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United States Senate

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March 3, 2004

BY U.S. MAIL AND FAX

Mark Goldstone, Esq.
9419 Spruce Tree Circle
Bethesda, MD 20814

Re: *United States of America v. Elena Ruth Sassower*,
Criminal No. M-4113-03 (D.C. Super. Ct.)

Dear Mr. Goldstone:

This letter memorializes our conversations concerning the above-referenced case, in which you are the attorney-adviser for the defendant, Elena Ruth Sassower, who is charged with disrupting a May 2003 hearing of the Senate Judiciary Committee.

On February 25, 2004, you called our office to ascertain the procedures for securing the testimony of Members of the Senate, and their staff, at trial, then scheduled to commence on March 1, 2004. In that conversation, and in a subsequent conversation on February 27, 2004, we informed you that, given the testimony likely to be requested, any subpoena for the production of evidence would fail under the District of Columbia Court of Appeals precedent in *Bardoff v. United States*, 628 A.2d 86 (D.C. 1993). In that decision, as you know, the court affirmed the quashing of subpoenas issued to Members and staff in a prosecution, like this one, arising out of the defendant's disruption of a congressional hearing. The court reasoned that the Speech or Debate Clause, art. I, cl. 6, of the Constitution afforded the Senators and their staff absolute immunity from the compelled production of evidence, *see id.* at 91-92, and that, aside from legislative immunity, there were no exceptional circumstances to permit the defendant to subpoena such high government officials to testify at trial. *See id.* at 92-93.

Apart from compelled production, we further apprised you that Members and their staff may, as a voluntary matter, testify in civil and criminal cases, but only in accordance with the Standing Rules of the Senate. Under the Senate's Rules, the production of testimony or Senate documents by a Member of the Senate, or his or her staff, can be accomplished only with the authorization of the Senate itself. The Senate typically authorizes the production of such evidence when it furthers the interests of justice and does not implicate any privileges, but it typically does so only upon a strong showing of relevance, need, and unavailability from other sources. In addition, where testimony is requested on a day that the Senate is in session, Senate Rule VI.2 provides that "[n]o Senator shall absent himself from the service of the Senate without

Exhibit "C"

leave." Normally, such leave would be granted only in the most compelling of circumstances even where the Senate would otherwise authorize testimony.

Senate authorization for the production of evidence serves a critical and essential purpose: to protect Members of the Senate and their staff from a voluminous number of requests that would otherwise interfere with the work of the Senate without any corresponding benefit to our system of justice. Accordingly, parties requesting the production of testimony or Senate documents are typically asked to provide a written, particularized request, including proposed areas of inquiry and an explanation of the direct relevance, need, and lack of alternative availability of such evidence. Providing this information puts the Senator's office in the position to analyze effectively the applicability of all relevant privileges, and our office in the position to recommend whether the Senate should authorize a sitting Senator and/or a member of his staff to divert time from their official duties to testify or provide documents in a legal proceeding.

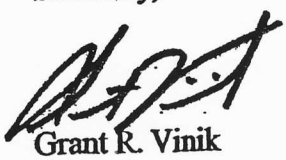
In response to our invitation to make that showing, after the close of business on Thursday, February 26, 2004, the defendant transmitted to our office a letter requesting the testimony of five United States Senators, and four members of their staff, for the trial scheduled to commence on Monday, March 1. Specifically, the defendant requested the testimony of (i) Senator Hillary Rodham Clinton, her Chief of Staff, Tamara Luzzatto, her counsel Leecia Eve, and one of her legislative correspondents, Joshua Albert; (ii) Senator Charles Schumer, and his Director of Intergovernmental Affairs, Michael D. Tobman; (iii) Senator Orrin Hatch, Chairman of the Senate Judiciary Committee; (iv) Senator Patrick Leahy, Ranking Member of the Senate Judiciary Committee; and (v) Senator Saxby Chambliss, who apparently was presiding at the May 2003 hearing at the time the defendant was arrested.

On Friday morning, February 27, I informed you that the defendant's letter failed to satisfy the preliminary showing required in order for the Senate to consider her request for the testimony of its Members or their staff. Far from the strong showing that is required for any non-privileged testimony, the defendant's letter did not identify with any specificity what testimony she sought or its direct relevance, need, or unavailability from other sources. Rather, the defendant's letter merely adverted to half a dozen documents apparently related to an October 2003 discovery motion that was the subject of rulings, not referenced in defendant's letter, issued on December 3, 2003, and February 26, 2004. Additionally, as we have discussed, the matters upon which testimony is sought here are privileged under the Speech or Debate Clause. *See*, *Bardoff*, 628 A.2d at 91-92. When the lack of a strong showing of relevance, need, and unavailability from

other sources is coupled with the privileged nature of any such testimony, there is no basis for seeking authorization from the Senate for such testimony.

Please feel free to contact me should you have any questions.

Sincerely,



Grant R. Vinik