To Be Argued by
Elena Ruth Sassower

#04-CM-760
#04-CO-1600

DISTRICT OF COLUMBIA COURT OF APPEALS

ELENA RUTH SASSOWER,

Appellant,

-against-

UNITED STATES OF AMERICA,

Appellee.

SUPPLEMENTAL FACT STATEMENT

On Appeal from D.C. Superior Court [#M-4113-03]
Judge Brian F. Holeman

Elena Ruth Sassower, Appellant *Pro Se*
Box 69, Gedney Station
White Plains, NewYork 10605-0069
Phone: 914-421-1200

TABLE OF CONTENTS

STATEMENT OF THE FACTS

Background

Appellant Elena Ruth Sassower [hereinafter "Sassower"] is the coordinator and cofounder of the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful [A-120]. On May 22, 2003, she was arrested on a single misdemeanor charge of "disruption of Congress" under D.C. Code §10-503.16(b)(4) based on what she was alleged to have said at that day's Senate Judiciary Committee hearing to confirm President George W. Bush's nomination of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals. Sassower was released the following day, May 23, 2003, on her own recognizance, after being arraigned in D.C. Superior Court.

At arraignment, Sassower was provided with a copy of an Information, dated May 23, 2003, and illegibly signed by an Assistant U.S. Attorney, with no signature by U.S. Capitol Police Officer Roderick Jennings, whose name was typed in [A-100]. She also received a letter dated May 23, 2003 [A-77], signed by Assistant U.S. Attorney Leah Belaire [A-83], which extended no plea offer [A-78], claimed to be "currently aware" of no *Brady* evidence [A-82], and purported to provide "current and comprehensive discovery" [A-77]. The annexed discovery included the underlying May 22, 2003 Capitol Police arrest reports [A-84, 86, 88, 89, 93] naming Senator Saxby Chambliss as the "complainant", Officer Jennings as the "arresting officer", Sergeant Kathleen Bignotti as the "reviewing official", and Detective William Zimmerman as the "investigator". These underlying prosecution documents purported that Sassower had shouted "Judge

Wesley, look into the corruption of the New York Court of Appeals" and -- without quoting her specific words -- that she had "further stated she wanted to 'testify' to the committee". This was contradicted and clarified by other annexed discovery, identified by Ms. Belaire's letter as a "copy of def's handwritten statement from which she was reading during the disruption (1 page)" [A-79]. On it was written,

> "Mr. Chairman, there's citizen opposition to Judge Wesley based on his documented corruption as a New York Court of Appeals judge. May I testify?" [A-94]

Ms. Belaire's letter also contained a "*Drew/Toliver* Notice" [A-82], identifying that the prosecution intended to use as "evidence" that "Def is known to Capitol Police for being disruptive in the past; Def was arrested in 1996 for disorderly conduct on Capitol grounds.".

Not referred-to or annexed by Ms. Belaire's letter was Sassower's 39-page May 21, 2003 fax to Detective Zimmerman, entitled "NOT BEING ARRESTED" [A-102]. The fax established that Sassower's presence at the May 22, 2003 Senate Judiciary Committee hearing and her intent with respect thereto were known in advance to Capitol Police, as well as to Senate Judiciary Committee Chairman Orrin Hatch, Ranking Member Patrick Leahy, and New York Home-State Senators Charles Schumer and Hillary Rodham Clinton[1]. Her intent, in the event the hearing's presiding chairman did

---

[1] These Senators were all recipients of Sassower's fax to Detective Zimmerman – whose two-page coverletter to him transmitted 37 pages consisting of her correspondence to them or to which they were recipients, *to wit*, (1) her May 21, 2003 memorandum to Chairman Hatch and Ranking Member Leahy [A-104]; (2) her May 21, 2003 letter to Senator Schumer [A-106]; (3) her May 21, 2003 letter to Senator Clinton [A-119]; and (4) her July 3, 2001 letter to Senator Schumer [A-120]. As Sassower's authorship of this, as well as other correspondence to the Senators and the March 26, 2003 written statement hereinafter referred to, was as CJA's coordinator, these documents are varyingly identified as CJA's.

not himself inquire whether anyone wished to testify – as had been done in the past [A-105, 107 (fn. 2), 128 (fn. 6) -- was to respectfully request to testify with "citizen opposition". The fax reflected that Detective Zimmerman had threatened her that she would be arrested for so-requesting and that she had challenged this on two grounds: First, that it is the presiding chairman – not the police -- who is in charge of the hearing and his decision to direct her arrest for respectfully requesting to testify. Second, that it would "deviate from the precedent" of the Senate Judiciary Committee's June 25, 1996 hearing at which Sassower had not been arrested for requesting to testify in opposition to a federal judicial nominee -- contrary to the insistent claim of Special Agent Lippay, Detective Zimmerman's subordinate. As summarized by the fax [A-102-3; 107 (fn. 3), 129-130, 139-40], Sassower's June 25, 1996 arrest was for alleged "disorderly conduct" in the hall outside the Committee room after the hearing had ended – a charge so completely trumped-up that she had filed a police misconduct complaint.

Sassower's fax [A-102] reflected the May 21, 2003 call she had received from Capitol Police came at the instance of Senator Clinton's office, on whose voice mail she had left two messages requesting to speak with Senator Clinton's Chief of Staff, Tamera Luzzatto, about the misconduct of the Senator's Counsel, Leecia Eve, and Legislative Correspondent, Joshua Albert. This, in connection with a 35-minute phone conference she had had with them on May 20, 2003 – the particulars of which the fax recounted [A-107-109]. Notwithstanding CJA had provided the Senator's office with a March 26, 2003 written statement, particularizing the documentary evidence of Judge Wesley's corruption as a New York Court of Appeals judge [A-1436], neither Mr. Albert nor Ms. Eve appeared to have read it – and they refused Sassower's request that they do so. By

their own admission, they had not reviewed the substantiating documentary evidence which had accompanied the statement and to which it referred. Nevertheless, they told Sassower that Senator Clinton would do nothing to stop the May 22, 2003 confirmation hearing, such as by withdrawing her "blue slip" approval of Judge Wesley's confirmation, and that Senator Clinton would not even endorse Sassower's request to testify in opposition. In so stating, they refused to give the March 26, 2003 statement to Senator Clinton for her own review. Nor would they give Senator Clinton CJA's two-page May 19, 2003 memorandum [A-1535], jointly addressed to her and Senator Schumer, which, in addition to requesting their personal review of the March 26, 2003 statement, had enclosed a ten-page May 19, 2003 memorandum to Chairman Hatch and Ranking Member Leahy [A-1522], chronicling the misfeasance and nonfeasance of Senate Judiciary Committee staff with respect to the March 26, 2003 statement – all the more egregious because it also covered up the fraudulence of the barebones ratings of the American Bar Association and Association of the Bar of the City of New York in approving Judge Wesley's nomination.

Sassower's fax further reflected that she had discussed CJA's March 26, 2003 statement with Detective Zimmerman and Special Agent Lippay, as likewise her extensive correspondence with the Senate Judiciary Committee and Senators Clinton and Schumer based thereon. She had also directed them to CJA's website, *www.judgewatch.org*, where these documents were posted as a "paper trail" [A-102-3]. Additionally, by her accompanying May 21, 2003 correspondence to Chairman Hatch and Ranking Member Leahy [A-104], and to Senators Schumer and Clinton [A-106; 119] which was part of the 39-page fax, she notified them of Detective Zimmerman's threat

that she would be arrested for respectfully requesting to testify and implored them to take steps to ensure that she not be arrested for peaceably and publicly requesting to testify in opposition, in the event the presiding chairman did not ask whether anyone wished to testify at the next day's hearing.

As early as May 28, 2003, in a further memorandum to Chairman Hatch and Ranking Member Leahy, with copies simultaneously transmitted to Senators Clinton and Schumer [A-142], Sassower described the criminal charge against her as "a vicious assault on citizen rights and responsibilities" [A-145] – and stated that her defense would expose the corruption of federal judicial selection by the "paper trail" of her correspondence with them and Capitol Police. She gave a copy to Assistant U.S. Attorney Aaron Mendelsohn at the first court conference on June 20, 2003 [A-56]. She also gave him a copy of her June 16, 2003 memorandum to Ralph Nader, Public Citizen, and Common Cause [A-149], identifying the "elementary proposition" of law to be championed in the case: "that a citizen's respectful request to testify at a congressional committee's public hearing is not – and must never be deemed to be – 'disruption of Congress'" (underlining in the original) [A-151]. This, quite apart from the fact that Sassower's respectful request to testify had not even been made until "after the presiding chairman had already announced that the 'hearing' was 'adjourned'" (underlining in the original) [A-150].

By August 2003, Sassower, acting *pro se*, filed motion papers setting forth that she had informed Mr. Mendelsohn that discovery would establish that the prosecution against her was "not just bogus, but malicious" and that the videotape of the May 22, 2003 hearing – a copy of which he had given her on June 20, 2003 [A-47] – established

that the underlying prosecution documents were materially false[2]. These underlying prosecution documents included a "Gerstein" [A-101] – a copy of which Sassower had not received at arraignment and which she had found in the court file on June 20, 2003 [A-47, fn. 7]. Allegedly signed and sworn-to by Officer Jennings on May 23, 2003, the "Gerstein" purported to describe the "events and acts" Sassower had committed at the May 22, 2003 hearing. It materially differed from the underlying police reports she had received at arraignment [A-84-89]. These material differences included: (1) its addition of the sentence, "The disruption occurred during a Judiciary Committee hearing"; (2) its addition of the clause, "After striking the gavel twice", as a preface to the sentence that Chairman Chambliss requested the police to restore order; and (3) its addition of a handwritten sentence, "After the senator called for order, the defendant continued to shout", tacked on to the end of the otherwise typed "Gerstein" – and without identifying what Sassower had purportedly continued to shout[3].

Sassower's August 12, 2003 First Discovery Demand

On August 12, 2003, Sassower served her first discovery demand upon Mr. Mendelsohn, seeking 22 items of "documents and tangible objects" pursuant to D.C. Superior Court Criminal Procedure Rule 16(a)(1)(C) [A-70]. Among these:

> (1) Any and all records of arrests by Capitol Police of members of the public for requesting to testify in opposition to confirmation of federal judicial nominees at Senate Judiciary Committee hearings -- particularly where the arrestee was charged with "disruption of Congress" (10 D.C. Code Section 503.16(b)(4));

---

[2] *See* Sassower's August 6, 2003 motion (pp. 3-4, 6); her August 17, 2003 motion (p. 6).

[3] As established by the video, these words were Sassower's question to Chairman Chambliss:, three times repeated, "Are you directing that I be arrested?" [A-1572] – to which he did not respond.

(2) Any and all documents pertaining to the protocol and/or guidelines of Capitol Police for responding to "disruptive" conduct by members of the public and for evaluating when arrest is appropriate;

(5) Any and all records, including audio recordings, of communications to Capitol Police and/or its "Threat Assessment Section" on or about May 21, 2003 from the office of Senator Hillary Rodham Clinton concerning Elena Sassower;

(6) Any and all records, including audio recordings, pertaining to Special Agent Lippay's telephone call to Elena Sassower at approximately noon on May 21, 2003, the phone conversation between them, and the subsequent phone conversations between Elena Sassower and Detective Zimmerman;

(7) Any and all records, including audio recordings, of Elena Sassower's telephone call to Capitol Police at approximately 9:30 p.m. on May 21, 2003 pertaining to her 39-page fax transmittal for Detective Zimmerman – and a copy of that fax transmittal;

(8) Any and all records, including audio recordings, of communications from the "Threat Assessment Section" and/or Capitol Police to the office of Senator Hillary Rodham Clinton from May 21, 2003 to May 23, 2003 pertaining to the phone conversations of Special Agent Lippay and Detective Zimmerman with Elena Sassower and her fax transmittal;

(9) Any and all records, including audio recordings, of communications between the "Threat Assessment Section" and/or Capitol Police and members and/or staff of the Senate Judiciary Committee* from May 21, 2003 to May 23, 2003 regarding Elena Sassower's request to testify in opposition at the Committee's May 22, 2003 hearing to confirm New York Court of Appeals Judge Richard Wesley to the Second Circuit Court of Appeals;

(10) Any evaluation, report, or recommendation rendered by the "Threat Assessment Section", both prior to, as well as subsequent to, its receipt of Elena Sassower's May 21, 2003 fax transmittal;

(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

---

* This would include communications with the office of Senator Charles Schumer, a member of the Senate Judiciary Committee.

Sassower's request to testify in opposition to Judge Wesley's confirmation to the Second Circuit Court of Appeals;

(20) Any and all records pertaining to assignment of Capitol Police officers to the Senate Judiciary Committee on June 25, 1996 at its hearing on the confirmation of New York Supreme Court Justice Lawrence Kahn to the District Court for the Northern District of New York and their arrest of Elena Sassower on that date for "disorderly conduct" in the corridor outside the hearing room -- including the personnel records of all such officers;

(22) Any and all records pertaining to the investigation and disposition of Elena Sassower's September 22, 1996 police misconduct complaint by both Capitol Police ("Internal Affairs Case #96-081") and Metropolitan Police.

Mr. Mendelsohn did not respond for more than two months. On October 16, 2003, right before the beginning of a court conference before Senior Judge Ronald Wertheim, he handed Sassower a letter, dated 13 days earlier, October 3, 2003 [A-74] -- responding to each of her 22 itemized requests for "documents and tangible objects" and producing only seven documents. Upon Sassower's objection to the manner and sufficiency of this response [A-42-43], Judge Wertheim gave her two weeks within which to make a motion, setting December 3, 2003 for oral argument and January 14, 2004 for the trial [A-21].

Sassower's October 30, 2003 Motion to Enforce Her Discovery Rights, the Prosecution's Disclosure Obligations, and for Sanctions

On October 30, 2003, Sassower made a 27-page discovery/disclosure/sanctions motion [A-39] – without prejudice to her contention:

> "that to ensure the appearance and actuality of fair and impartial justice, it is appropriate to transfer this politically-explosive 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 advise and consent of the Senate or one of its committees." [A-41: ¶3].

