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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CASE MANAGEMENT BRANCH

UNITED STATES OF AMERICA

2004 JUN 28 A 10:15

Defendant's Affidavit Commenting upon and Correcting the May 28, 2004 Presentence Report of D.C. Court Services & in Opposition to the U.S. Attorney's June 1, 2004 Memorandum in Aid of Sentencing

FILED

-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, acting *pro se*, wrongfully convicted of "disruption of Congress" and facing punishment of six months in jail and a $500 fine.

2. This affidavit presents my comment to, and correction of, the Presentence Report, submitted to the Court on Friday, May 28, 2004, by the Court Services and Offender Supervision Agency for the District of Columbia. Such Report, highly favorable to me, was prepared by Erika Westry, a Community Supervision Officer, and approved by her supervisor, Karen McDaniel, as Supervisory Community Supervision Officer.

3. This affidavit is additionally submitted in opposition to the June 1, 2004 Government's Memorandum in Aid of Sentencing, filed by U.S. Attorney Kenneth L. Wainstein, Assistant U.S. Attorney Anthony Asuncion, as Chief of the Misdemeanor Trial Section, Assistant U.S. Attorney Aaron Mendelsohn, and signed, on their behalf,

by Assistant U.S. Attorney Jessie Liu. Such Memorandum is not only knowingly false and misleading, but altogether unethical in urging a sentence where it has made NO representation that I have had due process. Indeed, the Memorandum does NOT deny or dispute the accuracy of the particularized facts and evidence presented by my May 25th letter to Ms. Westry for inclusion in her Presentence Report (Exhibit "C") establishing that the "disruption of Congress" charge against me is "bogus and malicious", being based on knowingly false and misleading prosecution documents, and that I was wrongfully convicted following a trial whose due process violations, *reversible as a matter of law*, included the Court's preventing me from testifying as to the events at issue.

4. That Mr. Mendelsohn and Ms. Liu, the U.S. Attorneys handling this case pre-trial and at trial, can attest -- of their own PERSONAL KNOWLEDGE -- to the truth of essential facts and evidence presented by my May 25th letter (Exhibit "C") makes the June 1, 2004 Memorandum all the more sanctionable. Such misconduct reinforces my entitlement to sanctions and disciplinary and criminal referral of those at the U.S. Attorney's Office involved in this case – which I have demonstrated time and again throughout this litigation.

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

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Background

6. The comment and correction which this affidavit presents to Ms. Westry's Presentence Report follows upon my two May 28th faxes to the Court, requesting an adjournment of the scheduled June 1, 2004 sentencing so that I might have adequate opportunity to review it with the assistance of my legal advisor, Mark Goldstone, then out-of-town for the Memorial Day weekend. I sent the first of these faxes at 11:35 a.m. (Exhibit "A-1"), before even receiving the Presentence Report. In pertinent part, I stated:

> "I assume there is a statutory provision or rule affording me – as well as the prosecution – sufficient opportunity to review the pre-sentence report and to provide written comment and/or other substantiating matter....
>
> Please advise – including as to the applicable statutory or rule provision – so that I might be guided accordingly."

7. I sent the second at 3:05 p.m. (Exhibit "B-1"), by then identifying the legal authority which I believed substantiated my entitlement to adjournment, D.C. Superior Court Criminal Rule 32(b)(3)(A), and quoted its language:

> "The Court shall make available to the defendant through the defendant's counsel and to counsel for the government a copy of the report of the presentence investigation a reasonable time before imposing sentence". (emphasis in the original).

8. By the end of the day, with no response from the Court – and no opposition from the U.S. Attorney or responding comment from either Ms. Westry or Ms. McDaniel, to whom I had sent these two faxes, each critical of their conduct (Exhibits "A-1", "A-2") -- I sent the Court and U.S. Attorney a further fax, enclosing a copy of my May 25, 2004 letter to Ms. Westry (Exhibit "C"). This, because her Report

had NOT included it and had misidentified its date, form, and length – all highlighted by my fax.

9. In the absence of any response from the Court to these three May 28th faxes (Exhibits "A-1", "B-1", "C"), I was burdened with the necessity of making a costly and time-consuming trip from New York to Washington, D.C. for the June 1st sentencing, scheduled for 9:00 a.m.

10. On June 1st, while the Court disposed of a long list of other cases on its calendar, I was handed a copy of the Government's Memorandum in Aid of Sentencing, whose sentencing recommendation differed from that of the May 28th Presentence Report. The Memorandum's one and only footnote, annotating its very first sentence, was as follows:

> "The United States intended to submit this memorandum well in advance of the sentencing hearing in this case, but decided that it was wise to wait until it had reviewed the presentence report, which it received on May 28, 2004. In light of Defendant's repeated demands for the Government's sentencing recommendation, the Government has chosen to submit a written memorandum rather than merely present oral argument at the hearing." (emphasis added).

11. Upon the case being called, the Court made no acknowledgment of my May 28th faxes requesting an adjournment. Instead, the Court proceeded to allow Ms. Liu to reiterate the Memorandum's content and sentence recommendation. In response, I reiterated my threshold right to adjournment of the sentencing, handing up copies of my unresponded-to May 28th faxes (Exhibits "A", "B", "C")[1]. I further stated

[1] The copy of my May 28th fax which I handed up to the Court included, in addition to my May 25th letter to Ms. Westry, copies of the documents from CJA's website, inventoried at page 2 of that letter for inclusion in her Presentence Report. These documents are annexed hereto as Exhibits "D" –"H".

that I was entitled to reasonable time to review and comment upon the U.S. Attorney's Memorandum – stating that an adjournment should be granted for this additional reason, if the Court was not going to reject the Memorandum as untimely, in light of the U.S. Attorney's failure to have requested an adjournment or to have joined in my own request.

12. The Court ultimately adjourned the sentencing to Monday, June 28th – citing the same language of D.C. Superior Court Criminal Rule 32(b)(3)(A) as I had cited in my second May 28th fax (Exhibit "B-1"). Before doing so, however, the Court required me to orally particularize some of the more significant errors of the Presentence Report.

13. Consequently, the key respects in which Ms. Westry's Report is materially misleading in its content and as to my rights, summarized by the below paragraphs, were orally presented by me on June 1st.[2]

* * *

The May 28, 2004 Presentence Report, Although *Highly Favorable to Me*, is Materially Misleading in its Content and as to My Rights, Raising Reasonable Questions as to Whether its Vague "Intervention Plan" and "Recommendation" are a "Cover" to Enable the Court to Impose a Sentence Where None is Warranted

14. Although Ms. Westry's May 28th Report is highly favorable to me, there are three critical issues which, beginning on May 26th, I had repeatedly requested to speak to her supervisor, Ms. McDaniel, about. These were:

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[2] I have not yet received the transcript of the June 1st proceeding, which I ordered immediately following its conclusion.

