance came out and washed away the chalk with water, on one occasion a security officer took his chalk away.
9. The matter currently pending trial results from an incident which occurred on April 7th, 2005, in which Defendant attempted to write "Dom I Love You - Senator Clinton help us!" with children's chalk on the outside wall of the building. He was arrested after writing only a few letters.

10. Defendant then returned to the building on April 13th, 14th, and 15th and was able to write all or parts of his message. Security staff approached him, took his chalk, and allowed him to walk away. Officers were assigned to monitor him while he was near the building.
11. To reduce impact on building security, Defendant would tell security when he was leaving or when he expected to return. He also minimized his efforts to avoid expending a lot of their time once he realized no arrest would occur.
12. Events of the last few months have made it difficult to understand what is or is not allowed at the Federal Building. It appears too much discretion is being used in enforcing rules and a tremendous waste of manpower for what should be a very simple item.
13. Defendant believes officials are acting from 'political' motivation. That it would be an embarrassment to Senator Clinton to have a peaceful parent arrested outside her offices. Defendant is pushed outside. It might be an embarrassment to have a peaceful parent arrested right outside the building. Defendant believes the government is intentionally acting in a manner that can only serve to escalate the conduct.
14. The rule of law should apply to the officials as well. The Court should demand fair and equal enforcement of law.

Issue protective order

15. In a Trial held by Judge DiBianco on Nov. 7, 2003. Defendant was found not guilty on two of the counts for incidents which occurred on Oct 1, 2003 and Oct 9, 2003. In these incidents the Defendant had entered the lobby of the building and security staff asked him where he was going. He replied "to petition Senator Clinton for Family Law reform". He was arrested on that basis as having 'intent' to violate the stay away order of Dec. 13, 2002.
16. Since that time the Defendant has returned and attempted to enter the building on August 17th, 19th, 25th, and September 2nd of 2004. January 18th, 20th, April 7th, 13th, 14th, 15th, 18th of 2005. He tells security staff, "I am here to petition Senator Clinton for Family Law reform" and is pushed away and forced out of the building.
17. On at least two occasions I have written the US Attorney's office in an attempt to bring a stop to such behavior. I served as a pilot in our Air Force and to be subject to such treatment, pushed away like a 'bag lady' - is an indignity and not appropriate. Most especially when the person being pushed away is a peaceful parent looking for Civil Rights protections.

18. When Communist Chinese leaders do not want to be embarrassed by having peaceful protesters arrested in Tiananmen Square the guards just 'push' people away. Such conduct by police should not be tolerated here in America. As such conduct always does, it has not solved, but only aggravated the situation and events.

JOHN MURTARI

Sworn to before me this
4th Day of August, 2005.

Notary Public