The motion demonstrated that Mr. Mendelsohn's dilatory production constituted, at most, compliance with two, or possibly three, of Sassower's 22 requests for "documents and tangible objects" and that virtually all his itemized responses were "false, in-bad faith, and deceitful" in purporting that her 22 requests were "irrelevant", "do not exist", or were "protected by USCP privacy guidelines" [A-46-47: ¶15].

The largest portion of Sassower's motion – spanning from pages 7-20 [A-47-60] – addressed Mr. Mendelsohn's bald claim, 16 times repeated, that the requested "documents and tangible objects" were "irrelevant to the case". Sassower demonstrated that her 39-page May 21, 2003 fax to Detective Zimmerman [A-102] – produced by Mr. Mendelsohn in response to her request #7 [A-71, 75] -- sufficed to establish the relevance of virtually ALL 22 of her requests. She stated that Mr. Mendelsohn could be expected to have seen this from reading the fax [A-52: ¶27] and, indeed, to have recognized that he would be "unable to prove the necessary 'intent' to sustain the criminal charge" [A-55: ¶29]. Consequently, she asserted that Mr. Mendelsohn "must be required to identify when he first read [it]" [A-55: ¶30] -- as the fax "had to be viewed by any ethical prosecutor as *Brady* material, to be 'disclose[d] as quickly as possible', unless the criminal charge was to be altogether dropped." [A-58: ¶37].

The motion also raised the possibility that Capitol Police had withheld the fax from the U.S. Attorney at the outset of the prosecution. It stated:

> "Obvious from the most cursory reading of the fax is that Capitol Police was duty-bound to have turned it over to the U.S. Attorney at the same time as it turned over the various documents annexed to Ms. Belaire's May 23rd letter. This, not only because it is plainly *Brady* evidence of which the U.S. Attorney needed to be 'aware' in completing Section VII of its form letter relating to '*Brady*' – as, for instance, when Ms. Belaire's May 23rd letter affirmatively represented that the U.S. Attorney was 'currently aware of no such evidence'...-- but because it was essential to

> the U.S. Attorney's independent evaluation of whether there was any basis to prosecute a 'disruption of Congress' charge – a charge requiring that [Sassower] 'willfully and knowingly engaged in disorderly and disruptive conduct with the intent to impede, disrupt, and disturb...' (emphasis added)." [A-49: ¶20].

In this regard, the motion identified the bias and ulterior motives of both Capitol Police and Ms. Belaire. As to Capitol Police, Sassower stated [A-59: ¶40] that the true arresting officer was not Officer Jennings, as was falsely purported by the underlying prosecution documents [A-84-89]. Rather, it was Sergeant Bignotti – believed to be the female officer against whom Sassower had filed her September 22, 1996 police misconduct complaint based on the June 25, 1996 arrest [A-59: ¶41; 164-6, 184]. As to Ms. Belaire, Sassower stated [A-45: fn. 4] that she was a former counsel at the Senate Judiciary Committee, whose misfeasance in that capacity Sassower had chronicled in an August 12, 1998 letter sent to Ms. Belaire. Sassower annexed copies of both the September 22, 1996 police misconduct complaint [A-154] and August 12, 1998 letter [A-190] to her motion.

Thus, beyond the first two branches of Sassower's October 30, 2003 motion [A-39]:

> "(1) to compel production of the 'documents and tangible objects', sought by defendant's First Discovery Demand, dated August 12, 2003;" and
>
> "(2) for sanctions against Assistant U.S. Attorney Aaron Mendelsohn for his dilatory, bad-faith, and deceitful response to defendant's First Discovery Demand, wasting resources and necessitating this motion;"

were two additional branches addressed to the U.S. Attorney's disclosure obligations – and the integrity of the prosecution against her [A-39-40]:

> "(3) for disclosure by the U.S. Attorney for the District of Columbia:
>
> (i) as to whether he was in possession of defendant's 39-page May 21, 2003 fax to U.S. Capitol Police when Assistant U.S. Attorney Leah Belaire signed a May 23, 2003 letter on his behalf,

declining to make a plea offer, purporting to make 'current and comprehensive discovery', and purporting to be unaware of *Brady* evidence;

(ii) as to when he came into possession of the exculpatory materials identified by defendant's May 28, 2003 memorandum to U.S. Senate Judiciary Committee Chairman Orrin Hatch and Ranking Member Patrick Leahy, including defendant's 39-page May 21, 2003 fax to the U.S. Capitol Police;" and

"(4) for such other and further relief as may be just and proper, including sanctions against the U.S. Attorney for the District of Columbia for failing to comply with the mandatory disclosure obligations imposed upon him by law, reflected by the May 23, 2003 'discovery' letter, signed on his behalf by Assistant U.S. Attorney Leah Belaire."

Mr. Mendelsohn responded by an unsworn 10-page opposition statement, dated November 13, 2003 [A-212]. It did not deny or dispute any aspect of Sassower's factual or legal showing, but instead rested on a bald assertion that she had offered "no new evidence or legal analysis that could alter the foundation of the government's October 3, 2003 response" and 'no factual or legal basis for her contentions" [A-217: ¶11]. In so doing, Mr. Mendelsohn excised the operative language of Rule 16(a)(1)(C) to remove from its purview "documents and tangible objects...which are material to the preparation of the defendant's defense" – purporting instead [A-213: ¶3] that Rule 16(a)(1)(C) entitled Sassower only to "documents and tangible objects" "intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.".

Sassower answered with a 24-page reply affidavit, dated December 3, 2003 [A-222]. Analyzing the entirety of Mr. Mendelsohn's November 13, 2003 opposition, she demonstrated that it was:

"...nothing less than a fraud upon the Court, violating a plethora of District of Columbia Rules of Professional Conduct designed to ensure the integrity of judicial proceedings. These include: Rule 3.3(a)(1),

> proscribing a lawyer from knowingly making "a false statement of material fact or law to a tribunal"; Rule 3.4(d), requiring a lawyer to 'make reasonably diligent effort to comply with a legally proper discovery request by an opposing party'; Rules 8.4(c) and (d), denominating as professional misconduct for a lawyer to 'engage in conduct involving dishonesty, fraud, deceit, or misrepresentation'; and to 'engage in conduct that seriously interferes with the administration of justice'; and, additionally, Rule 3.8, entitled 'Special Responsibilities of a Prosecutor', specifically, Rule 3.8(b) that a prosecutor in a criminal case shall not 'file in court or maintain a charge that the prosecutor knows is not supported by probable cause'; Rule 3.8(c) that he shall not 'intentionally avoid pursuit of evidence or information because it may damage the prosecution's case or aid the defense'; and Rule 3.8(e) that he shall not 'intentionally fail to disclose to the defense, upon request and at a time when use by the defense is reasonably feasible, any evidence or information that the prosecutor knows or reasonably should know tends to negate the guilt of the accused or to mitigate the offense...'" [A-222: ¶3].

Such violations were stated as

> "underscor[ing] the necessity that [Mr. Mendelsohn] not only be sanctioned, as expressly requested by the second branch of relief sought by [Sassower's October 30, 2003] motion, but that the Court refer him to appropriate disciplinary and other authorities, pursuant to its own disciplinary responsibilities under Canon 3D of the Code of Judicial Conduct for the District of Columbia" [A-223: ¶4].

December 3, 2003 Oral Argument Before Senior Judge Stephen Milliken on Sassower's October 30, 2003 Discovery/Disclosure/Sanctions Motion, the Prosecution's December 3, 2003 Motion *in Limine*, & Sassower's December 31, 2003 Affidavit in Opposition to Motion *in Limine* and in Further Support of her Discovery/Disclosure/Sanctions Motion

On December 3, 2003, oral argument was held on Sassower's discovery/disclosure/sanction motion before Senior Judge Stephen Milliken [A-300]. Like Judge Wertheim and a succession of D.C. Superior Court judges before him, Judge Milliken had not been assigned to the case. Rather, he had been rotated to handle Misdemeanor Calendar 1, on which the case appeared. This, in the absence of a permanent judge – who would not take over Misdemeanor Calendar 1 until January 2004.

Without addressing any of the facts and law as to Mr. Mendelsohn's misconduct, presented by Sassower's motion and reply, Judge Milliken, without reasons, stated that he would not impose sanctions upon him and that the case would not be dismissed [A-329-330, 338]. This, notwithstanding his recognition that Mr. Mendelsohn's opposition rested on his misrepresenting Rule 16(a)(1)(C) [A-303-4] and that the prosecution's charge against Sassower was "so thin" that the typewritten text of the "Gerstein" had not presented probable cause for the arrest [A-315]. It was also in face of Sassower's assertion that the U.S. Attorney's obligation was to have dismissed the case because, as established by her 39-page fax [A-102], "there was no intent to impede, disrupt. None whatsoever" [A-329]. Instead, Judge Milliken gave Mr. Mendelsohn another chance to comply with her August 12, 2003 discovery demand [A-70] and, *sua sponte*, allowed him to make production for *in camera* inspection, giving him until January 14, 2004 – the date Judge Wertheim had previously fixed for the trial. Judge Milliken's patient explanation to Mr. Mendelsohn as to the compliance he was requiring included the following:

> 'So if, for example, she is a representative of an organization that's about cleaning up the judiciary, she wants to fight to prevent a second circuit appointment and she wants to be heard and there is a public hearing organized to that effect, and hearings regularly allow for people to speak and she wants to get up and say, well, I was there to speak and lo and behold, here I am pounced on. I was just starting to speak. I didn't even hear the speaker call for quiet. I didn't hear anything. I was just trying to discharge my citizenly opportunity to petition the Government for redress of grievances and so, if there are communications whether from offices represented in Congress to police or, you know, target this woman, intercept her, arrest her, she gets to have that specific to these circumstances. And you have to ask for that specific to these circumstances and you have to review it specific to these circumstances and you have to, under the Akers case, which I know you've read 100 times, resolve all bouts [sic] in favor of discovery. That was the Supreme Court's command...
>
> So that's my charge on reading the papers to the Government, all right? Talk to the Capitol Police. See what records they maintain on her, see what

communications they got about her in this instance, and get any history of complaints of police misconduct [by] this defendant for potential bias cross-examination. And I order that produced for in-camera inspection in chambers..." [A-309-10]

"So, you have to at least inquire. You know, did somebody say, look, I'm a Senator and that person is not coming to my hearing and tell the police, I don't care how you do it, get rid of her. All right? And, as an example, I mean, she's going to make a claim that she didn't do anything wrong, and that, in fact, the charge is manufactured and, in fact, the charge is so thin, let me see if I can find it. Have you got your Gerstein handy?...

When you read it, it's an amended Gerstein. ['']After the Senator called for order, the defendant continued to shout. ['] 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 didn't have probable cause to arrest her. When they talked to a prosecutor, their representations were amended. Now they've built sufficient prosecution. So clearly I'm right that I was arrested for nefarious motives and reasons. And now I'm being pressed because prosecutors are supporting the police authorities and I really never did anything wrong in the first place. And if I have access to documents to show that they were out to get me before I even step on the Capitol grounds, that proves that they were going to get me removed, incarcerated at all costs because they want to suppress me and I live in a police state. This is fascism, this is not America and she gets to do all that, all right? That's her defense or it could be. I'm not saying it is because she doesn't have to settle on one but it could be and one hard to think about. So you have to see, was there some, we are going to get her kind of communication. And if it's true, she's entitled to have you deliver that to me." [A-314-6].

Judge Milliken further stated that the Court's determination as to disclosure would be by "early in February if not late January" [A-312] and set March 1, 2004 as the new trial date [A-331]. Mr. Mendelsohn requested an opportunity to respond to Sassower's December 3, 2003 reply affidavit – and Judge Milliken gave him to the end of December [A-318] – the same as he had given Sassower to respond to Mr. Mendelsohn's December 3, 2003 "motion *in limine* to preclude reference to defendant's political motivations, political beliefs, political causes, etc." [A-247], which Mr. Mendelsohn had handed her during the oral argument [A-318].

Judge Milliken also stated, "The judge is obliged to look into the destruction of discoverable material and then assess its impact under pertinent authorities" [A-337]. This, in response to Sassower's pointing out that it appeared from Mr. Mendelsohn's opposition that requested materials may have been destroyed. Sassower further stated she would be renewing her request for sanctions and disciplinary action against Mr. Mendelsohn [A-338].

Mr. Mendelsohn did not thereafter respond to Sassower's December 3, 2003 reply affidavit [A-222], leaving its factual and legal showing as to the fraudulence of his November 13, 2003 opposition to her discovery/disclosure/sanctions motion entirely undenied and undisputed. Nor was there any response from Assistant U.S. Attorney Jessie Liu, who had been present with Mr. Mendelsohn at the December 3, 2003 oral argument. By contrast, Sassower submitted a 13-page December 31, 2003 opposing affidavit [A-251] to Mr. Mendelsohn's motion *in limine* [A-247], demonstrating that it (a) rested on "knowing and deliberate falsification of the facts pertaining to [her] arrest"; (b) was "unsupported by any legal authority, other than the statute under which [she] was arrested, as to which it [was] misleading"; and (c) was "impermissibly and prejudicially vague as to the 'political' matter it sees to preclude by pre-trial order" [A-251: ¶3]. Sassower stated that Mr. Mendelsohn's motion *in limine* not only reinforced her entitlement to sanctions, as documented by her October 30, 2003 discovery/disclosure/sanctions motion [A-39] and December 3, 2003 reply [A-222], but that it provided

> "a vivid example of what happens when a lawyer, whose flagrant and repeated transgressions are brought before the Court is allowed to get off 'scott free', without even a warning as to the consequences of future

> misleads. He immediately continues his unethical conduct, 'without skipping a beat'." [A-262: ¶31]

Indeed, Sassower demonstrated that Mr. Mendelsohn's summary of the events of May 22, 2003 pertaining to her arrest – the factual predicate for his motion *in limine* – was

> "EVEN MORE FALSE than the underlying prosecution documents, whose falsity [she had] repeatedly brought to Mr. Mendelsohn's attention – including by [her] October 30, 2003 discovery/disclosure motion..." [capitalization and underscoring in the original]. [A-255: ¶12].

She asserted that inasmuch as this factual predicate was "'a demonstrated deceit', the motion must fail – even apart from consideration of its legal baselessness." [A-259: ¶20]. Mr. Mendelsohn did not thereafter reply, leaving Sassower's factual and legal showing entirely undenied and undisputed.