(a) Ms. Westry's advice to me on May 26th that my May 25th letter to her for inclusion in the Presentence Report would not be included because of its discussion of the court proceedings relating to the underlying criminal charge;

(b) Ms. Westry's uncertainty as to whether, as part of the Report's recommendation for sentencing, there might be a recommendation of a stay pending appeal, which I had requested; and

(c) Ms. Westry's inability to answer my questions as to what statutory or rule provision govern presentence reports and whether I was entitled to a certain period of time within which to review and comment upon the report.

15. Ms. Westry's Report acknowledges only the first of these three issues: the exclusion of my May 25th letter because of its discussion of "Court proceedings", described as "various injustices experienced during the trial proceedings"[3]. However, Ms. Westry identifies no specifics as to these "injustices", and fails to identify my explanation to her as to why they were properly part of the Presentence Report, as well as my requests to speak with Ms. McDaniel in connection therewith. Nor does the Report identify that on May 27th I left three unreturned voice mail messages for Ms. McDaniel at 9:12 a.m., 1:50 p.m., and 4:02 p.m. – or Ms. Westry's failure to return the voice mail message I left for her at 4:38 p.m. on that date, advising that I had still not heard from Ms. McDaniel. Indeed, even though Ms. Westry and I had at least <u>two</u> phone conversations on May 27th prior to that 4:38 p.m. voice mail message[4], the Report's list of "Contacts" (at p. 3) altogether omits May 27th as a date on which the

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[3] *See* pp. 3-4: "Defendant's Statement"; *Also* p. 17: "Evaluative Summary".

[4] These were a conversation before 9:00 a.m. in which Ms. Westry gave me Ms. McDaniel's phone number and a conversation sometime after 2:00 p.m., when I told Ms. Westry that I had already left Ms. McDaniel two voice mail messages and asked that she independently apprise Ms. McDaniel that I was awaiting her return call.

two of us had any contact. This, while identifying May 27th as the date on which "Case submitted to SCSO Karen McDaniel".

16. The foregoing, as well as Ms. Westry's assurances to me on both May 26th and May 27th, in response to my expressed concerns, that the Report would not be finalized until I had spoken to Ms. McDaniel, are material facts which Ms. Westry and Ms. McDaniel were professionally obligated to disclose in the Report. That they did not do so reflects their knowledge that they could not justify Ms. McDaniel's wilful and deliberate failure to speak with me about matters germane to the Report's content and my rights. Indeed, the only explanation for Ms. McDaniel's behavior is that she knew that I was entitled to favorable resolution of these issues, which, were she to speak with me, she would have to concede.

17. To date, more than four weeks later, neither Ms. Westry nor Ms. McDaniel have phoned or otherwise communicated with me to explain their failure to respond to my urgent May 27th and May 28th voice mail messages and my May 28th faxes (Exhibits "A-2", "B-2").

18. I do not know what the relationship is between Court Services and the Court, but a resolution favorable to me on the first two issues would have required Court Services to produce a Report adversely reflecting upon the Court. As to the third issue – providing me with information as to my rights with respect to reviewing and commenting upon the report -- such would have thwarted the Court from rushing ahead with the June 1st sentencing, as it was obviously intent on doing when it ignored my May 28th faxes (Exhibits "A"-"C").

19. With respect to the first issue: exclusion of my May 25th letter based on its purported discussion of "Court proceedings". The obvious bad-faith of this exclusion may be seen from the fact that in addition to omitting the specifics of these "Court proceedings", the Report makes it appear that my July 7, 2003 memo to the American Civil Liberties Union (Exhibit "H") -- whose relevance Ms. Westry demonstrates by reproducing *verbatim* seven of its nine pages into the body of the Report (at pp. 4-11) – has NO connection to my letter[5].

20. Examination of the May 25th letter (Exhibit "C") shows that my July 7, 2003 memo was not only the most focal of the documents it presented for inclusion in the Report, but that my discussion of "Court proceedings" was tied directly to the memo. Indeed, the discussion's purpose was to explain why, in face of the memo's detailed recitation of the documentary, video and transcript evidence establishing that the underlying prosecution documents are knowingly false, misleading, and motivated by ulterior interests, I was nonetheless convicted.

21. It was my position, so-stated to Ms. Westry, that the ONLY way she could properly evaluate why I was not contrite and remorseful – as is the expected posture of defendants hoping to mitigate the severity of their sentence -- was if I demonstrated, by a presentation of evidence, that not only was the underlying charge "bogus and malicious", but that my conviction had been procured through a

[5] The Report never identifies that the inclusion of any documents was requested by my May 25th letter. This includes in the Report's "Evaluative Summary" (at p. 17), which, while stating that I had requested inclusion documents from CJA's website and "documents initially sent out on her behalf to various media outlets and civil liberties organizations" does NOT connect this to my May 25th letter, which is not mentioned.

fundamentally unfair trial. This is reflected by Ms. Westry's "Evaluative Summary" (at p. 17)[6], which, without referencing my May 25th letter, states:

> "Before the Court is an individual dedicated to reform and accountability through activism. Her efforts have spearheaded a local effort, which has since transcended into a national commitment of ensuring judicial accountability of federal judicial selections – The Center for Judicial Accountability(CJA). The defendant serves as co-founder and coordinator of the non-partisan, non-profit organization as detailed on the CJA website, www.judgewatch.org. ***In fact much of the website has been used to document every aspect of the defendant's contacts in the Instant Offense and proceeding Court matters – much of which was asked to be included for the presentence report. According to various documents listed on the website, as well as defendant's own testament to which she spoke of great length, Ms. Sassower emphatically believes that she was unjustly persecuted, falsely and maliciously charged, and subjected to judicial misconduct. Certainly as a result, she denied any wrongdoing stating that the account of what transpired was bogus.*** It appears that the defendant's quest for judicial accountability and 'documenting how judges break the law and get away with it' (as emblazed on the title of CJA's website) has been further fueled through the Instant Offense and subsequent trial proceedings.
>
> During the presentence investigation, the defendant requested the inclusion of several documents initially sent out on her behalf to various media outlets and civil liberties organizations detailing her ordeal... It was apparent that the defendant viewed the presentence investigation as a beneficial venue to further document her paper trail of events although it was subsequently deemed inappropriate with supervisory contacts of the Court Services and Offender Supervision Agency. While Ms. Sassower was certainly willing to provide a wealth of information regarding the injustices of her arrest and subsequent Court proceedings, selections of her reported information that did not pertain to the specific purpose of the PSI report were not included.

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[6] Such "Evaluative Summary" section corresponds to the "Evaluation & Diagnosis" section of the "sample worksheet", which Ms. Westry furnished me. The instructions with respect thereto – which I pointed out to Ms. Westry -- are for the caseworker to "Evaluate all facts (see essentials), impressions, observations, diagnosis, problems, areas defined, Inc. assessment of crime, culpability, remorse, motives, discrepancies, criminal intent, etc." (Exhibit "J", p. 12, underlining added for emphasis)

> It is clearly evident that the defendant remains steadfast in her tireless efforts. As she feels that she has been unfairly persecuted, she has taken extreme measures to document and expose every element of the judiciary as evidenced by her website..." (at p. 17, italics and bold added for emphasis).