January 2004: Enter D.C. Superior Court Judge Brian F. Holeman

On January 21, 2004 – a week after Judge Milliken's January 14, 2004 deadline for the U.S. Attorney's response to Sassower's August 12, 2003 first discovery demand -- Sassower telephoned the chambers of Judge Brian Holeman, inquiring of his law clerk whether he was the long-awaited judge assigned to the Misdemeanor Calendar 1 who would be handling the case and, if so, whether he had received anything from the U.S. Attorney, as she herself had received nothing. The law clerk called back the next day with instructions from Judge Holeman that she not call chambers and that the matter was "under advisement" [A-291].

Sassower thereupon wrote Judge Holeman [A-291], clarifying the entirely proper nature of her call and questioning whether the instruction that she not call chambers reflected "a fair and impartial tribunal". Noting that Judge Holeman was apparently

refusing to respond to her "straightforward inquiry as to whether [he had] received anything from the U.S. Attorney....", her January 22, 2004 letter explained:

> "I have rights flowing from noncompliance by the U.S. Attorney with the January 14, 2004 deadline. This, in addition to the fact that the Court should want to know – and needs to know – that I have received nothing from the U.S. Attorney in connection with that deadline. Such is legitimately brought to the Court's attention, at least initially, by a call to chambers." [A-292]

Judge Holeman responded, *via* a call from his law clerk, reiterating that his position as "not changed". A week later, by a January 30, 2004 letter to Judge Holeman [A-293], Sassower stated that such response reinforced her belief "that the Court is 'not a fair and impartial tribunal'" and asked:

> "So that I may be guided accordingly in protecting my constitutional rights, please advise whether it is your policy to request attorneys and pro se litigants not to call chambers with their inquiries regarding *procedural, non-substantive matters* pertaining to cases before you.
>
> If you have no such policy, I intend to make a motion for the Court's disqualification based upon the wholly unwarranted, invidious mistreatment of me...In any event, I call upon you to make disclosure – as is your duty under Canon 3E of the District of Columbia's Code of Judicial Conduct – of any facts and circumstances bearing adversely upon your ability to be fair and impartial." [A-294, underlining in the original].

Sassower further stated her view, based on the title of the U.S. Attorney's *ex parte in camera* submission that she had received from Dan Cipullo, Director of the Superior Court's Criminal Division, that the submission did not comply with Judge Milliken's December 3, 2003 direction. She therefore gave notice that upon receipt of the transcript of the December 3, 2003 oral argument, she would be making "an appropriate motion to secure the full relief to which Judge Milliken – and more importantly, any fair and impartial review of the record of [her] October 30, 2003 motion show[ed] [her] to be overwhelmingly entitled." [A-294].

Eleven days later, with no response from Judge Holeman, Sassower wrote a third letter to him, dated February 10, 2004 [A-295]. It set forth her belief that:

> "[if his] blanket directive that [she] not call chambers...[was] not part of an across-the-board general policy – [it] served no purpose but to impede [her] in protecting [her] legitimate rights with respect to [her] dispositive October 30, 2003 discovery/disclosure motion, as likewise from clarifying how [she was] to proceed with such related procedural issues as [her] subpoenaing of witnesses whose testimony will relate to the documents sought by that motion" [A-296].

Sassower asked for Judge Holeman's response "by Thursday, February 12th at the latest so that [she could] decide on an appropriate course without further delay" – and presented an additional question germane to her potential motion for his disqualification. The question, based on the December 3, 2003 transcript [A-333], which she had by then received, was:

> "Was it you to whom Judge Milliken referred when he stated that the new judge who would be handling this calendar and this case had 'just stepped out', but had 'heard the bulk of the arguments in the case today' [Tr. 34, lns. 24, 21-22]? If so, at what point did you leave the courtroom?" [A-295-6]

Additionally, she alerted Judge Holeman to the fact that notwithstanding his view, expressed *via* his law clerk, that she could gain necessary information by contacting the U.S. Attorney's office, she had received no response from Mr. Mendelsohn to her February 4, 2004 written request to him that he identify the content of his ***ex parte in camera*** submission [A-297].

Sassower's February 23, 2004 Motion to Disqualify Judge Holeman, for Postponement/Continuance of the Scheduled March 1, 2004 Trial Date, and for Transfer of the Case

Thirteen days after this February 10, 2004 letter [A-295], with no response from Judge Holeman, Sassower made a 22-page motion [A-265] for:

"1. Disqualification of Judge Brian F. Holeman pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts;

2. Postponement/continuance of the scheduled March 1, 2004 trial date, chargeable to the Government or the Court, pursuant to Rule 16(d)(2) of the Superior Court Rules of Criminal Procedure, pending responsive, written adjudication of defendant's still-outstanding October 30, 2003 motion to enforce her discovery rights, the prosecution's disclosure obligations, and for sanctions -- including responsive, written adjudication of defendant's December 3, 2003 affidavit in reply and in further support of her motion; and

3. Such other and further relief as may be just and proper, including ensuring the appearance and actuality of fair and impartial justice by transferring this politically-explosive 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."

Sassower stated that Judge Holeman was disqualified "based upon what was initially the appearance and is now the actuality that he is not fair and impartial" [A-268: ¶5]. She asserted that "the facts creating this appearance and actuality [were] reflected in [her] three letters to [him], dated January 22, 2004, February 4, 2004, and February 10, 2004", and that her disqualification motion had been "necessitated by [his] wilful failure to respond to the latter two letters, following [his] non-responsive response to the first letter" [A-268: ¶¶6-7] – the significance of which she described as follows:

8. Thus established is the Court's wilful refusal to respond to the straightforward question as to whether it has a policy of requesting attorneys and *pro se* litigants to not call chambers with their *procedural, non-substantive* inquiries. This, in face of notice that such information was critical to my deciding whether to make this disqualification motion.

9. The reasonable inference is that the Court has no such policy and that it does not wish to identify such fact because doing so would expose its invidious treatment of me, to which it has steadfastly adhered, over my protests and with knowledge of its prejudice to my legitimate rights.

10. As the record herein is totally DEVOID of any basis for the Court's treating me differently from attorneys and other *pro se* litigants, nothing more is needed to establish my entitlement to the Court's disqualification for actual bias.

11. Indeed, prior to my first and only January 21st telephone call to the Court's chambers, resulting in its startling instruction to me not to call again, I had NO interaction with the Court.

12. To the extent that the Court, new to the bench[fn2] and newly-assigned to the case [fn], had any pre-judgment about me, its only legitimate source is the record. Yet, the only judgment possible from objective review of my motion papers, my correspondence to predecessor judges and their law clerks, and the audiotape/transcripts of court conferences is that I am a highly professional, painstaking, and effective advocate in my own defense. My October 30, 2003 discovery/disclosure/sanctions motion is the most stellar representation of this.

13. It is my belief – reflected by my letters – that the reason for the Court's unexplained conduct in instructing me not to call chambers – was to prevent me from safeguarding my rights with respect to my October 30, 2003 discovery/disclosure/sanctions motion and, further, to thwart my ability to properly proceed with such related pre-trial issues as subpoenaing witnesses whose testimony will relate to the documents sought by the motion.

14. The fact that throughout this past month, as the clock has steadily ticked to the March 1, 2004 date which Judge Milliken fixed for trial, the Court has not only wilfully ignored the threshold issues of its disqualification and duty of disclosure, in violation of Canons 3E and F of the Code of Judicial Conduct for the District of Columbia Courts, but, additionally, the issues I have raised with respect to my October 30, 2003 motion, suggests that this biased Court is maneuvering to bring me to trial without the documents and witnesses to which I am entitled and on which my defense rests.

15. That the Court has not even reacted to Mr. Mendelsohn's deliberate failure to provide me with any information that would enable me to evaluate his compliance with Judge Milliken's January 14, 2004 deadline, such that I am completely in the dark, only reinforces that

---

[fn2] This Court's appointment by President George W. Bush was made on May 22, 2003 – the same day as I was arrested at the Senate Judiciary Committee for "disruption of Congress". Its confirmation hearing before the Senate's Committee on Government Affairs was on September 30, 2003. Without a printed report, the appointment was placed on the Senate Executive Calendar on October 22, 2003. Senate confirmation was on October 24, 2003, by a voice vote.

belief. No fair and impartial tribunal could deem this acceptable based on the record herein.

The motion asserted [A-276: ¶16] that Judge Holeman's severely prejudicial behavior fit within a pattern of judicial conduct identified by the very first footnote of Sassower's October 30, 2003 discovery/disclosure/sanctions motion:

> "The record in this case, as in the 1997 case against me on a trumped-up 'disorderly conduct' charge (D-177-97), suggest a pattern by this Court of rushing criminal cases to trial, without concern for defendants' discovery rights -- at least where the arrests involve U.S. Capitol Police and the U.S. Senate Judiciary Committee." [A-43].

To demonstrate this pattern, Sassower annexed the record of the 1997 case. She also set forth Judge Milliken's misconduct in this case two-and a half months before the December 3, 2003 oral argument, as well as late in the day on December 2, 2003. This, to provide a context for what she described as:

> "the mishmash of ambiguous, contradictory, insufficient, and factually unsupported rulings and statements that a demonstrably biased Judge Milliken made from the bench with respect to [her] October 30, 2003 discovery/disclosure/sanctions motion." [A-279: ¶27].

Sassower stated that irrespective whether Judge Holeman was present at the December 3, 2003 oral argument, he had more than ample time to hear the audiotape and compare it with her October 30, 2003 discovery/disclosure/sanctions motion and December 3, 2003 reply – and that review "suffices for any fair and impartial tribunal to know that Judge Milliken's from-the-bench dispositions were biased and improper." [A-280: ¶28]. Among these dispositions: his "'kid glove' treatment" of Mr. Mendelsohn and his pretense that she was not entitled to sanctions – which he accomplished by not addressing any of the facts and law presented by her motion [A-280: ¶29]; his failure to make any finding as to the "materiality" of the 22 requests for documents and tangible

objects sought by her August 12, 2003 first discovery demand – entitlement to which her motion resoundingly established [A-281: ¶30]; his *sua sponte* and overbroad direction to Mr. Mendelsohn that he make production for *in camera* inspection – where no request for protective relief had been made by Mr. Mendelsohn – let alone a "sufficient showing" by motion, as Rule 16(d)(1) requires, and where Mr. Mendelsohn's October 3, 2003 response had objected to only six of the 22 requests on grounds of confidentiality – and this based on alleged "USCP privacy guidelines" whose inadequacy her motion demonstrated [A-282-3: ¶¶31-4].

Sassower further asserted,

> "Although Judge Milliken did not specify what I would be receiving in connection with Mr. Mendelsohn's *in camera* submission to the Court on January 14, 2004, any fair and impartial would deem it obvious that if Mr. Mendelsohn were going to be complying with Judge Milliken's directive, he would have to accompany his *in camera* production with a coverletter correlating the 'documents and tangible objects' he was producing to the 22 itemized requests in my first Discovery Demand. Such coverletter would be comparable to his initial October 3, 2003 coverletter accompanying his production..." [A-283-4: ¶35].

She stated that for Judge Holeman to neither himself identify what Mr. Mendelsohn had submitted *ex parte* nor to direct Mr. Mendelsohn to respond to [her] written request to him for that information was to "disregard...[her] most fundamental due process right to notice and opportunity to be heard with respect to the sufficiency of Mr. Mendelsohn's '*ex parte in camera*' submission" [A-285: ¶37].

As to the requested continuance, Sassower's presentation was as follows [A-285-7]:

> "38. At the December 3rd oral argument, Judge Milliken ruled that I had 'a 16(D)(2) remedy of Court ordered discovery. That's what has to happen...' [], stating further,

'I do rule that the remedy is Court ordered discovery...look at our local criminal Rule 16(D)(2). You'll see that the very first recommended sanctions are discovery and continuance to allow for lawful discovery and with a recast of the obligation on the Government, that's the road I send you down.' (p. 30, lns. 5-11).

39. For this reason, Judge Milliken replaced the January 14, 2004 date that Judge Wertheim had scheduled for the trial – and made it the date by which Mr. Mendelsohn was to turn over for the Court's inspection the 'documents and tangible objects' sought by my First Discovery Demand. []. He then stated,

'If there is a determination to disclose, it'll go to the defendant early in February if not late January and I'll give notice to the Government after that which is disclosed.' (p. 13, lns. 4-8).

40. It is now already the last week in February, with no word whatever from the Court as to its 'determination to disclose' any of Mr. Mendelsohn's '*ex parte in camera*' production of 'documents and tangibles'.

41. Based on my October 30, 2003 motion – and, in particular, pages 7-20, which I expressly identified at the December 3rd oral argument as establishing 'materiality' (Exhibit "W", p. 26, lns. 6-15) and whose review Judge Milliken thereafter acknowledged as appropriate for this Court (p. 36, lns. 1-8) -- a fair and impartial tribunal would have promptly made a 'determination to disclose' most, if not all, of the 'documents and tangible objects' sought by my First Discovery Demand – assuming Mr. Mendelsohn had produced them for *in camera* inspection.

42. As Judge Milliken did not identify any item among my 22 requests for 'documents and tangible objects' that Mr. Mendelsohn was relieved of complying with, his production was required as to all 22 such requests. Indeed, Judge Milliken recognized that the Court must evaluate not only what is to be disclosed, but whether Mr. Mendelsohn "has produced in camera what's required" (Exhibit "W", p. 36, lns. 1-3) and, further, to the extent he claims that records do not exist, must state whether it is because they have been destroyed because '[t]he judge is obliged to look into the destruction of discoverable material and then assess its impact under pertinent authorities' (p. 38, lns. 15-17).

43. Rule 16 (a)(1)(C) entitles me to rulings on my requested 'documents and tangible objects' – including a ruling as to whether Mr. Mendelsohn produced them for *in camera* inspection and, if not, why not. Such is NOT merely for purposes of my 'defense', as for instance, at trial, but for 'the preparation of [my] defense'. This has not been afforded, with

the result that my trial preparations, including issuance of subpoenas to witnesses pertaining to the events embraced by these records, have been impeded.

44. Pursuant to Rule 16(d)(2), postponement/continuance of the scheduled March 1, 2004 trial date must be ordered. Such is properly chargeable to Mr. Mendelsohn, whose wilful failure to furnish me with any information as to what he transmitted to the Court for *in camera* inspection is inexcusable and, which, from the title description given me by Mr. Cipullo – as recited by my January 30th letter (Exhibit "T-2", p. 2) -- is patently non-compliant with Judge Milliken's directive.

45. Such postponement/continuance would restore my legitimate rights, trampled upon by this biased Court in depriving me of notice and opportunity to be heard as to the sufficiency of Mr. Mendelsohn's *in camera* transmittal and in failing to make the substantive adjudications called for by Judge Milliken -- and compelled by my October 30, 2003 motion."

Sassower's concluding paragraph – not only to the section of her February 23, 2004 motion discussing her entitlement to a continuance – but to her motion itself -- was as follows [A-288]:

"46. The serious and substantial issues documented by my October 30, 2003 motion, not only as to my discovery rights and the Government's disclosure obligations, but as to the Government's knowledge that it had NO basis in fact or law to prosecute and maintain this criminal case against me for 'disruption of Congress', require judicial adjudication that is responsive and written. No trial date is properly set until a reasoned adjudication is rendered by a fair and impartial tribunal, addressed to the clearly dispositive, evidentiarily-established facts in the record and the law pertaining thereto. This includes adjudication with respect to my uncontested sworn statement...that the videotape of the Senate Judiciary Committee's May 22, 2003 'hearing' does NOT support the underlying prosecution documents and, specifically, does NOT support the recitation of 'events and acts' in the amended 'Gerstein'[fn.10]." [emphases in the original].

---

fn.10 *See, inter alia*, affidavit in support of October 30, 2003 motion (¶¶17-18, 29) and December 31, 2003 affidavit in opposition to the prosecution's motion *in limine* (¶¶11-19).

Judge Holeman did not await any response from the U.S. Attorney before issuing five orders, dated February 25, 2004, faxed shortly before 7:30 p.m. They were:

1. An order denying the motion's first branch for his disqualification – based on a conclusory claim that Sassower had "established no facts that the trial judge's impartiality might reasonably be questioned" [A-407];

2. An order denying the motion's second branch for a continuance – based on a conclusory claim that Sassower had "failed to establish that a continuance of the trial date is necessary to prevent manifest injustice" [A-409];

3. An order denying the request for change of venue contained in the motion's third branch – based on the conclusory assertion that "the law of this case as to venue" had been established by Senior Judge Mary Ellen Abrecht's September 4, 2003 Memorandum Explaining Denial of Motion for Change of Venue" and that there had been "no demonstration of newly presented facts or a change in substantive law" [A-411];

4. An order granting Mr. Mendelsohn's December 3, 2003 motion *in limine* – without any reason therefore [A-413];

5. An order releasing to Sassower the prosecution's "*Ex Parte In Camera* Submission Regarding Evidence Relevant to Bias Cross-Examination of Government Witnesses, filed with the Clerk of the Court on January 18, 2004" – based on Judge Holeman's review of it and "the record of the proceedings of December 3, 2003" [A-414].

As to the now-released *ex parte in camera* submission [A-415] it consisted of an unsworn seven-paragraph statement signed by Ms. Liu, which conceded that Sergeant Bignotti had been the "supervising officer" when Sassower was arrested in 1996; that Sassower had filed a complaint arising from the 1996 arrest as to which a notice had been placed in Sergeant Bignotti's personnel file; that in "mid-May 2003" there had been interaction between Capitol Police and Sassower; and that two members of Senator Clinton's staff, Ms. Eve and Mr. Albert, had also interacted with Sassower, including by a phone conference, following which Ms. Eve had contacted Capitol Police. No "documents and tangible objects" were produced by the prosecution's *ex parte in camera*

submission, except for a copy of the police report of Sassower's 1996 arrest [A-419], uncorrelated to any of the 22 requests in her August 12, 2003 first discovery demand [A-70].

Sassower's February 26, 2004 Memorandum for Supervisory Oversight, Judge Holeman's Subsequent February 26, 2004 Order, and Sassower's February 27, 2004 Memorandum for Supervisory Oversight

Sassower's response to Judge Holeman's five February 25, 2004 orders was to immediately contact supervisory authorities at the D.C. Superior Court: Chief Judge of the Superior Court Rufus King III, Noel Anketell Kramer, Presiding Judge of its Criminal Division, and Dan Cipullo, Director of the Criminal Division. Her February 26, 2004 memorandum to them [A-426], following her phone calls to their chambers/offices, summarized the situation as follows:

> "In violation of my legitimate discovery rights under Rule 16(a)(1)(C), Judge Holeman is attempting to railroad me to trial this Monday, March 1, 2004. This, to 'protect' influential members of the U.S. Senate, Senate Judiciary Committee, and U.S. Capitol Police, whose misconduct underlies the Government's initiation and prosecution of a legally and factually baseless charge against me for 'disruption of Congress'."

She then presented the substantiating particulars. With respect to the three orders which denied the three branches of her February 23, 2004 motion, Sassower stated:

> "NONE of these three orders even identifies, let alone addresses, ANY of the substantiating facts detailed by my motion as entitling me to the relief sought – and the reason is obvious. Judge Holeman could not do so and maintain his bald pretenses that I had 'established no facts that [his] impartiality might reasonably be questioned'; 'failed to establish that a continuance of the trial date is necessary to prevent manifest injustice', made 'no demonstration of newly presented facts' to warrant transfer. Such conclusory claims are outright judicial lies." [A-427, capitalization and underlining in the original]

She described Judge Holeman's order granting Mr. Mendelsohn's December 3, 2003 motion *in limine* as "similarly insupportable" in failing to identify "ANY basis for relief

demonstrated by [her] December 31, 2003 opposing affidavit to be factually and legally insupportable." [A-427, capitalization in the original]. As to the order releasing the ex *parte in camera* submission, Sassower stated:

> "Judge Holeman conspicuously did not identify, let alone adjudicate, ANY of my objections with respect to such submission, particularized by my February 23, 2004 motion. This includes my objection as to its sufficiency [] – as to which I gave detailed argument as to why I believed it to be non-compliant with Judge Milliken's directive to the Government at the December 3, 2003 oral argument of my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions. As Judge Holeman may be presumed to have immediately recognized from my February 23, 2004 motion, the Government's *ex parte in camera* submission is flagrantly non-compliant with Judge Milliken's directive – entitling me to the requested continuance/postponement of the March 1, 2004 trial date on that basis alone. .
>
> The language of Rule 16(a)(1)(C), invoked by my August 12, 2003 First Discovery Demand, is explicit: 'documents and tangible objects...material to the preparation of the defendant's defense' (underlining added). Yet, as ¶30 of my February 23, 2004 motion detailed, Judge Milliken made NO adjudication of the 'materiality' of the 22 requests for 'documents and tangible objects' in my August 12, 2003 First Discovery Demand, while nonetheless directing the Government's production for *in camera* inspection. Pursuant to Rule 16(a)(1)(C), I am entitled to such adjudication of 'materiality', to production based thereon, and to rulings as to whether records claimed by the Government not to exist have been destroyed -- and this sufficiently in advance of trial so that I might properly prepare my defense. As stated by my February 23, 2004 motion (¶43) – and prior thereto in my February 10, 2004 letter to Judge Holeman (Exhibit "T-3", p. 2) to which he did not respond -- my right to subpoena witnesses whose testimony relates to these 'documents and tangible objects' rests on such adjudications, not yet rendered." [A-427-8, capitalization and underlining in the original].

Sassower faxed Judge Holeman a copy of this February 26, 2004 memorandum [A-431] – and shortly before 7:00 p.m. that evening received a further order from him [A-433]. Dated February 26, 2004, it baldly purported the Judge Milliken's December 3, 2003 from-the-bench rulings established "the law of this case" with respect to her October 30, 2003 motion, that the prosecution's "sole outstanding discovery obligation"

had been "satisfied" by its January 14, 2004 *ex parte in camera* submission, that Judge Milliken had "ruled there would be no imposition of sanctions against the Government for failure to comply with discovery obligations", and that Sassower's February 23, 2004 motion had offered "no demonstration of newly presented facts or a change in substantive law".

Sassower responded the next day, February 27, 2004, with a further memorandum to supervisory authorities: Chief Judge King, as well as Judge Harold Cushenberry, Acting Presiding Judge of the Criminal Division in the absence of Presiding Judge Kramer [A-435]. Such identified Judge Holeman's February 26, 2004 order as reinforcing the necessity of their "immediate supervisory intervention":

> "By this sixth order, Judge Holeman attempts to create a 'written adjudication' of my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions. He does this NOT by adjudicating my entitlement to a 'responsive, written adjudication' to that dispositive motion -- the express basis upon which the second branch of my February 23, 2004 motion sought postponement/continuance of the March 1, 2004 trial date – nor by confronting, or even identifying, my assertion of Judge Milliken's bias, let alone the extensive evidence I presented..." [A-436, capitalization and underlining in the original].

Sassower then demonstrated, by transcript excerpts from the December 3, 2003 oral argument, that Judge Holeman's assertion in his February 26, 2004 order that:

> 'Judge Milliken determined that the sole discovery obligation of the Government was the *ex parte in camera* submission of documents relevant to bias cross-examination, which was satisfied by way of the Government's submission of responsive documents for this Court's review on January 14, 2004'

was "yet a further 'outright judicial lie'" [A-437].

Sassower stated that irrespective of the outcome of the criminal trial, she intended to file a judicial misconduct complaint against Judge Holeman with the District of

Columbia Commission on Judicial Disabilities and Tenure – and that their failure to discharge their supervisory and disciplinary duties, including pursuant to Canon 3C(3) and 3D(1) of the Code of Judicial Conduct for the District of Columbia, would be grounds for a complaint against them [A-435-6].

Sassower faxed this February 27, 2004 memorandum to Judge Holeman under a coverletter which gave notice that Mr. Mendelsohn had consented to postponement/continuance of the March 1, 2004 trial date, necessitated by the hospitalization of her 79 year-old father, George Sassower [A-442]. She thereafter supplemented this by a further letter on the subject, requesting a postponement/continuance [A-444]. At approximately 6:30 p.m. that evening, Friday, February 27, 2004, the Court faxed an order granting the continuance based on her father's illness and unilaterally setting a new trial date of Monday, April 5, 2004 [A-447].

March 9, 2004 Motion of Sassower's Legal Advisor for Continuance of Scheduled April 5, 2004 Trial Date to May 3, 2004 & Sassower's March 18, 2004 Memorandum for Supervisory Oversight

On March 9, 2004, and without prejudice to Sassower's contention that Judge Holeman was disqualified for actual bias, her legal advisor, Mark Goldstone, Esq., served a motion to change the trial date to Monday, May 3, 2004 [A-343]. After reciting the relevant facts and circumstances – including prior discussions with Ms. Liu, who had not identified any prejudice to the prosecution by such requested continuance – his motion stated:

> "There is a further good and sufficient reason for putting the trial over to May 3rd, namely, to allow adequate time for motion practice with respect to the nine subpoenas served on defendant's behalf upon Senators Hatch, Leahy, Chambliss, Clinton, and Schumer – and, upon various members of Senator Clinton and Schumer's staff. The Office of Senate Legal Counsel, which on March 4th, advised that it was authorized to accept service of

such subpoenas – and which did accept service on March 5th – has stated that it will be filing a Motion to Quash the subpoenas on constitutional separation of powers grounds. It is unknown when such motion will be made – but plainly there must be adequate time for the *pro se* defendant to research the complicated constitutional law with respect to privilege immunity and the Speech and Debate Clause and, based thereon, to interpose opposing papers addressed to the specific facts of this case. Presumably, the Government will need time to respond thereto. As for the Court, which presumably has never addressed such a motion, it will likewise require time for its own studied analysis of the law – and for a decision tailored to the unique, perhaps unprecedented, facts of this case.

Needless to say, once the Court adjudicates defendants' entitlement to her subpoenaed witnesses, their availability will have to be confirmed. The Senate is in recess from April 12th through April 16th – and, upon information and belief, the subpoenaed Senators will not be in Washington. Such is yet another good and sufficient reason for scheduling this criminal trial to May 3rd when the Senate is in session, and the witnesses will be available." [A-344].

Ms. Liu's March 11, 2004 opposition to the motion did not allege any prejudice by the granting of the continuance to May 3, 2004, nor deny that such date would enable sufficient time to resolve Sassower's right to the subpoenaed Senate witnesses [A-347]. Nonetheless, Judge Holeman did not adjudicate the motion. Rather, shortly after 7:00 p.m. on March 17, 2004, he faxed Sassower an order directing a "status hearing prior to trial" for March 22, 2004 at 2:00 p.m. [A-449].

Sassower responded with a March 18, 2004 letter to Judge Holeman [A-450] setting forth background facts concealed by his March 17, 2004 order, further demonstrating his actual bias, and requesting clarification as to the issues to be addressed at the pretrial hearing. She asserted that such pretrial hearing was premature in light of Mr. Goldstone's pending continuance motion – as to which no hearing was necessary as Ms. Liu had not alleged any prejudice to the government by its granting. She sent a copy to Chief Judge Rufus King, to Criminal Division Presiding Judge Kramer, and to Criminal Division Acting Presiding Judge Cushenberry under a March 18, 2004

memorandum for supervisory oversight [A-454]. Neither Judge Holeman nor supervisory authorities responded – thereby requiring Sassower to travel from New York on March 22, 2004 for the pretrial hearing [A-394].