22. Had the referred-to "supervisory contacts of the Court Services and Offender Supervision Agency" – presumably meaning Ms. McDaniel -- been confident that the exclusion of my May 25th letter was defensible, Ms. McDaniel would have spoken to me directly on the subject, amplifying upon the "specific purpose of the PSI report".

23. There is no reason why the "Defendant's Statement" portion of the Presentence Report should be exclusively "to recount the defendant's version of the Instant Offense" (at p. 3) – without any portion for a defendant's comment as to his conviction. Such comment is surely no less relevant to the "specific purpose of the PSI report".

24. It is reasonable to assume that had Ms. Liu not deferred her "commentary for sentencing" – as so-identified in the "U.S. Attorney's Statement" section of the Presentence Report (at p. 3) immediately preceding the "Defendant's Statement" section – she would not have been precluded from describing evidence adduced at trial in substantiation of the charge, especially as deemed relevant to considerations of sentencing. This is precisely what Ms. Liu does in the Government's Memorandum in Aid of Sentencing – where she supports its sentencing recommendation with what she purports to be my trial testimony and the "evidence at trial" (*See* pp. 33-35, *infra*).

25. It may also be noted that the "Defense Attorney's Statement" of Mark Goldstone (at p. 11), directly following my "Defendant's Statement", is addressed to both the conviction and charge, *to wit*, "She shouldn't have been convicted, she shouldn't have been charged."

26. With respect to the second issue: my request that the Presentence Report include a recommendation that any sentence imposed by the Court – particularly of incarceration – be stayed pending appeal. Such plainly required providing Ms. Westry with specific, credible evidence for inclusion in the Presentence Report that my conviction resulted from my being denied a fair trial. This is yet another reason why my May 25th letter to Ms. Westry was rightfully a part of her Presentence Report – and I discussed this with her on May 26th.

27. With respect to the third issue: My request for the statutory or rule provisions governing the Presentence Report and, specifically, with respect to my right to adequate opportunity to review and comment upon it. Ms. McDaniel is presumed to have known that submission of the Presentence Report to the Court on May 28th for a sentencing scheduled for June 1st would not afford me "reasonable time" to review and comment. Ms. Westry certainly knew -- because I discussed it with her when we spoke sometime after 2:00 p.m. on May 27th -- that I was fearful that the Court would not respect my rights to adequate time to review the report, in advance of the sentencing, and that I was relying on her and Ms. McDaniel to protect my rights in this regard.

28. Not only did Ms. Westry and Ms. McDaniel fail to protect my rights by NOT providing me with this reasonably-requested information before submission of the Presentence Report and by NOT apprising the Court, upon its submission, that the

June 1st sentencing date would need be adjourned to afford me (and the U.S. Attorney) adequate time for review, but by failing to take appropriate steps upon their receipt of my two May 28th faxes requesting adjournment (Exhibits "A-2" and "B-2") – including, as to the first, by immediately furnishing me with the statutory and rule authority I had requested.

29. This conduct is so shocking and indefensible as to raise serious questions as to their fairness and impartiality – notwithstanding the Presentence Report is highly favorable to me. Indeed, it is reasonable to assume that had they actually been independent – rather than "protective" of the Court – there would have been NO "Intervention Plan" of "community service" (at p. 17) and "Recommendation" of a "Fine". Such, however, would have exposed what is obvious from objective evaluation of this record: that any fair and impartial tribunal would have thrown out this case on the papers because there was NO BASIS to waste valuable court time and resources on so plainly bogus and malicious a charge, for which only a fundamentally unfair trial could secure a conviction.

The May 28, 2004 Presentence Report is Rife with Error

30. According to the Presentence Report (at p. 2), Ms. Westry was not assigned the case until on May 10, 2004. In my conversations with her, I repeatedly expressed concern that she not be rushed into submitting the Presentence Report prematurely. Indeed, on May 26th, I faxed Ms. Westry a superseding version of my May 25th letter to her under a coverletter (Exhibit "I") stating:

> "Inasmuch as you stated to me that the usual time-frame for pre-sentence reports is about seven weeks – and Judge Holeman did NOT request a report until May 5th or so -- please advise as to whether you

will be notifying Judge Holeman that the June 1st sentencing date needs to be deferred in conformity therewith to permit adequate time for you to complete your important work.

As you know, I have no objection – and understood from Judge Holeman's law clerk, Sara Pagani, when she called on May 5th to apprise me of his direction for a pre-sentence report, that the June 1st sentencing date would be postponed, if necessary."

31. It is reasonable to assume that had Ms. Westry and Ms. McDaniel operated under the usual seven-week time parameters – rather than, as they did, within less than half that time – there would have been far fewer factual errors and omissions in the Presentence Report.

32. The errors and omission include the following:

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"**Conviction Date**": The indicated date of "4/8/04" is incorrect. Such date is four days before I was even scheduled to appear in court for trial, which did not itself commence until April 14, 2004. The correct conviction date is April 20, 2004, when the jury returned its verdict.

"**DEFENDANT INFORMATION** -- **Address**": The indicated street address is incorrect. It should not be "Lake Shore", but "Lake Street".

Pages 2-3

"**CONTACTS**": Among the respects in which Ms. Westry's skeletal listing of "contacts" is incomplete, misleading, and erroneous are the following:

(1) "5/18/04: "Defendant's appointment rescheduled" – does not reflect, as it should, that the rescheduling was at Ms. Westry's instance, not mine -- as might otherwise be assumed.

(2) Ms. Westry incorrectly fails to note any telephone "contacts" between us for four days from May 19th,. the date on which she interviewed me by telephone, and May 24th. Our "contacts" during this four-day period are reflected by footnote 2 of my May 25th letter to her (Exhibit "C") – the accuracy of which she did not contradict in her May 28th Presentence Report. As therein set forth, I telephoned Ms. Westry twice on Wednesday May 19th following our interview of that date, leaving two voice mail

messages, which she did not return. I also called her on Thursday, May 20th, also leaving a voice message, which she did not return. Only during the afternoon of Friday, May 21st, after I had left a further voice mail message for her, did Ms. Westry return my call. I was not then in, but did call her a short time later and discussed with her the matters which were the subject of my prior unreturned calls, *to wit*, appropriate arrangement for my transmittal of the letter to her and whether she would be interviewing the pertinent Assistant U.S. Attorneys and relevant Senators. Thus, at very least, her "Contacts" listing should have included the May 21st phone conversation between us – if not my prior unreturned voice mail messages for her.

(3) "5/24/04". Ms. Westry incorrectly notes this as the date "Fax received from defendant regarding her account of the Instant Offense". In fact, we had no contact on 5/24/04 for the reason set forth by footnote 2 of my May 25th letter (Exhibit "C"), and my faxing of that letter to her was on the following day, May 25th – the same date as appears on the letter

(4) Ms. Westry incorrectly fails to note any telephone contact between us on May 25th. Such included, in addition to my faxed May 25th letter, a phone conversation prior thereto, as reflected by footnote 2 of my May 25th letter (Exhibit "C").