March 22, 2004 Pretrial Hearing

Judge Holeman opened the March 22, 2004 pretrial hearing by entertaining oral argument on Mr. Goldstone's continuance motion [A-351]. This apparently was the purpose of the hearing as Judge Holeman did not seek any input from the parties for his timetable for pretrial matters which he unilaterally set immediately upon denying Mr. Goldstone's requested continuance. This denial was notwithstanding that neither Ms. Liu nor Mr. Mendelsohn, both present at the pretrial hearing, claimed any prejudice. It was also in face of Sassower's statement that it was "anticipated that this trial will consume a full week" – which Judge Holeman rejected "based upon [his] understanding of the information" [A-354]. In response to Mr. Goldstone's assertions that he would "definitely need until that May 3rd date, given [his] calendar and given [the] complexity and the time this case is going to take, in order to be prepared for trial" [A-352]; and "there's no way in heck that I can be properly prepared for trial of this significance" [A-358], Judge Holeman ruled:

> "...Mr. Goldstone, unfortunately, I guess for you, my position in this case is that we were prepared to have this case go to trial on the 1st of March. And shortly before the case was to go to trial, we were notified of Ms. Sassower's emergency.
>
> Having formerly practiced as a lawyer my experience has been that the trial preparation that would have taken place in anticipation of that March 1st trial date frankly would or should have taken place at the time that we were notified of the emergency, therefore, I'm not convinced by this lack of preparation argument that I hear from the defense."
>
> I'm going to set the trial date in this case for April 12th. In view of the trial date of April 12th I am going to order that the parties exchange

proposed voir dire questions by March – strike that; April 2nd. And I would like any objections to those voir dire questions filed by April 8th. ...

With regard to any preliminary matters that the parties anticipate I'd like a brief listing of those matters also filed on April 8th..." [A-360-1].

As to Sassower's right to her subpoenaed witnesses, Judge Holeman purported that it was not "at all related to this issue of a continuance", but, rather, a "separate Discovery issue" [A-352]. Stating that it was "difficult" to give a timetable for resolution of Sassower's subpoenas as he had not received a motion to quash [A-362], Judge Holeman expressed reluctance, upon receipt of such motion, to give Sassower even the "customary" ten days to respond, let alone such time as she needed to address the complicated legal issues [A-363]. According to Judge Holeman, he had "already reviewed the law in this case", and "given the nature of the subpoenas as I understand them and given the facts of the case as I understand them, there should not be -- certainly shouldn't be a continuance of this trial predicated upon the inability to respond to the motions to quash..." [A-364]. As to whether the subpoenaed witnesses would "provide testimony favorable" to Sassower, the colloquy between him and Sassower was as follows [A-367-9]:

Sassower: "Well have I not been deprived of my rightful Discovery? As established by my October 30th motion, it would be evident that their testimony could only be favorable to me.

Holeman: Well one thing is very clear, we will not be re-treading the ground of prior Discovery. You haven't been wrongfully deprived of anything. I've reviewed this jacket. I've reviewed the prior orders in this case. You have – you have been provided with the Discovery that prior judges who've sat [on] this case, and with me who ruled on the issue of Discovery, have found you were entitled to.

The issue of additional Discovery or Discovery that you thought you were entitled to is a non-issue now. There is no outstanding Discovery here.

Sassower: The only judge—

Holeman: The only issue that we are now addressing is the issue of the motion to quash subpoenas. And my ruling is that, following its receipt you may file an opposition or any other response that you determine appropriate. If in your judgment you consider it to be – the motions to quash filed on the eve of trial, and, therefore, believe emergency relief to be appropriate, you may file that motion with the Court and I will consider it.

Sassower: Yes. I am aware of how Your Honor considers motions. However, I will apprise the Court that I am one person, I am not an attorney, I cannot prepare for trial, prepare voir dire questions, prepare the other issues that you have indicated have to be addressed, also research the law for the opposition for a motion to quash and then if it's untimely file an emergency relief application, I'm sorry, Your Honor, I will have to apprise the Court that that you are placing upon me a burden that I cannot – an attorney couldn't address this. But not – but a non-lawyer certainly not.

Holeman: It was you –

Sassower: Assuredly, I would also indicate that my attorney has never addressed a motion to quash as I understand it, is totally unfamiliar with that area of the law, so I will not even have the benefit of his guidance.

Holeman: None of which, none of which is my problem, Ms. Sassower. You –

Sassower: It should be.

Holeman: You exercised your rights under 28 USC Section 1654, in representing yourself. And in so doing, I will hold you to the same standard as anyone else who represents themselves.

Sassower: The time restrictions –

Holeman: You –

Sassower: -- would be unfair for an attorney.

Holeman: -- made – you made the effort a minute ago to tell me as a sitting judge that I should address you. That Mr. Goldstone is only your attorney-advisor.

Sassower: Correct.

Holeman: Therefore I'm telling you that the burden that you now shoulder is the same burden as any lawyer who would stand in your shoes.

Sassower: That would be an oppressive burden for an attorney.

Holeman: Well then --

Sassower: Quite apart from a Pro Se.

Sassower's March 22, 2004 Disqualification Motion to Vacate Judge Holeman's Orders for Violation of Rule 63-I, for Removal/Transfer of the Case to the U.S. District Court Pursuant to D.C. Code §10-503.18, and for Stay of Trial

The March 22, 2004 pretrial hearing closed with Sassower identifying the basis for her contention, embodied in a formal motion of that date, that Judge Holeman was "without jurisdiction to make any rulings" [A-369] – which she had unsuccessfully attempted to set forth at the outset of the hearing [355-6]. She also summarized the motion's requested relief:

> "(1) Vacating all Orders of Judge Brian F. Holeman as violative of D.C. Superior Court Civil Procedure Rule 63-I pertaining to 'Bias or prejudice of a judge', made applicable to criminal cases by D.C. Superior Court Criminal Procedure Rule 57(a);
>
> (2) Removing/transferring this case to the United States District Court for the District of Columbia pursuant to D.C. Code §10-503.18;
>
> (3) Such other and further relief as may be just and proper, including, if the foregoing relief is denied: (a) reargument and renewal of the Court's challenged Orders, and upon granting of same, recall and/or vacatur thereof: and (b) a stay of the trial herein to permit defendant to bring a writ of mandamus/prohibition to the District of Columbia Court of Appeals and/or file a petition of removal to the United States District Court for the District of Columbia."

Sassower served and filed this March 22, 2004 motion [A-375] immediately following the pretrial hearing. Its 27 pages picked up where her February 23, 2004 motion for Judge Holeman's disqualification had left off [A-265]. It detailed the fraudulence of his February 25, February 26, and March 17, 2004 orders by comparison with the record, so as to demonstrate his "pervasive actual bias" meeting the "impossibility of fair judgment standard" articulated by the U.S. Supreme Court in *Liteky*

v. United States, 510 U.S. 540, at 551, 555, 556, 565 (1994) -- entitling her to his recusal, including pursuant to D.C. Superior Court Civil Procedure Rule 63-I – and to the vacatur of his orders by reason thereof. The motion also chronicled the failure of those charged with supervisory responsibilities over Judge Holeman to take corrective steps – underscoring the necessity that the case be removed or transferred to the United States District Court for the District of Columbia – relief Sassower asserted was available pursuant to D.C. Code §10-503.18, which she now cited for the first time.

The U.S. Attorney's opposition, filed on March 23, 2004 [A-464], consisted of three-sentences, signed by Ms. Liu for Mr. Mendelsohn. It claimed that Sassower had "not demonstrated any specific bias or prejudice by Judge Holeman". As for change of venue, it claimed that "no new facts" had arisen since "August 20, 2003" when Judge Abrecht denied Sassower's motion for change of venue.

By order dated March 29, 2004 [A-466], Judge Holeman adjudicated only the second and third branches of Sassower's March 22, 2004 motion. He denied removal/transfer pursuant to D.C. Code §10-503.18 by baldly claiming that Sassower had presented "no demonstration of newly presented facts or a change in substantive law, nor citation of any legal authority supportive of the requested relief". Without reasons, he also denied her requested stay of the trial, purporting that such was being sought "pending appeal of this ruling".

Judge Holeman did not decide the first branch of the motion – to vacate his orders based on his disqualification – until a week later, when he denied it by an order dated April 6, 2004, faxed and mailed the following day [A-468]. By then, he had been served with Sassower's April 6, 2004 petition to this Court for a writ of mandamus and

prohibition to disqualify him, and for certiorari and/or certification of questions of law as to her entitlement to removal/transfer under D.C. Code §10-503.18. Such petition further discussed *Liteky*, including this Court's recognition that it is the "governing standard[]" for recusal under Rule 63-I (at p. 12).

In denying the first branch of Sassower's March 22, 2004 motion, Judge Holeman asserted that she had not met the procedural requirements for relief pursuant to 63-I [A-469]. Without any legal authority, he purported that by being "defendant pro se", Sassower was "counsel of record" and, as such, was required to have submitted a certificate attesting that her own affidavit of bias had been "made in good faith". He also purported that Sassower's affidavit of bias "failed to state with particularity material facts that, if true, would convince a fair and reasonable mind that bias exists". Without identifying, let alone disputing, Sassower's assertion that his orders were "judicial lies" – being all unsupported and contradicted by the record -- Judge Holeman contended that her objections to his orders denying her February 23, 2004 motion were that they were "all based on 'conclusory claims'" and, with respect to his order granting the prosecution's motion *in limine*, that it "did not state reasons". He then purported that it was "unclear" what Sassower meant by "conclusory claims", but that

> "further clarity is unnecessary to disposition of the pending question. None of the grounds asserted by Defendant even remotely assert prejudice from an extrajudicial source. Rather, they simply reflect the Defendant's dissatisfaction with this Court's Orders." [A-469]

In so stating, as likewise in stating that bias, to be disqualifying, must have "originated from sources *outside of court proceedings*" [A-468, italics in order], that "adverse rulings do not reflect bias nor justify recusal" [A-470], that she had "failed to establish *any* facts to support the required showing that the Court's alleged bias stems from a source outside

the scope of official judicial conduct" [A-470, italics in order], and had "failed to establish that the alleged bias and prejudice stems from an extrajudicial source" [A-470], Judge Holeman did not identify, let alone discuss, *Liteky* – including the quote from *Liteky* set forth by both Sassower's motion [A-398, fn. 6] and her mandamus/prohibition petition (at p. 11) that "an allegation concerning some extrajudicial matter is neither a necessary nor sufficient condition for disqualification under any of the recusal statutes". Instead, his April 6, 2004 order falsely purported that Sassower had "failed to cite any legal authority for the requested relief" [A-470].

Senate Legal Counsel's March 26, 2004 Motion to Quash Sassower's Subpoenas of Five Senators and Four Senate Staff Members

On March 26, 2004, Senate Legal Counsel made a motion to quash Sassower's subpoenas of five Senators and four Senate staff [A-472] – as to which, on March 30, 2004, Judge Holeman issued an order setting April 5, 2004 as the date for responses [A-501]. Sassower did not respond as she was then preparing her April 6, 2004 mandamus/prohibition/certiorari petition to this Court and accompanying application to stay the trial [A-547-8]. However, even unopposed, a fair and impartial tribunal would have recognized material respects in which the motion to quash was deceitful. Among these: its misrepresentation that the basis of Sassower's subpoenas was "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" [A-475] – when the basis was set forth in Sassower's February 26, 2004 letter to Senate Legal Counsel [A-487], which the motion annexed, as presented by:

> "pages 7-20 of [her October 30, 2003 discovery/disclosure] motion -- and the substantiating documents relating thereto, in particular [her] May 21, 2003 fax to Capitol Police Detective Zimmerman [] and [her] May 28,

2003 memorandum to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy..." [A-488].

Additionally, with respect to the subpoena's request for "[a]ll documents and records relating to Defendant, the Center for Judicial Accountability, Inc. and Defendant's attempts to testify before Senate Judiciary Committee Hearing on 5/22/03" [A-492-500], the motion asserted that there was no basis to believe that the Senators and their staff had any "non-cumulative evidence material to the matters at issue in this prosecution" [A-482] and quoted from Judge Holeman's February 26, 2004 order for the proposition that all the government's outstanding discovery obligations had been satisfied [A-482].

By order dated April 8, 2004, faxed and mailed on April 9, 2004 [A-503], Judge Holeman decided Senate Legal Counsel's motion. Resting on what he asserted to be "pertinent facts adduced during pretrial discovery" [A-502], Judge Holeman claimed that aside from Ms. Eve and Mr. Albert,

> "None of the other subpoenaed respondents are known to have had telephone contact with Defendant, nor are any known to have directed communication to Defendant by any other means." [A-502, underlining added].

Judge Holeman held:

> "...the confirmation hearing itself, as well as any work performed by Subpoenaed respondents as deliberative and communicative processes outside the hearing, are protected by the Speech or Debate Clause and interpretive case law. Since there has been no showing that Subpoenaed Respondents who are Senate Members were involved in activities other than the confirmation hearing or deliberative and communicative processes, they are all immune from being compelled to testify or produce documents in the instant case against Defendant.
>
> Further, there has been no demonstration that extraordinary circumstances exist which compel the Senate Members or staff members from testifying at trial. On the facts known to date, Defendant has 'failed to proffer any reason why others present who did not hold such high office

> could not provide the testimony.' *Bardoff v. United* States, 628 A.2d 86, 90 (D.C. App. 1993).
>
> Finally, regarding activities of the Subpoenaed Respondents that do not fall within the legislative activity or deliberative and communicative processes attendant to the confirmation hearing of May 22, 2003, Defendant has not established that the testimony of Senate Members Saxby Chambliss, Hillary Rodham Clinton, Orrin Hatch, Patrick Leahy, and Charles Schumer, nor that of Senate staff members Tamera Luzzatto and Michael Tobman, is evidentiary or relevant..." [A-506, underlining added]

Based thereon, Judge Holeman quashed the subpoenas of all Senate respondents, except Ms. Eve and Mr. Albert, whose testimony he stated "*may* be evidentiary or relevant as to the events leading to Defendant's arrest." [A-507, italics in original]. As to their production of requested documents and records, Judge Holeman quashed the subpoenas "with respect to documents already produced, whether by Defendant's own production or by Government's prior production". He then further limited the subpoenaed production to "any documents which have been prepared by Mr. Albert or Ms. Eve pertaining to Defendant and which have not been previously produced." These he ordered produced "forthwith" [A-507].

The Prosecution's Response to Judge Holeman's March 22, 2004 Pretrial Timetable

Meantime, in response to the timetable which Judge Holeman had announced at the March 22, 2004 pretrial hearing, Ms. Liu sent Sassower proposed voir dire questions on April 2, 2004 and a "Statement of Preliminary Issues" on April 8, 2004 [A-515]. These preliminary issues included a request for a ruling as to whether the prosecution would be permitted to introduce "Other Crimes Evidence Pursuant to Drew v. United States" [A-516]. As to this, the prosecution had filed, on April 5, 2004, a "notice of its intent to introduce evidence of Defendant's disruptive behavior in a Senate office building in 1996 to show motive, intent, lack of mistake or accident, identity of the

accused, and common scheme or plan in this case" [A-509] – as to which Ms. Liu's "Statement of Preliminary Issues" noted that Sassower had not filed any response.

Even without a response, a fair and impartial tribunal would have readily recognized that the prosecution's "notice" was deficient on its face. Although it acknowledged that "uncharged misconduct" must be "proved by clear and convincing evidence" [A-511], it failed to even allege that the 1996 arrest was so-proven. It also omitted all pertinent procedural history, *to wit*, that Ms. Belaire's May 23, 2003 letter had identified that the prosecution intended to introduce such *Drew* evidence [A-82], that Sassower's October 30, 2003 motion contended [A-60: ¶42] that this made "all the more relevant" item #22 of her August 12, 2003 discovery demand for the investigative file of her September 22, 1996 police misconduct complaint arising from the 1996 arrest [A-73]; and that the prosecution had not produced any investigative records, even after being expressly required to do so by Judge Milliken at the December 3, 2003 oral argument [A-307-316].

Ms. Liu's April 8, 2004 "Statement of Preliminary Issues" additionally included a request that Judge Holeman clarify his February 25, 2004 order granting the prosecution's motion *in limine* so as to "make clear exactly what evidence is not admissible at trial" [A-516-7]. It also sought a ruling on whether, at trial, it could introduce and present to the jury as exhibits enlarged copies of the "disruption of Congress" statute -- §10.503.16 -- as well as "the United States Constitution, art. I, §5, cl. 2, and Authority and Rules of Senate Committees, Rule XXVI" [A-517-8].

The Prosecution's Eve-of-Trial Production of Documents Requested Eight Months Earlier by Sassower's August 12, 2003 First Discovery Demand – and its First-Time Disclosure that Critical Evidence was "Lost"

At 8:22 p.m. on April 7, 2004, Ms. Liu faxed Sassower what she described only as "four pages of documents that came into the government's possession this afternoon during a witness conference in preparation for trial" [A-520]. Sassower's response, by an April 8, 2004 fax [A-525] was as follows:

> "These four pages are a two-page 'Subject Profile', with two pages pertinent thereto prepared by U.S. Capitol Police. Such were demanded nearly eight months ago by my August 12, 2003 First Discovery Demand, in particular by items ## 5, 6, 9, 10, 11 – as to which I made my October 30, 2003 motion to enforce my discovery rights and the prosecution's disclosure obligations.
>
> Based on your yesterday's production, I hereby demand your immediate production of the following documents, whose possession by Capitol Police is specifically referred-to by the 'Subject Profile':
>
> > (1) a copy of the audiotapes of the two voice messages I left with Senator Clinton's office, the first on May 20, 2003 and the second on May 21, 2003;
> >
> > (2) a copy of my fax, whose date is not identified, which Senator Clinton's office faxed to Capitol Police, wherein I requested 'to testify in opposition at the May 22, 2003 hearing on Judge Wesley's confirmation' and for 'Withdrawal of your 'blue slips' approving Senate confirmation of Judge Wesley and of P. Kevin Castel, Esq.'.
>
> As reflected by the 'Subject Profile', it was Capitol Police which made the copies of my voice mail messages with Senator Clinton's office. Presumably, Capitol Police also utilized its recording system to tape my phone conversations with Special Agent Lippay and Detective Zimmerman. Demand is hereby made for a copy of such audiotapes, requested by item #6 of my First Discovery Demand, as well as for copies of any other audiotapes, handwritten notes and other records which Capitol Police made pertaining to the matters set forth in the 'Subject Profile' – to which I am entitled by my items ##5, 6, 9, 10, and 11, in particular.

> All such documents are 'material to the preparation of [my] defense'– as expressly stated by my First Discovery Demand, quoting the language of Superior Court Criminal Procedure Rule 16(a)(1)(C). As such, I am entitled to production IN ADVANCE OF TRIAL." [emphasis in the original].

Ms. Liu's responding fax, on April 9, 2004 [A-529] advised, with respect to Sassower's two voice messages to Senator Clinton's office, that Special Agent Lippay had informed her that the audiotape had been "lost" and that she did "not know how that occurred". As to Sassower's fax which Senator Clinton's office had faxed to Capitol Police, Ms. Liu asserted "The Capitol Police is in possession of only one page of that fax, I am enclosing that page, as well as the facsimile transmittal sheet from Senator Clinton's office..." The transmitted page [A-532] was the first page only of what should have been a 12-page document: Sassower's May 19, 2003 memorandum to Senator Clinton, consisting of two pages [A-1535], with its enclosed May 19, 2003 memorandum to Chairman Hatch and Ranking Member Leahy, which was ten more [A-1522].

Eve-of-Trial Proceedings

April 12, 2004

On April 12, 2004, Sassower appeared before Judge Holeman for trial – this Court having denied, on April 7, 2004, her April 6, 2004 petition for a writ of mandamus/prohibition/certiorari/certification and motion for a stay. Sassower repeated what she had stated on March 22, 2004 [A-359], that the case was "not trial ready" [A-538]. She asserted that her appearance and proceeding before him were "without prejudice to [her] threshold contention" that he was "disqualified for actual bias, already demonstrated and made the subject of a mandamus petition." [A-538], that she had a "continuing objection to being tried before [him]", and was "[m]oving forward under

compulsion and without particularizing some of the intermediate matters that additionally bear upon [his] bias" [A-539].

As to Judge Holeman's April 8, 2004 order pertaining to her subpoenas [A-503], Sassower stated that with respect to its reference to "pertinent facts adduced during pretrial discovery", she had been "denied [her] pretrial discovery, vis-à-vis [her] August 12th discovery demand" [A-539] and asserted her belief, based on the order's claim that she had only had contact with Ms. Eve and Mr. Albert, that Judge Holeman had only "read the ex parte, in camera submission, as opposed to pages seven through 20 of [her] October 30th motion for discovery." [A-540]. Sassower further stated that Senator Chambliss, as the presiding chairman at the May 22, 2003 hearing, had directed comments to her by his direction that order be restored and, further, that he was identified as the "complainant on this prosecution" by the underlying prosecution documents [A-541]. The colloquy included the following [A-541]:

> Holeman: Well, "I'll tell you this, Miss Sassower, if the Government calls Senator Chambliss you can cross-examine him. Next witness.
>
> Sassower: I'd like him as my witness.
>
> Holeman: Did you subpoena him?
>
> Sassower: Yes.
>
> Holeman: And the grounds that I gave for denying for quashing the subpoena was speech and debate, correct? Isn't that correct?
>
> Sassower: Speech and debate has nothing to do with initiating a criminal charge, he lodged a criminal charge; that's not part of his legislative function.

Judge Holeman's responded by turning to Mr. Mendelsohn, who in turn deferred to Assistant Senate Legal Counsel Grant Vinik, who purported that "Senator Chambliss is protected by the Speech and Debate Clause of the United States Constitution" – and cited,

from his motion, this Court's decision in *Bardoff v. United States*, 628 A.2d 86 (D.C. 1993) and, additionally, the Ninth Circuit decision in *Schultz v. Sundberg*, 759 F.2d 714 (1985). Sassower's exchange with Judge Holeman was as follows [A-543]:

> Sassower: As I implore the Court, this is a technical area of the law.
>
> Holeman: Excuse me. I want you to respond –
>
> Sassower: Yes.
>
> Holeman: -- to the legal authority that was cited.
>
> Sassower: Well, without reading the legal – first of all Bardoff does not control in this case, no way. There was – the circumstances are not comparable, but as to Saxby – as to the case you cited from the Ninth Circuit, are we talking about a right of a criminal defendant –
>
> Holeman: Excuse me.
>
> Sassower: -- to call the witness?
>
> Holeman: Excuse me, Miss, Sassower.
>
> Sassower: To call the complainant as witness?
>
> Holeman: Miss Sassower, excuse me. Any argument that you make make it to me.
>
> Sassower: Well, I believe I respectfully – I respectfully submit that surely in that case what is not involved is a right of a criminal defendant to have the witness called by – by way of confrontation rights under the Sixth Amendment. May I hand up the pertinent page showing that Saxby Chambliss is the complainant? Please.
>
> Holeman: No, I don't need to see that. Bardoff is controlling, it flows from his legislative duties, you've made your record, next issue.

Mr. Vinik thereafter sought to prevent further argument from Sassower by asserting a timeliness objection based on Judge Holeman's March 30, 2004 order requiring her response to his motion by April 5, 2004 [A-501]. In the colloquy that followed, Sassower

answered why she should not be held to such order and should be permitted to now respond – which Judge Holeman rejected [A-547-551]:

> Sassower: As the transcript of the March 22nd pretrial quote, hearing, unquote, March 22nd hearing reflects, I protested to the Court the time parameters that were imposed as being oppressive for an attorney, let alone for a pro se, whose attorney, parenthetically, was – who's legal advisor – was busy with other cases and scheduled to go off for a week's holiday.
>
> However, as the Court is aware, the defendant has not been a slouch here, the defendant has been vigorously trying to safeguard her rights, and had to make a decision, a prioritizing decision, as to how to do it, and based on the D.C. Court of Appeals' decisions in Scott and Anderson, I felt I had a solid, absolute right to review of your Honor's refusal to recuse yourself, and in reliance on that black letter controlling authority, which the Court of Appeals, in denying review, doesn't identify or address, I spent a week and a half, from the time I left this court on March 22nd, until I made a special trip to serve and file the mandamus and stay, I worked round the clock, conscientiously, to the best of my ability, in a fashion that would be commendable of an attorney to produce a set of papers that are sterling.
>
> Holeman: Very well.
>
> Sassower: Now, if I may –
>
> Holeman: Miss – Miss Sassower.
>
> Sassower: -- the Court has a duty not to be imposed upon.
>
> Holeman: Excuse me.
>
> Sassower: There was a fraud committed by Mr. Vinik and Senate legal counsel in the motion. And I –
>
> Holeman: Miss Sassower, Miss Sassower.
>
> Sassower: -- I wish that legal counsel is aware.
>
> Holeman: I ordered – I ordered that responses be filed by a date certain. You, by your own admission here, chose to invest your energies in some other legal proceeding which was ultimately found deficient –
>
> Sassower: The Court disregarded it own controlling black letter law.
>
> Holeman: -- by the Court of Appeals. That being the case, that being the case, Miss Sassower, the Court stands by the prior motion schedule that was set in this

case and made known to all of the parties. You didn't file a response to the motion, I am not going to hear novel argument that should have been made in writing, and when you exercise your right to become your own lawyer, I notified you when we were last here that you stand in the shoes of the lawyer who would be handling your case, which means, Miss Sassower, you should have complied with the Court's order pertaining to responses to the motion to quash. You failed to do so.

Any motion that you attempt to bring now or response that you attempt to bring now, is unavailable. Therefore, with regard to the most recent order of this Court that pertains to the motion to quash, there will be no reconsideration, the only two Government – I'm sorry, Senate employees who will be testifying in this case, if you choose to call them, will be Miss Eve and Mr. Albert.

...

Sassower: Let the record reflect, had there been pretrial discovery to which I was entitled by my formal motion –

Holeman: Which has already been ruled on and is not an issue right now, it is not an issue. The issue currently before the Court, the issue current –

Sassower: (Talking at the same time the Court is speaking) – it was the subject of my disqualification motion because I saw I could not get any kind of fairness from this tribunal that did not care about the facts or the law [and] was going to give a pass to the Government.

Now Mr. Vinik, in his motion –

Holeman: Miss Sassower

Sassower: --committed fraud upon the Court.

Holeman: Miss Sassower, first of all, there was noting in Mr. Vinik's motion to demonstrate or indicate fraud whatsoever, and you should be thankful that you're in court making those allegations because those allegations are questionably privileged here. But Mr. Vinik has never demonstrated to this Court any conduct other than the highest conduct that would be expected from a lawyer. So to hear you demean a member of the Bar in this way –

Sassower: Would you like me to particularize?

Holeman: -- is simply not appropriate. No, it is not...

...

Sassower: I would like to say that the focal – the focal – for Your Honor to have said that it doesn't know that there were – there was phone contact with other subpoenaed respondents can only mean that it has not read the documents that were integrally part of my discovery motion, the most important was the 39-page fax to Detective Zimmerman which contained my letter to Michael [Tob]man reflecting not only a phone conversation of May 21st, but an in-person

conference of approximately 40 minutes in the New York City office of Senator Schumer.

With all respect, when Mr. Vinik, at the close of his motion, cites to a supposed December 3, 2003, ruling –

Holeman: Miss—

Sassower: -- Judge Milliken recognized my entitlement to documents.

Holeman: Miss –Miss Sassower, I've already ruled on documents, I've already ruled on witnesses.

Thereafter, when Sassower sought to rely on the "accepted practice" of reargument/reconsideration to correct the "erroneous understanding" in Judge Holeman's April 8, 2004 order as to Senator Chambliss, which she attributed to being "largely the result of deficient, sanctionable papers, of Senate legal counsel" [A-579], pointing out that Judge Holeman had acknowledged reargument as available with respect to his rulings, Judge Holeman rejected it [A-580]:

Sassower: You're denying reargument is what you're saying?

Holeman: I am, that is correct.

Sassower: I need to make a record and have made a record that you are denying me confrontation of the complainant in this criminal charge.

Holeman: "You've made that argument, I'm not allowing reargument on it and we're done with that. There's nothing further to be said."

Judge Holeman then turned to the issue of *Drew* evidence [A-553]. Ms. Liu stated, referring to her "notice of intent" as a motion, that although "there was no briefing schedule set on this particular motion, we have not received anything from the defendant on this issue" [A-554]. Sassower's response – and that of Judge Holeman – were as follows [A-554-8]:

Sassower: ...As I am a novice in all this I had no clue as to what kind of briefing schedule Your Honor was referring to on March 22nd. Indeed, because

Miss Liu imposed upon the Court and Your Honor also chimed in that this case was ready to proceed on March 1st...I naturally assumed there couldn't be too many pretrial issues that would have to be dealt with since you were going to go from that Friday [February 27, 2004] to that Monday [March 1, 2004] to trial without any pretrial issues.