(5) "5/27/04" Ms. Westry incorrectly fails to note her telephone contact with my sister, Carey – confining her entry to "5/26/04 Telephone attempt to defendant's sister, Carey. (212) 427-2515." (emphasis added). That Ms. Westry succeeded in reaching my sister is reflected by the "Other Significant Information" portion of her Report (at p. 16), which states:

> "Lastly, the defendant's sister, Carey was overcome with disbelief regarding the outcome of the defendant's arrest. She related that the defendant is an extreme do-gooder, fairly benevolent, and a high achiever. It was apparent that she was quite moved due to the potential punitive measures facing the defendant 'simply for exercising her civic duties.' To her, the defendant's criminal contact counters her character."

(6) Ms. Westry also fails to note any contact between us on May 27th. We had at least two phone conversations on that date: the first before 9:00 a.m., when she phoned me, during which conversation she gave me Ms. McDaniel's phone number, and the second conversation sometime after 2:00 p.m., when I told her that despite two voice mail messages that I had left for Ms. McDaniel, I had not heard from her. I therefore requested that Ms. Westry independently seek out Ms. McDaniel and ask her to call me. By 4:38 p.m., having received no return call from Ms. McDaniel, for whom I had by then left a third message, I called Ms. Westry. Her voice mail picked up and my voice mail message for her expressed my growing concern at not having heard from

Ms. McDaniel, identifying the times of my three unreturned voice messages for her (9:12 a.m.; 1:50 p.m.; and 4:02 p.m.). [See recitation in my May 28th fax (Exhibit "A-1") and ¶15 hereinabove].

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"**THE OFFENSE**":

Ms. Westry improperly fails to identify the source of her quoted paragraph constituting "The Offense". It is the handwritten "Statement of Facts" of Officer Roderick Jennings from his May 22, 2003 "Arrest/Prosecution Report" (PD 163)[7]. In copying this, Ms. Westry has made two errors: First, the date of the offense appearing on the PD 163 is not "February 22, 2003", as Ms. Westry has incorrectly copied, but "May 22, 2003" – which Officer Jennings had written out as "5.22.03". Second, I was not transported for processing to "119 K Street NE", but to "119 D St. N.E.", as Officer Jennings has written.

As reflected by my May 25, 2004 letter (Exhibit "C", at p. 5), Ms. Westry did not have the PD 163 for the May 22, 2003 arrest before her at the time of our May 19th interview – but, rather the PD 163 for the June 25, 1996 arrest. The materially false and misleading nature of both these PD 163 reports was extensively discussed with Ms. Westry during the interview – and is additionally set this forth in my May 25, 2004 letter.

It must be noted that in the "sample worksheet" which Ms. Westry sent me in advance of the May 19th interview (Exhibit "J"), this particular section is not called "The Offense", but, more accurately, "Official Version" – as to which the caseworker is instructed:

> "Summarize information from PD 163, Affidavit in Support of an Arrest Warrant, AUSA, complainant, other viable sources – Quote sources where applicable)..." (Exhibit "J", at p. 2)

"**DEFENDANT'S STATEMENT**":

This portion of the Report parallels the "Defendant's Version" section of the "sample worksheet", whose instruction to the caseworker is "(Summarized verbatim account)" (Exhibit "J", at p. 3). The Report does not identify that it was based on this worksheet that I wrote my May 25th letter to Ms. Westry, whose RE: clause reads: "'DEFENDANT'S VERSION' for Inclusion in Pre-Sentence Report" (Exhibit "C").

Pages 12-13:

"VICTIM IMPACT STATEMENT":

Because of the page breaks, it is not at all clear whether the two important sentences on page 12 of Ms. Westry's Report are under this heading. These two sentences are as follows:

> "At the defendant's request, a voice message was left for Senator Saxby Chambliss regarding the Instant Offense. If a return message is received, the senator's statement will be forwarded to chambers for sentencing."

Ms. Westry does not identify the basis of my "request". From the seven pages of my nine-page July 7, 2003 memo to the ACLU (Exhibit "H") which she reprints as my "Defendant's Statement", it might be inferred that it was because Senator Chambliss was the presiding chairman at the Senate Judiciary Committee's May 22, 2003 "hearing". The reason, however, extends beyond that. According to the underlying prosecution documents, Senator Chambliss is the "complainant" against me – a fact identified by my May 25, 2004 letter to Ms. Westry (Exhibit C", p. 5), much as it had been discussed during our interview. As such, his statement is a necessary component to such portion of the Presentence Report as expected Ms. Westry to contact the "complainant". This is all the more so because Senator Chambliss chose not to testify at trial and the Court quashed my subpoena for his testimony. As highlighted by the draft of my intended opening statement at trial (Exhibit "E", p. 3), it was my position that Capitol Police had "no authority to arrest me for respectfully requesting to testify at the Senate Judiciary Committee hearing unless so-directed to arrested me by the Presiding Chairman."

Ms. Westry does not deny that she is reasonably expected to contact the "complainant" for a statement. As identified by my May 25th letter to her (Exhibit "C", p. 5), such expectation is explicit from the "sample worksheet" she provided me (Exhibit "J", p. 2).

In preparing this comment to the Presentence Report, I sought to ascertain whether the Court had received any statement from Senator Chambliss, responding to Ms. Westry's May 26th voice mail message for him. By a June 24, 2004 letter to the Court (Exhibit "L"), I inquired whether any statement from Senator Chambliss had been forwarded

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[7] This PD 163 is part of the U.S. Attorney's May 23, 2003 letter, signed by Assistant U.S. Attorney Leah Belaire, which extended NO "PLEA OFFER (Exhibit "F" to my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions).

and, if so, that it be faxed to me "as soon as possible so that I might incorporate it into my written comment to the presentence report". I received no response from the Court – and likewise none from the indicated recipients: Senator Chambliss, Ms. Westry and Ms. McDaniel, Mr. Mendelsohn and Ms. Liu, and Assistant Senate Legal Counsel Grant Vinik.

It must be noted that, *independent* of Ms. Westry's solicitation of Senator Chambliss' comment, I have endeavored to obtain Senator Chambliss' comment – as likewise that of Senate Judiciary Committee Chairman Hatch, Ranking Member Leahy, and New York Home-State Senators Schumer and Clinton. I did so, initially, by my published Letter to the Editor in the May 10th Roll Call (Exhibit "D-1") – whose importance I stressed during Ms. Westry's May 19th interview of me and which I listed first in my May 25th letter to her (Exhibit "C", p. 2). Such published Letter publicly stated that the Senators should be asked "how much jail time they deem appropriate" for the "concocted crime" of which I had been "wrongfully convicted". I then followed this up by my May 28, 2004 memo to them (Exhibit "K-1"), repeating that and other pertinent questions germane to the Court's sentencing me for a crime for which I am innocent. Having received no response, I have followed this up by a further June 24, 2004 memo to them (Exhibit "M-1"), to which I have as yet received no response.