Little did I realize that I would be bombarded with a series of documents requiring response in a week when Your Honor was informed that my legal advisor would be in communicado, on vacation. And I will say to the Court that I had no contact at all with Mr. Goldstone who [was] out of touch from the early afternoon of April 2nd, until yesterday evening. I sent an e-mail that we were on for tomorrow, he called me back, he had just arrived home, we spoke for the first time, it was about nine o'clock in the evening, so I had no counsel to assist me in dealing with these series of documents requiring my response.

Holeman: Right. Miss Sassower, as I've previously articulated to you, when you decided to represent yourself you're responsible for addressing these legal matters as counsel appointed by you would have.

On the specific issue of the other crimes evidence pursuant to Drew versus United States, what is your position?

Sassower: All right, so in other words you are denying me –

Holeman: No, I'm asking you –

Sassower: -- the right to have had the assistance of counsel. Okay.

Holeman: No, you denied yourself that when you appointed yourself as your own attorney. Miss Sassower, please address the Drew issue.

Liu: Your Honor, may I add one thing for the record please?

Holeman: Yes.

Ms. Liu: I do know in my file I have a discovery packet that was given to Miss Sassower or whoever was representing her in C-10 when she was arraigned, it's dated May 23rd 2003. At that time the Government said we expect to use the following Drew/Toliver evidence: ['']The defendant is known to Capitol Hill officers for being disruptive in the past, defendant [was] arrested in 1996 for disorderly conduct on the Capitol grounds.['']

So almost a year ago it was disclosed to Miss Sassower that we might very well seek to introduce this Drew evidence.

Sassower: And that was one of the bases on which I requested the file, the investigation of my police misconduct complaint that I filed in 1996 with regard to that incident.

Holeman: Which was disclosed by the Government.

Sassower: No, it was not, nothing was disclosed with respect to the – the complaint that I filed. There was no disclosure. What was disclosed for the first time were the prosecution documents that I had never seen from 1996, I was seeing them for the first time.

Holeman: Miss Sassower, what I'm asking you for is your position on the Drew/Toliver evidence.

Sassower: As Your Honor should be aware from the [October 30, 2003] discovery motion Sergeant Bignotti, who arrested me on May 22nd of last year, was involved in the 1996 incident, and as particularized by me in that motion, had been the subject of a police misconduct complaint that I filed in 1996, that had been dismissed by Capitol Police Chief Abrecht, that is the husband of Mary Ellen Abrecht, whose seat you have assumed since she took senior status, and that incident will come in in any event, because additionally, as was made known to Capitol police in my lengthy phone conversation with Detective Zimmerman on May 21st, and prior thereto with Special Agent Lippay, to no avail, the precedent in 1996, and reflected in my correspondence to Detective Zimmerman, that 39-page fax, was that in 1996 when I rose to request to testify at the public Senate Judiciary Committee Confirmation hearing I was not arrested.

Holeman: Miss Sassower –

Sassower: So it will come in.

Holeman: -- with regard – with regard to the Drew/Toliver evidence what is your position?

Sassower: Well, I – the Court should be aware, respectfully, that if they think they're going to prove what they claim this trial will be quite extended. I am just advising the Court, and I am advising the Court because of the disposition of the 1996 case, which was made part of the record in my initial motion for your disqualification, I included the documents from 1996, and what Judge Murphy did, and the transcript, and the correspondence, and you know I never had my day in court.

Holeman: Very well.

Sassower: On that case.

Holeman: I take it then that you oppose the admission of the Drew/Toliver evidence?

Sassower: I am advised that yes, but it will come in, the case will come in in any event.

Holeman: Motion's granted.

Thereafter, following a returning from a break, Judge Holeman revised his ruling [A-571]:

"I've had an opportunity to rethink the issue of the prior crimes, and I think that what I'm going to do in that circumstance is I won't allow the other crimes evidence under Drew to be a part of the Government's case in chief, I will allow it on rebuttal if the evidence warrants.

All right. Since until, quite frankly until the trial starts, I won't have a sense for the actual defense until I start to hear evidence, so we will – I will simply hold that until hearing the defense case, and then make a determination at that time whether Drew will be warranted on rebuttal."

This assertion by Judge Holeman that, until the trial starts, he wouldn't have a sense of the actual defense" was notwithstanding Sassower's statement but a short time earlier [A-559] that pages 7-20 of her October 30, 2003 discovery/disclosure motion [A-47-60] were a "roadmap" of her defense – and had been so-identified by her December 31, 2003 affidavit in opposition to the prosecution's motion *in limine* [A-261]

As to Ms. Liu's request for clarification of his February 25, 2003 order granting the motion *in limine* [A-413], Judge Holeman himself asked, "Ms. Liu or Mr. Mendelsohn, you want some clarification, it was your motion that I granted, what is it that you need clarification of?" [A-560]. Upon Mr. Mendelsohn's response that they "wanted clarification as much for our benefit as for the defendant's benefit as to what facts will be admissible at trial outside of the facts of the arrest." [A-560], Sassower answered [A-561-2]:

"Your Honor, in the 12-and-a-half page affidavit I opposed the motion in limine made by the prosecution...And one of the things that I said is that it is impermissibly and prejudicially vague as to the political matter it seeks to preclude by pretrial order.

And indeed it has been borne out because they don't even know, apparently, as I identified, what they want to preclude. There is nothing political that I

know of that I have introduced at any point here, so I don't know – I haven't a clue.

However, I would certainly bring to the Court's attention that this arrest, it is my defense that I have particularized that my arrest had nothing to do with anything I did at the May 22nd Senate Judiciary Committee hearing, but rather it was part of a design and plan set in motion on May 21st when I received a call from Special Agent Lippay –"

After interrupting Sassower midsentence because he needed to "call another trial that we're going to send out" [A-562], Judge Holeman thereafter gave the still vague ruling that he would be guided by "whether the information that is proffered as evidence is in fact relevant to the charge, its elements or a defense thereto" [A-577]; "If there can't be an argument made that it is relevant to proof of an element or a defense then it's irrelevant and won't come in." [A-577]; "I don't know how much clearer I can be before we're confronted with the circumstance of its attempted admission. But I'll know it when I hear it." [A-578]. To this, Sassower responded "Yes, I said the same thing in opposition to the motion [*in limine*] which is one of the basis on which I opposed it." [A-578].

Mr. Mendelsohn then pursued this further, offering that "the fact that the defendant was opposed to a certain judicial nomination might be admissible for the mere fact that it gives some – some background to the jury as to why the defendant is alleged to have disrupted the congressional hearing." [A-582]. This, possibly because Judge Holeman had indicated a scope of testimony so truncated as to even say: "I'm aware of her organization, and I don't think that its name precludes its introduction to the jury as an organization with which she's affiliated, does work for, whatever." [A-578]. To Mr. Mendelsohn's statement: "It's the Government's position that why the defendant was opposed to the nomination, any background about that particular judicial nominee, is not

admissible at trial....", Judge Holeman responded "Your point is one well taken" [A-583].

The exchange between Sassower and Judge Holeman was as follows [A-584-5]:

> Sassower: As the record reflects, most specifically [my] discovery motion, and the 39-page fax I sent to Detective Zimmerman, I was called by Capitol police and it was expressly inquired of me, the basis upon which I was seeking to testify and was opposed to the nomination. I had a 40-minute conversation –
>
> Holeman: Excuse me, excuse me, please, please. You see, what may have been the source of inquiry during the course of investigation of this case may or may not have any bearing upon proof or disproof of the elements of the offense with which you are charged. Therefore, to the extent that full inquiry was made as to why you did what you did, what your motivations were, what your beliefs are and so forth, while that may have been helpful to law enforcement, it is inappropriate. If it does not get to the heart of an element of the offense with which you are charged, and this is a matter that I've given some thought to, and I must say that without hearing any trial proffers at this point in time, Ms. Mendelsohn's position is in fact the one that is – that I believe is tentatively correct. Namely, that your political beliefs, motivations, causes, none of that is relevant unless it addresses one of the elements that the Government must prove beyond a reasonable doubt or a defense thereto.
>
> In the absence of either of those it's irrelevant and I will treat it like any other piece of irrelevant evidence if the circumstances warrant it. Again, I say it's very difficult to do this without having the question posed outside of a trial, and I'm not asking anyone to provide me with trial questions. We'll address it as it develops but I must tell you, Miss Sassower, that if the issue, if the statement of your belief, I don't care if it was inquiry made by law enforcement, it has no bearing on the elements of the offense or a defense thereto, it's irrelevant.
>
> Sassower: My defense as reflected in my discovery motion papers is that Leecia Eve and Senator Clinton's office set in motion a chain of events to – based upon inquiry of me, extensive inquiry of me as to the basis of the opposition. I was arrested for reasons having nothing to do with anything that took place at the hearing.
>
> Court: Miss Sassower, your record on this issue has been made. I will await further deliberations—I'll just await our final adjudication of these issues on a question by question basis as they arise and it will become very clear to me in short order as to whether efforts are being made to get in what I perceive to be irrelevant evidence and I'll let you know that at that time.

Sassower's attempt to bring up Ms. Liu's late production of documents and Mr. Mendelsohn's false representations prior thereto in response to her August 12, 2003 first

discovery demand and her October 30, 2003 discovery/disclosure/sanctions motion was blocked by Judge Holeman, who, without making any inquiry of Ms. Liu or Mr. Mendelsohn, stated [A-581-2]:

> "...I'm aware of the matters that were disclosed as I see this, discovery is a continuing obligation, the matters were disclosed when they were discovered by the Government, you now have the items, there was no effort once they were disclosed to the Government to keep those materials away from you, you have them. I don't find prejudice, I don't find rule 11 applicable, and to the extent that rule 11 could be argued applicable, a point that I don't hold, I am not finding any grounds for sanctioning the Government. There's no further discussion on –
> ...no further discussion on that issue, excuse me. Miss Sassower."

April 13, 2004

The following day, April 13, 2004, immediately before jury selection [A-605], Ms. Liu asked to amend the May 23, 2003 Information [A-100] to add "uttered loud, threatening, or abusive language"-- the initial *verbatim* wording of D.C. Code §10-503.16(b)(4). Again, Sassower objected that "The case is not trial ready. It has not proceeded orderly with proper disposition of my dis, discovery rights on which my witness rights, right rested" and, further, that her going forward was without prejudice to these objections and to Judge Holeman's presiding [A-606]. Sassower then raised specific objections to amending the Information on grounds of timeliness. To this, Judge Holeman ruled that an "information may be amended at anytime prior to trial", comparing the case to one where "the information contains one charge and perhaps the trial is held on a lesser included offense because of lack of proof on a particular element." [A-609]. Judge Holeman stopped Sassower's response that this was a case where "the evidence in the government's possession shows that there is no basis for the charge" [A-610].

Sassower thereafter turned to Judge Holeman for "assistance". It related to the last of the prosecution's "Preliminary Issues" raised by Ms. Liu's April 8, 2004 Notice [A-517-8] – and arose because Ms. Liu refused to answer Sassower's question as to the specific subsection of Senate Rule XXVI that the prosecution believed relevant and wished to enlarge [A-618-622]. Judge Holeman thereupon ruled. He would take judicial notice of the statute, committee rules and constitutional provisions which the prosecution had sought to enlarge, but would not allow the enlargements as demonstrative evidence. Nor would he allow the jury to be informed of these provisions, excepting the "disruption of Congresss" statute. With regard to the constitutional and rule provisions, he ruled that they were "not matters of fact to be addressed by the jury. Rather, they are issues of law for my determination." [A-621]. For this reason, he dismissed Sassower's request to know for her "edification what specific subsection [she was] thought to have violated, what subsection of this huge rule [XXVI]". [A-622]. Sassower asked, "Will it not come up?", to which Judge Holeman stated,

> "Correct, it will not come up within the context of the information that the jury is entitled to decide, as a matter of fact, in this case." [A-622].

Thereby concealed was the "matter of law" as to whether the prosecution could proceed without the testimony of Senator Chambliss – and clarification as to whether, as purported by the underlying prosecution documents [A-88, 89], he was the "complainant" in fact.[4]

---

[4] Subsection 5(d) of Rule XXVI states:

> "Whenever disorder arises during a committee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the Chair to enforce order on his own initiative and without any point of order

Later that day [A-633], as a result of Judge Holeman's granting of the prosecution's request to amend the Information, the prosecution offered up a "Proposed Elements of the Offense" [A-1406]. Except for the wording of its first element, reflecting the language of the amended Information, this "Proposed Elements of the Offense" was essentially identical to Judge Holeman's own "Elements of the Offense" [A-1403] which, earlier that day, he had presented to the parties, *sua sponte*, without notice – and already signed.[5] Included in his "Elements" – and identically in the prosecution's responding "Proposed Elements" [A-1406] – was this Court's caselaw interpreting the "disruption of Congress" statute. *Armfield v. United States*, 811 A.2d 792, 796 (2002), was quoted for the proposition:

> "When someone claims the right to speak in a public place, 'the crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."

Smith-Caronia v. United States, 714 A.2d 764, 766 (1998), was cited for the definition of "disorderly and disruptive conduct" as "conduct that hinders or interferes with the peaceful conduct of governmental business."

> being made by a Senator. When the Chair finds it necessary to maintain order, he shall have the power to clear the room, and the committee may act in closed session for so long as there is doubt of the assurance of order."

[5] The third element of Judge Holeman's "Elements of the Offense" [A-1403] failed to track the language of the "disruption of Congress" statute in only identifying a "session of Congress" and not the balance of the statute that includes "any hearing". This was replicated by the prosecution's "Proposed Elements of the Offense" [A-1406] – and corrected by its further "Proposed Elements of the Offense" [A-1409] after Sassower pointing this out [A-633-5].

April 14, 2004

Having permitted the prosecution to amend the Information on April 13, 2004, Judge Holeman responded to Sassower's request on April 14, 2004 to examine the newly amended Information by stating, "you can compare it all the way up until the time that you seek to offer it into evidence" [A-660][6]. He revised this shortly thereafter, telling her, "the information in this case is not evidence. It's a charging document. It's not admissible as evidence in this case. As far as its admissibility is concerned, it won't be admitted into evidence in this case for any reason." [A-665].