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"PRIOR CRIMINAL RECORD":

Ms. Westry's description of the outcome of the June 25, 1996 arrest as "Nolle Prosequi, 5/11/01" is an inaccurate simplification of what I described to her in great detail during the May 19th interview – and then summarized in my May 25th letter (Exhibit "C", p. 5) as follows:

> "...I was deprived of my right to a trial in that case, initially because of the coercive tactics chronicled by my September 22, 1996 police misconduct complaint and, thereafter, because of the misconduct of D.C. Superior Court Judge Tim Murphy on April 4, 1997 and in the weeks following [fn 9]."

The footnote provided Ms. Westry with the substantiating record references:

> "A copy of the case record (D-177-97), establishing what Judge Murphy did, is annexed as Exhibits 'X' 'Y', and 'Z' to my February 23, 2004 motion to disqualify Judge Holeman."

"EMPLOYMENT HISTORY": (p. 13)

(1) Ms. Westry erroneously describes the local citizens' organization preceding the Center for Judicial Accountability, Inc. as "seeking accountability among the 9th District Court". No such entity exists. The predecessor organization, called "Ninth Judicial Committee", was formed to challenge an illegal judge-trading deal between Democratic and Republican leaders, affecting the five constituent counties of New York's Ninth Judicial District.

(2) Ms. Westry erroneously spells the name of the synagogue where I lead religious services for families with children ages 4-7. It is Ansche Chesed.

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"SOCIAL HISTORY – Family History":

(1) In referring to my two sisters Carey and Beth, Ms. Westry uses the word "eldest". I am the eldest of the three, with my sister Carey being the "elder", as between herself and Beth. Ms. Westry has also chronologically reversed Carey's careers in stating: "Reportedly, the eldest daughter is a small entrepreneur, designing handbags. Formerly, she worked in the real estate market." It is the other way around. Carey now works in real estate and formerly was a small entrepreneur, designing and manufacturing handbags.

(2) Ms. Westry states that I was "primarily raised in the surrounding metropolitan area of New York City. Such locations include Brooklyn, Westchester County, New Rochelle, and more recently White Plains, New York." New Rochelle and White Plains are each cities within Westchester County – and my family has lived in White Plains for nearly 25 years.

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"Other Significant Information":

The second paragraph relating to the "informal worksheet" Ms. Westry faxed me in advance of her interview of me does not explain the obvious question as to why she would fax me an "outdated" worksheet. Such is NOT reflected by her fax transmittal sheet (Exhibit "J"), which referred to it only as a "sample worksheet for interview preparation". Indeed, the most significant fact about the worksheet was its title, "Felony Presentence Report Worksheet" – which, as I pointed out to Ms. Wesley at the outset of our May 19th interview, did not correspond to the charge against me, which is a misdemeanor. However, the further question that Ms. Westry does not answer is the extent to which the various sections of the "sample worksheet", with its annotation of

instructions for the caseworker, correspond to the somewhat differently-named sections of Ms. Westry's report and are guided by similar, if not identical instructions.

It does not matter that Ms. Westry's report does not have a section entitled "Official Version" as appears in the sample worksheet, with instructions "(Summarize information from PD 163, Affidavit in Support of Arrest Warrant, AUSA, complainant, other viable sources – Quote sources where applicable)..." Ms. Westry's report has equivalent sections: "The Offense" (at p. 3) -- where she quotes from the "PD 163" -- and the "U.S. Attorney's Statement" (at p. 3)– which is the "AUSA". As for a section for a statement from the "complainant", Ms. Westry's Report includes (at p. 13)– but without a separate heading – my request for Senator Chambliss' statement, implicitly conceding that such is appropriate. In other words, Ms. Westry's Report has the component parts of the "Official Version" of the "sample worksheet".

Conspicuously, Ms. Westry does NOT identify that it was based on her "sample worksheet", whose "Official Version" section is followed by a "Defendant's Version" section, requiring her to give a "(Summarized verbatim account)", that I prepared my May 25th letter so that she would thereby have my "Summarized verbatim account". Even more conspicuous is Ms. Westry's concealment of my May 25th letter entirely – even while excerpting from it. Thus she states:

> "Specifically for instance, the defendant forwarded the following: "your OFFICIAL VERSION (regarding the official version of the Instant Offense) must properly include his [Senator Saxby Chambliss] 'applicable' 'quote(s)' as to HIS complaint, i.e., specifically what he purports occurred at the May 22, 2003 'hearing' , warranting arrest and prosecution."

Nowhere identified is that what I "forwarded" was my May 25th letter, which provided explanatory context relating to Senator Chambliss, which she has not given: the instructions to the "Official Version" in her "sample worksheet" (Exhibit "J", p. 2) that she obtain information from the "complainant".

With respect to Ms. Westry's third paragraph relating information from her interview of my sister, Carey, on May 27th, it is noteworthy that no information is related as to her interview with my mother, Doris, also on May 27th. Such later interview with my mother – a lawyer and co-founder with me of the Center for Judicial Accountability, Inc. (CJA) -- was far more substantial and substantive.

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"**EVALUATIVE SUMMARY**":

Ms. Westry's incorrectly states, referring to me, that:

> "Previously, she was arrested in 1996 for a similar charge although that case was nolled."

My arrest in 1996 was NOT "a similar charge" – a fact which I extensively discussed with Ms. Westry – including because, during her May 19th interview of me, she mistakenly had before her the PD 163 for my June 25, 1996 arrest. From that PD 163, she could see for herself that the charge was "disorderly conduct" and it was NOT premised on my having respectfully requested to testify at the Senate Judiciary Committee's "hearing" on that date. As such, it was altogether DISSIMILAR to the May 22, 2003 charge of "disruption of Congress", rising from my respectful request to testify at the Committee's May 22, 2003 "hearing". This was further highlighted by the documents from CJA's website which I brought to Ms. Westry's attention during her May 19th interview of me – and which, by my May 25th letter to her (Exhibit "C", p. 2), I specifically requested be included as part of my "Defendant's Version". Among these, the draft of my intended opening statement on April 14th, highlighting by comparison to the June 25, 1996 arrest that my May 22, 2003 arrest was "unprecedented" (Exhibit "E", p. 2).

Moreover, as hereinabove noted (at p. 19), to only state that the charge was "nolled" is an unfair and misleading simplification.

With respect to Ms. Westry's assertion that I "not only requested but 'demanded' the sentencing recommendation of the AUSA as well as Senator Saxby Chambliss", Ms. Westry fails to give any of the contextual details for my strong position, such as was conveniently set forth for her by my May 25th letter (Exhibit "C", pp. 5-6).

Finally, as to Ms. Westry's observation that "It was apparent that the defendant viewed the presentence investigation as a beneficial venue", this was explicitly discussed with her, as reflected by footnote 1 to my May 25th letter (Exhibit "C", p. 1).

"**INTERVENTION PLAN" -- with My Clarifying Proposal**

Ms. Westry gives no explanation as to why "community service" is appropriate or what it should consist of.

From her review of CJA's website, *www.judgewatch.org*, it should have been obvious to Ms. Westry that my non-partisan championing of meaningful and effective

mechanisms of judicial selection and discipline already represents full-time "community service". Nevertheless – and based on her "Intervention Plan" – I put forward a reasonable suggestion to Senate Judiciary Committee Chairman Hatch, Ranking Member Leahy, New York Home-State Senators Schumer and Clinton, and Senator Chambliss in my June 24, 2004 memo to them (Exhibit "M-1"). In pertinent part, I stated:

> "...the D.C. Court Services' May 28, 2004 presentence report recommended that I perform "community service". I am perfectly willing to perform "community service" -- so long as it consists of my working with the Senate Judiciary Committee to develop ways of facilitating and enhancing citizen participation in federal judicial selection and otherwise advancing the unimplemented non-partisan, good-government reform recommendations of The Ralph Nader Congress Project (1975), Common Cause (1986), and The Twentieth Century Fund Task Force on Judicial Selection (1988)[fn.1]. Would this be acceptable to you?
>
> If I do not hear from you, I will assume you have NO OBJECTION and will so inform the Court at the June 28th sentencing." (Exhibit "M-1", p. 2, emphases in the original)

I have as yet not received a response from the Senators – or from the U.S. Attorney's Office or Senate Legal Counsel, each recipients of the memo (Exhibit "M-2").

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"RECOMMENDATION"

Ms. Westry gives no explanation as to why a "fine" is appropriate or what amount. No purpose would be served by a fine. Obvious from the record before Ms. Westry is that I have already expended vast sums of money in defending myself and upholding fundamental citizen rights against this bogus and malicious charge – with the initial

[fn.1] "Excerpts of these important recommendations are quoted by my June 16, 2003 memo to Ralph Nader, Public Citizen, and Common Cause – posted at the TOP of CJA's homepage."

retainer for my legal advisor's services itself ten times the maximum $500 fine (Exhibit "F", p. 4).

* * *

The Government's Memorandum in Aid of Sentencing is a Knowing Deceit and Manifests the U.S. Attorney's Ongoing Wilful Disrespect for its Obligation to Ensure Justice

33. The June 1st Government's Memorandum in Aid of Sentencing is a knowing deceit, manifesting the U.S. Attorney's ongoing wilful refusal to respect its transcendent obligation to ensure that justice is done in our courts.

34. Regarding its first footnote, that I had made "repeated demands for the Government's sentencing recommendation", the Memorandum does not identify ANY of the facts and circumstances relating to these "demands". As set forth by my May 25th letter to Ms. Westry (Exhibit "C", at p. 6), this is a case where the U.S. Attorney made NO PLEA OFFER, preferring to "spend many tens of thousands of taxpayer dollars in prosecuting me and bringing me to trial". Further, and as highlighted by my May 28th fax coversheet to the U.S. Attorney (Exhibit "K-2"), transmitting a copy of my May 28, 2004 memo to Senate Judiciary Committee Chairman Hatch, Ranking Member Leahy, New York Home-State Senators Schumer and Clinton, and Senator Chambliss, (Exhibit "K-1"), my "demand" was not limited to a sentencing recommendation from the U.S. Attorney, but that such be "informed" by the Senators' responses thereto, including as to the facts "*corroborative of my innocence*", summarized by my published Letters to the Editor in Roll Call and New York Law Journal, which the memo enclosed.

35. As hereinabove noted, I received no response from the Senators to my May 28th memo to them (Exhibit "K-1") – and the U.S. Attorney's June 1st Memorandum fails to identify whether the Senators have been consulted with respect to its sentencing recommendation.

The Memorandum's "Procedural History" is Devoid of ANY Qualitative Assessment, Including as to Due Process

36. The Memorandum's three-sentence procedural history (at p. 1) contains only skeletal information: the date of my arrest, the charge, the date of the trial, the date of my jury conviction, and the potential penalty I face. The inference – including by its mention of "lengthy pretrial litigation" -- is of procedural regularity and conformity with due process prerequisites.

37. Ms. Liu and Mr. Mendelsohn are presumed sufficiently competent to know that nothing could be further from the truth. Indeed, the Government's Memorandum makes NO affirmative representation on the subject.

38. It is unethical for the U.S. Attorney to urge ANY sentence where it does not preface its recommendation with even a representation that the conviction was the result of fair judicial proceedings.

The Memorandum's "Sentencing Recommendation" Raises Serious Questions as to Why the U.S. Attorney Wasted Tens of Thousands of Taxpayer Dollars on this Prosecution and Extended NO PLEA OFFER

39. The Memorandum's sentencing recommendation (at pp. 1, 4) is for nothing more than "a sentence of five days of incarceration, all suspended, and six months of probation conditioned on completion of an anger-management course". If such sentence was ALL the U.S. Attorney was going to be seeking upon my conviction

– and this, *via* unconscionable and false claims and inferences – it should NOT have wasted tens of thousands of taxpayer dollars on proceedings against me, diverting time and resources from bringing to justice the perpetrators of serious crimes. Its obligation was to have offered me a plea with those terms – and ANY fair and impartial tribunal would demand to know WHY this was not done.

40. Upon information and belief, it is standard Court procedure, before proceeding to trial, to inquire whether "the government provided a plea offer or some form of diversion". Indeed, this inquiry appears on a form entitled, "MISDEMEANOR STATUS HEARING FORM" (Exhibit "N-1"). One such form was on the defendant's table on April 20, 2004, when the Court interrupted its morning calendar of other cases so that the jury could be brought in to announce its verdict in this case[8].

The Memorandum's Objection that I have Shown "No Remorse" and that I Have Not Acknowledged my Actions as "in Any Way Wrong" is Sanctionable Misconduct Where the U.S. Attorney Does Not Deny or Dispute ANY of the Facts and Evidence I have Presented Establishing that I was Wrongfully Charged and Convicted

41. To support its sentencing recommendation, the U.S. Attorney points to my "correspondence with the press and to Erika Westry" as demonstrating that "Defendant has shown no remorse for her actions" and has "not acknowledged that her actions were in any way wrong" (at p. 2). The Memorandum singles out my Letter to the Editor in the May 10th issue of Roll Call (Exhibit "D-1") and my May 25th letter to Ms. Westry (Exhibit "C"), further objecting that

> "in the 'Defendant's Statement' section of the presentence report, Defendant argued at length that she is innocent." (at p. 2)

[8] I did not realize what the form was when I took it in order to use its blank reverse side to take notes of the jury verdict (Exhibit "N-2").

42. Such is sanctionable misconduct – where the U.S. Attorney does NOT deny or dispute ANY of the specific facts presented by those documents establishing that to which it so baldly objects: namely, that the charge against me was "bogus and malicious", that "the Judiciary Committee's leadership 'set [me] up' to be arrested'", that the crime was "concocted" and that I was "wrongfully convicted" (at p. 2).

43. The evidence proving that the charge against me is "concocted" and "bogus and malicious" and that I was "set up" by the Judiciary Committee's leadership is particularized by the lengthy "Defendant's Statement" in the Presentence Report (at pp. 4-11) – such being Ms. Westry's *verbatim* extraction of seven pages from my July 7, 2003 memo to the ACLU (Exhibit "H"). Relevant facts as to the "Court proceedings" that led to my being "wrongfully convicted" are summarized by my May 25th letter to Ms. Westry (Exhibit "C") – and further identified by my published Roll Call Letter (Exhibit "D-1").

44. The U.S. Attorney's failure to deny or dispute the accuracy of these is a concession of their truth. No ethical prosecutor could seek a sentence under such circumstances – or do other than take steps to vacate the conviction, including by withdrawing the charge.

The Memorandum's Claim That I Have Made "Baseless Attacks" and "Unwarranted Personal Attacks" on Parties to this Case and their Representatives is Knowingly False – As the Record Resoundingly Shows

45. To further support its sentencing recommendation, the Memorandum falsely claims that I have "engaged in continual and baseless attacks" on the parties to this case (at p. 2) and "repeated and unwarranted personal attacks" on their

representatives (at p. 3). The cited examples are ALL belied by the record, establishing that my so-called "attacks" were fact-specific, document-supported allegations addressed to professional misconduct.

46. Example # 1: that the Senate Judiciary Committee "set [me] up" to be arrested. As my Roll Call Letter to the Editor makes explicit (Exhibit "D-1"), this allegation is not only based on my correspondence with the Senate Judiciary Committee, but the "tell-tale signs" from the videotape of the Committee's May 22, 2003 "hearing". These "tell-tale" signs are analyzed by my July 7, 2003 memo to the ACLU (Exhibit "H", pp. 8-9), whose accuracy the U.S. Attorney has NOT denied or disputed.

47. Senator Chambliss would have been examined on the subject, had the Court not improperly quashed my subpoena for his testimony at trial, after disregarding my entitlement to the material documents sought by my October 30, 2003 motion to enforce my discovery rights and the prosecution's disclosure obligations – as, for instance:

> #17 "The 'complaint' of Senator Saxby Chambliss, identified as the 'complainant' in the two May 22, 2003 Supplement Reports of Capitol Police."
>
> #18 "Any and all documents in the possession of Senator Saxby Chambliss at the time of his 'complaint to Capitol Police pertaining to Elena Sassower's request to testify in opposition to Judge Wesley's confirmation to the Second Circuit Court of Appeals."[9]

[9] My August 12, 2003 First Discovery Demand, annexed as Exhibit "A" to my October 30, 2003 discovery/disclosure motion.

48. Likewise, I would have examined Senate Judiciary Committee Chairman Hatch, Ranking Member Leahy, and Home-State Senators Schumer and Clinton, had the Court not improperly quashed my subpoena for their testimony, after disregarding my entitlement to material documents as to them, sought by my October 30, 2003 discovery/disclosure motion.

49. Example #2: that Senate Legal Counsel filed a "fraudulent motion" to quash my subpoenas for their testimony – such having been so-stated by my May 28, 2004 memo to the Senators (Exhibit "K-1"): As to this, the U.S. Attorney asserts: "In fact, these Senators' testimonial immunity under circumstances such as those presented in this case is explicitly established by the United States Constitution."

50. To the contrary, the "circumstances" of this case are NOT governed by the U.S. Constitution's "Speech and Debate Clause" – which is why Senate Legal Counsel CONCEALED and MISREPRESENTED them in its March 26, 2004 motion to quash my subpoenas, purporting:

> "As best as can be discerned from the subpoenas and conversations with defendant's attorney-advisor, defendant seeks evidence relating to her communications with Senate offices in support of her contention that her May 2003 arrest was motivated by an alleged bias against her resulting from a June 1996 arrest outside of a Senate Judiciary Committee nominations hearing." (at p. 3).

51. The deceit of this statement is established by my February 26, 2004 letter to Senate Legal Counsel, which that motion annexed as an exhibit, without discussing its content. Such not only invited Senate Legal Counsel to "call me directly at 914-421-1200" with "any questions", but expressly identified the basis for the subpoenas as set forth in the recitation:

> "at pages 7-20 of my [October 30, 2003 discovery/disclosure] motion -- and the substantiating documents relating thereto, in particular my May 21, 2003 fax to Capitol Police Detective Zimmerman [] and my May 28, 2003 memorandum to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy..."

52. Among the "circumstances" recited by those documents: that Senator Chambliss was the identified "complainant" in the underlying prosecution documents and that material to my defense was the extraordinary background of interaction between myself and the offices of Senators Hatch, Leahy, Schumer, and Clinton, including correspondence for the Senators' personal attention and conversations between myself and their staff. Such deliberate omissions were because Senate Legal Counsel could not otherwise argue that there were no "exceptional circumstances that would justify compelling testimony from high governmental officials" (at p. 4) and that the D.C. Court of Appeals decision in *Bardoff v. United States*, 628 A.2d 86 (D.C. 1993) "applies with equal force to the factually similar situation at issue here and requires that this Court quash the subpoenas issued to the Senators and employees in this action" (at p. 5)[10].

53. This was then compounded by the motion's deceit (at p. 11) with respect to my October 30, 2003 discovery/disclosure motion.

54. At the April 12, 2004 pre-trial proceedings, I sought to particularize these and other respects in which Senate Legal Counsel's motion was fraudulent[11]. The

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[10] *See also* the motion's claim (at p. 4) that *Bardoff* had "almost identical circumstances" to this case.

[11] The most immediately obvious respect is the motion's outrageous footnote 2, purporting to recite, "Without presuming to articulate its full basis, Ms. Sassower's opposition to Judge Wesley's

transcript reflects what happened: the Court refused to allow me to do so and further denied reargument of its April 8, 2004 order quashing my subpoenas, except for those compelling the testimony of Senate staffers Leecia Eve and Josh Albert (Tr., p. 3, ln. 4 – p. 18, ln. 10, p. 44, ln. 1- p. 45, ln. 15).

55. Example #3: that I "accuse" Assistant U.S. Attorney Leah Belaire of "misfeasance in her former capacity as a staffer for the Senate Judiciary Committee" and insist[] that her involvement in this case was "prejudicial" (at p. 2) – as to which the Memorandum states:

> "Ms. Belaire did nothing more than paper this case and prepare the initial discovery packet." . (at pp. 2-3)

56. As to Ms. Belaire's "prejudicial" involvement, my May 25th letter to Ms. Westry (Exhibit "C", p. 6) identifies what I had repeated during the course of this litigation, *to wit*:

> "It was Ms. Belaire who signed the U.S. Attorney's May 23, 2003 letter which made NO 'PLEA OFFER'".

Had Ms. Belaire been fair and impartial, she would have readily recognized the insufficiency of the case against me – as Judge Milliken readily did from the "amended Gerstein":

> "It's an amended Gerstein... It wouldn't take long for a person, it certainly didn't take me but a second to think, ahh, there. Based on what was originally reported by the officers, they

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confirmation". The footnote then gives a description that is so knowingly false and intentionally maligning that it bears NO RESEMBLANCE to CJA's March 26, 2003 written statement, particularizing Judge Wesley's corruption in two public interest lawsuits. Tellingly, the footnote fails to even refer to the March 26, 2003 written statement – THE FOCAL DOCUMENT in all CJA's subsequent correspondence with the Senate Judiciary Committee, New York Home-State Senators Schumer and Clinton, and the Senate leadership pertaining to our opposition to Judge Wesley's confirmation.

didn't have probable cause to arrest there. When they talked to a prosecutor, their representations were amended."[12]

57. The circumstances pertaining to the initiation of this case were integrally part of my October 30, 2003 motion to enforce my discovery rights, to compel the prosecution's disclosure obligations, and for sanctions -- and the pertinent documents were ALL annexed to that motion. This included my 1998 correspondence chronicling Ms. Belaire's misfeasance as investigative counsel for the Senate Judiciary Committee – whose accuracy neither she nor anyone else has ever denied or disputed. Nor has anyone ever denied or disputed that:

> "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'".[13]

58. Appropriate resolution of my October 30, 2003 discovery/disclosure motion by any fair and impartial tribunal, especially with respect to my entitlement to sanctions, would have entailed inquiry into Ms. Belaire's role, including as to the amending of the "Gerstein".

59. Example #4: that I have "launched scurrilous personal attacks" on Assistant U.S. Attorney Aaron Mendelsohn (at p. 3) – as to which the Memorandum specifies:

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[12] *See* December 3, 2003 transcript (p. 16, lns. 5-10), annexed as Exhibit "W" to my February 23, 2004 motion to disqualify the Court. *See also* pp. 10-11 of my March 22, 2004 vacatur/removal motion.

[13] fn. 4 of my October 30, 2003 discovery/disclosure motion, quoting from my August 17, 2003 reargument/change of venue motion.

> "On December 3, 2003, for example, in a sworn affidavit filed with this Court, Defendant accused Mr. Mendelsohn of 'obfuscation and deceit.' According to Defendant, Mr. Mendelsohn's opposition to her motion to compel discovery was a 'fraud'." (at p. 3)

60. The record is DEVOID OF ANY EVIDENCE that I ever made "scurrilous personal attacks" against Mr. Mendelsohn. This especially includes the fact-specific, law-supported December 3, 2003 affidavit, replying to Mr. Mendelsohn's opposition to my October 30, 2003 discovery/disclosure motion. Such affidavit so resoundingly demonstrated his professional misconduct that Mr. Mendelsohn never denied or disputed its accuracy – even after Judge Milliken gave him four full weeks to do so. He thereby:

> "conced[ed], ***as a matter of law***, the truth of my reply affidavit's demonstration of his on-going deliberate misconduct and the Court's obligations with respect thereto pursuant to its "Disciplinary Responsibilities' under Canon 3D of the Code of Judicial Conduct for the District of Columbia Courts".

I so stated this in my February 22, 2004 motion for the Court's disqualification (at fn. 8) – without ANY contradiction by Mr. Mendelsohn or anyone else, including the Court.

61. Example #5: that "Throughout the course of this case" I have "engaged in repeated and unwarranted personal attacks on the representatives of the other parties." (at p. 3). Here, too, the record is DEVOID OF ANY EVIDENCE of "unwarranted personal attacks on the representatives of the other parties", let alone that were "throughout the course of this case" and "repeated". The Memorandum's failure to provide ANY specificity bespeaks the frivolous, bad-faith nature of this claim.

The Memorandum's Claim That I am "Not a First Offender"
Has NO EVIDENTIARY VALUE

62. There is NO EVIDENCE to support the Memorandum's claim that because I was allegedly "treated leniently in the past" by receiving "the benefit of a conditional release" for a 1994 conviction in North Castle Town Court of a charge of "obstructing government", therefore, I "should receive a harsher sanction for the instant offense". Indeed, the Presentence Report fails to include ANY information as to the "exact release stipulations" on that earlier conviction or, for that matter ANY facts pertaining to the charge. Such precludes ANY informed assessment with respect to my purported "conditional[] discharged[]" and its affect upon me.

The Memorandum's Claim that I "Should be Required to Attend an Anger-Management Course" is Contradicted by DOCUMENTARY AND OTHER CREDIBLE EVIDENCE

63. There is NO CREDIBLE EVIDENCE that I require "anger-management treatment" – as may be seen from the Memorandum's reference (at p. 3) to my "post-trial correspondence". NOTHING in my "post-trial correspondence" remotely suggests "anger-management problems. To the contrary, such correspondence demonstrates my tremendous self-control – and the channeling of any personal feeling into meticulously focused presentations which are completely professional in all respects.

64. Nor did anything at trial bespeak any "anger-management" issues on my part. I deny – and challenge the Government to produce evidence – that I "shouted at the Assistant U.S. Attorney who cross-examined [me]" (at p. 3). It would appear that what is being referred to is Mr. Mendelsohn's improper and harassing rebuttal

examination of me with respect to my June 25, 1996 arrest -- including his insistent attempt to have me verbally enact, including as to volume, what took place at that time. To this I rightfully objected – ultimately, referring him to the September 22, 1996 police misconduct complaint I had filed with respect to the events of that arrest. Indeed, I did not understand from the "Court's instructions not to discuss certain matters" (at p. 3), that I could not refer to that police misconduct complaint if the U.S. Attorney itself used and referred-to the June 25, 1996 arrest in its rebuttal examination.

65. Finally, as to the Memorandum's assertion that "evidence at trial established that Defendant yelled at Senate staffers, including Leecia Eva and Josh Albert, when they refused to accede to her demands" (at p. 3), such is materially false and misleading. The only Senate staffers who testified at trial were Ms. Eve and Mr. Albert and I was prevented from presenting "evidence at trial" as to our May 20, 2003 telephone conference by the Court's unilateral and without-prior-notice termination of my testimony from the witness stand.

66. The "evidence at trial" showed that it was my May 20, 2003 voice mail message to supervisory staff at Senator Clinton's office regarding the professional misconduct of Ms. Eve and Mr. Albert during that May 20, 2003 phone conference which led that office to contact Capitol Police.

67. Capitol Police recorded that voice mail message – but mysteriously "lost" it. Even still, the description of it in Special Agent Lippay's police report is significant:

> "SA Lippay made a copy of the voice mail message, in which SASSOWER directs her message to a staff member and spoke in a calm, coherent tone. SASSOWER stated that members of

the Senator's staff engaged in 'misconduct' regarding a judicial nomination [nature of the misconduct was not provided]. SASSOWER would like to discuss the misconduct with the staff member and provided her call-back number...

No threats or harassing language were contained..."

68. The facts pertaining to the May 20, 2003 telephone conference between myself and Ms. Eve and Mr. Albert – as to which NO supervisory staff from Senator Clinton's office ever called me -- are recited by my May 21, 2003 letter to Senator Schumer's office. A copy was faxed and e-mailed to Senator Clinton's office under a May 21, 2003 coverletter. Both these documents are part of my 39-page May 21, 2003 fax to Capitol Police[14], the dispositive significance of which was detailed by my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions.

Elena Ruth Sassower

ELENA RUTH SASSOWER

Sworn to before me this
28th day of June 2004

Notary Public

[14] My 39-page fax is Exhibit "I" to my October 30, 2003 discovery/disclosure motion.