Judge Holeman's Interruption and Curtailment of Sassower's Opening Statement and Presence of Marshal

Sassower's opening statement on April 14, 2004 [A-677-685; A-692-8] followed the "roadmap" of her defense reflected by pages 7-20 of her October 30, 2003 discovery/disclosure/sanctions motion [A-47-60] and its substantiating exhibits. She asserted that the evidence would show that the Senate Judiciary Committee's May 22, 2003 hearing was already adjourned when she respectfully rose to request to testify with citizen opposition, that it was unprecedented to arrest a citizen for respectfully requesting to testify at a public committee hearing, even when it is not over – and cited, as precedent, what had taken place at the Senate Judiciary Committee's June 25, 1996 confirmation

---

[6] In response to Ms. Liu's backdating of the amended Information to "May 23, 2003" -- to which Sassower had objected as a "perjured, false document just by virtue of its date..." [A-662] -- Judge Holeman was ready to allow its entry. Although he thereupon accepted Ms. Liu's offer to change the date "for expediency" [A-665], it appears that no newly dated amended Information was thereafter submitted. Sassower was never given a copy, even after furnishing Ms. Liu with written requests for same, after trial [A-1780, 1774]. The court file contains no newly dated amended Information, but only the backdated amended Information [A-1405], in addition to the original [A-100]. Presumably, it was this backdated Information which – notwithstanding it is "not evidence" -- went before the jury [A-1349].

hearing, which was not over when she rose to respectfully request to testify with citizen opposition – and for which she was not arrested or even removed from the hearing room [A-680].

When Sassower stated that Capitol Police knew of her contention that they had no authority to arrest her for respectfully requesting to testify at the Senate Judiciary Committee hearing unless they were so-directed by the presiding chairman and that this was "effectively conceded by Capitol police when they put the name of Saxby Chambliss as the complainant on the arrest reports" [A-682], Judge Holeman interrupted and requested that she "move further" [A-682, ln. 17]. He again told her to "move further" when she identified that just as Senator Chambliss had not responded to her question at the hearing as to whether she might testify, so he had not responded to her question whether he was directing her to be arrested – and thereafter, as she had stood in handcuffs in the hallway outside the Senate Judiciary Committee, had not responded whether he was directing her arrest [A-683, ln. 10]. Judge Holeman interjected, "Ms. Sassower" [A-684, ln. 6], when she told the jury that they would "not be hearing from Senator Chambliss, the supposed complainant for my arrest, because the prosecution has not seen fit to call him as a witness in support of this shameful, shameful, disgraceful, outrageous charge against me. And my subpoena of him was quashed. But he could have chosen to testify upon my subpoena." [A-683-4]. When Sassower stated that the videotape established that "the prosecution documents are false, materially false and misleading" [A-684], Judge Holeman also interrupted as to whether she had "anything further" [A-684, lns. 20-1]. When she answered, "Yes, Yes", Judge Holeman replied: "Then please get to it or sit down and we'll begin the trial". She responded, "No reason to, Your

Honor, I have yet to conclude" and then resumed where she had left off with the "prosecution documents" [A-684-5]. Thereupon, Judge Holeman excused the jury and, without any inquiry of Sassower, chastised her [A-685-8]:

> Holeman: Throughout this case, both at hearings preliminary to trial during jury selection and during trial, I have afforded you the opportunity to present your case as a pro se defendant. And in so doing, I have probably allowed you more latitude than I have ever allowed a lawyer who appeared in front of me. You have repeatedly violated my directives. You have repeatedly sought to inject your views into this case where injection of same is inappropriate and not pertinent to the charges against you.
>
> I specifically gave you instruction to move along in this case when you're giving your opening statement. The statements with regard to subpoenas having been quashed, inappropriate. That's a matter that was taken care of prior to trial. It is no longer an issue.
>
> Sassower: He didn't –
>
> Holeman: You are, you are well aware of the witnesses who will be permitted to testify. The charging document, I have previously ruled, informed the jury yesterday during preliminary instructions and informed you this morning, that the charging document number one, has been received as amended, and number two, is not evidence in this case.
>
> Sassower: Those are not the underlying prosecution documents.
>
> Holeman: Very well. Ms., --
>
> Sassower: So that arrest, arrest report –
>
> Holeman: Ms. Sassower, I've –
>
> Sassower: The event report, the supplemental report.
>
> Holeman: I've also instructed you –
>
> Sassower: The citation release report.
>
> Holeman: -- to be silent when I'm addressing you.
>
> Sassower: And the Gerstein.
>
> Holeman: Now, it is clear to me and to anyone in this room that you don't intend to follow my instructions because you have not done so thus far.

And it is difficult for me to determine at this juncture whether that failure to follow my instructions is borne out of your intent to disregard my orders or whether there is some mental defect that will not allow you to appreciate the consequences of your failure to do so.

Therefore, Ms. Sassower, I am ordering you now to be seated and we will await the presence of the United States marshal. Please be seated.

Sassower: For what purpose?

Holeman: You're going to be stepped back.

Sassower: I'm going to be what?

Holeman: You are going to be stepped back.

Sassower: What does that mean?

Holeman: Please – you will find out soon enough. Please be seated.

...

Sassower: ...May the record reflect –

Holeman: No

Sassower: -- that I have moved –

Holeman: No.

Sassower: --for this Court's disqualification for demonstrated actual bias –

Holeman: There is –

Sassower: -- and brought a mandamus proceeding, which, as a matter of law, had to be granted.

Upon the arrival of the marshal, Judge Holeman stated "there seems to be repeat violations of my verbal instructions and directives to Ms. Sassower as she proceeds to represent herself" [A-688]. He then announced, "we're going to move beyond the opening statements and into the trial evidence of this case." and offered her the "opportunity" to have Mr. Goldstone represent her as "lead counsel" – which she rejected. Judge Holeman thereupon stated that the trial would proceed "with the marshals present"

and that she would be stepped back, without further warning, "if you violate my order, if you comport yourself in a manner that is disruptive of this court proceeding". He denied her request to respond and to make a statement for the record [A-689].

Following Mr. Goldstone's assertion that he believed "additional portions of [Sassower's] opening statement" comported with "the Court's order", Judge Holeman granted his request that Sassower be allowed to continue [A-689-90], stating "she will address what the evidence is intended to show" [A-690].

Ms. Liu thereupon raised the issue of *Drew* evidence. Purporting that Sassower had referred to the 1996 "incident" in her opening statement and had "mischaracterized the incident to suggest that she was not actually arrested", Ms. Liu asked whether the prosecution witnesses could now be instructed to make reference to it. In so doing, she stated, "we have instructed our witnesses to be very careful about not mentioning that incident in 1996" [A-691-2]. Judge Holeman responded:

> "I think you raised a good point. And certainly the, the manner in which it was raised by – well, the fact that it was raised at all and the manner in which it was raised gives the Court some concern.
>
> I believe, however, that my instruction as to what is and what is not evidence was clear to the jury. The statements made prior to the presentation of evidence simply is not evidence.
>
> So Ms. Sassower theoretically can promise whatever it is that she chooses to promise. The question is one of delivery, quite frankly.
>
> So my ruling is as follows: we will maintain the, my current ruling on the Drew evidence. Namely, that it would be used only in rebuttal, that on the government's case-in-chief, that the 1996 arrest will not be used for any purpose.
>
> And to the extent that the defense seeks to introduce evidence of that 1996 arrest, for whatever purpose it deems appropriate, then certainly the 1996 arrest is fair game for rebuttal. [A-692-3].

To this Sassower asked, "May I be heard?" [A-693]. The ensuing colloquy was as follows [A-693]:

Judge Holeman: No, you may not, not on this issue. Please, please be seated. Now –

Sassower: It's a complete misrepresentation of the facts in the record, totally.

Holeman: Ms., Ms., Ms. Sassower, you're either going to follow my directives or you're not. We're about to bring the jury in.

Sassower then continued with her opening statement, identifying that the evidence would show that Officer Jennings was not the true arresting officer, but Sergeant Bignotti – against whom she had filed a police misconduct complaint in 1996 arising from her role in arresting Sassower in the hallway outside the Senate Judiciary Committee on June 25, 1996 on a trumped up disorderly conduct charge – and that the jury would "see introduced in evidence the police misconduct complaint" [A-694]. No objection was made by either the prosecution or Judge Holeman to this continuation of Sassower's opening. Only when Sassower attempted to compare the importance of an impartial jury with the basis of CJA's opposition to Judge Wesley was there an objection by Ms. Liu, which Judge Holeman sustained. Thereupon Judge Holeman would not allow Sassower to conclude as to "The elementary proposition" that she would be championing in the case [A-698].

The following day, April 15, 2004, with the appearance of an article about the trial in The Washington Post, Sassower brought up something "very prejudicial" which she had realized upon reading it:

"Quite aside from what took place at the opening and the effect that it must have had on the jurors, there is a marshal that has been both standing and sitting directly in back of me. I am directly facing the jurors...

I realize in reading the article that the prejudice, among other things, of this marshal's presence gives the suggestion that I must be monitored. There must be surveillance of me.

This is a case involving disruption of Congress. What it does subliminally – I mean I think it would be prejudicial in any case. But in this case, there is too strong a parallel to what took place at the Senate Judiciary Committee.

It gives a subliminal message that legitimizes the surveillance and monitoring of me by the Capitol police." [A-847-8].

Judge Holeman's response was without giving the prosecution a chance to be heard, indeed telling Ms. Liu who attempted to speak "You don't have to speak" [A-848]. He stated:

"I gave you every opportunity during the pendancy of this case, after it had been assigned to me, to comport yourself in such a manner that the need for a marshal would not exist. You failed to do so.

I brought marshals in here to demonstrate to you, and I'm telling you right now that if there is any further disruption, the warning that I gave to you yesterday remains in effect.

We will have no further discussion on this issue. Your record is made. Step down." [A-849].

Judge Holeman thereupon denied Sassower's request to be heard in response [A-849][7].

The Prosecution's Case: April 14 & April 15, 2004

Testimony of U.S. Capitol Police Special Agent Deborah Lippay

The prosecution's first witness, Special Agent Lippay, testified on April 14, 2004. Her examination by Mr. Mendelsohn was brief [A-699-706]. She testified that Senator Clinton's office had called Capitol Police on May 20, 2003 and that, upon being assigned the case, she reviewed Sassower's voice mail message and fax which Senator Clinton's office had transmitted to Capitol Police. Special Agent Lippay did not disclose that she had made a copy of the voice mail message, which was now "lost" – and it was not brought up by Mr. Mendelsohn. Nor was Sassower's fax introduced into evidence – or any other documents, such as the bulletin which Special Agent Lippay testified she

[7] Upon Sassower's further protest later that day that "it's prejudicial to have the marshal behind me", Judge Holeman nonetheless directed that the marshal continue to sit in the same place [A-984].

generated and distributed about Sassower. Nor did Special Agent Lippay disclose that she had authored a subject profile of Sassower. As for her testimony about her May 21, 2003 phone conversation with Sassower, it rested on characterizations and omitted the reason why Sassower had requested to speak with her supervisor, namely, Special Agent Lippay's insistence that Sassower's 1996 arrest was for requesting to testify at a Senate Judiciary Committee hearing.

Sassower began her cross-examination [A-707-96] by establishing that although Special Agent Lippay was testifying as a prosecution witness, she had been served with Sassower's subpoena for her testimony, as well as for documents. Special Agent Lippay purported that "the necessary documents" had been turned over to the prosecution "on several dates" which she could not identify "offhand" [A-710-11]. Upon Sassower's pointing out that the requested documents had been sought by her August 12, 2003 discovery demand, Mr. Mendelsohn objected, stating, "These are discovery issues that have been resolved long before trial." [A-712]. Although cross-examination had just begun, Judge Holeman responded, "I assume that at some point, even though the questioning seems to take much longer to get to the exact point, there's going to be a confrontation on the specific document" and "what we need to be in the business of now, Ms. Sassower, is directing attention to specific items..." [A-712-3].

Sassower then attempted to cross-examine Special Agent Lippay with Ms. Liu's April 7, 2004 six-page fax to Sassower [A-519]. Mr. Mendelsohn objected to the first two pages consisting of Ms. Liu's fax coversheet and transmittal letter [A-519-20], stating "the date when Ms. Sassower received the documents has been resolved for trial" [A-714]. Judge Holeman ruled that these first two pages are "not documents that this

witness would be able to provide a foundation for" [A-714] and that there would be no "further inquiry of this witness" [A-715].

Sassower then confined her cross-examination to the remaining four pages: Special Agent Lippay's two-page subject profile of Sassower [A-521], her bulletin of Sassower [A-523], and a photocopy of Sassower's 1996 arrest card [A-524]. Special Agent Lippay represented that this – and the "faxed material [Sassower] had transmitted to [Capitol Police]" – were the full content of the jacket file which Capitol Police had turned over to the prosecution [A-721].

As to the subject profile [A-521], Special Agent Lippay purported that it constituted her only notes of her "investigation" – which she had typed directly onto the computer [A-717]. She explained that the reason the top of the subject profile identified May 19, 2003 as the "Incident Date" was because that was the date of Sassower's "contact" with Senator Clinton's office that "caused them concern" [A-721-2].

Sassower attempted to question about this May 19, 2003 "contact" – *to wit*, her May 19, 2003 fax to Senator Clinton [A-1535, 1522]. Special Agent Lippay purported that the fax that Senator Clinton's office had transmitted to Capitol Police, which she had reviewed, was only a single page [A-728]. Sassower thereupon proffered a copy of her two-page May 19, 2003 memorandum to Senator Clinton [A-1535], also addressed to Senator Schumer, and its enclosed ten-page May 19, 2003 memorandum to Chairman Hatch and Ranking Member Leahy [A-1522] [A-729]]. As Special Agent Lippay began to acknowledge having seen the first page of the memorandum addressed to Senators Clinton and Schumer [A1525], Mr. Mendelsohn interrupted "May we approach?" [A-731]. Immediately upon arriving at the bench, and with no further comment from Mr.

Mendelsohn, Judge Holeman asserted: "There's been no foundation laid that this witness originated the documents..." [A-731-2]. Mr. Mendelsohn thereafter stated his objections, "the discovery issues have been resolved." and "Everything has been turned over to the defendant, and that's been resolved pretrial including a one-page fax" [A-733]. Judge Holeman allowed Special Agent Lippay to testify to what part of Sassower's May 19, 2003 memorandum she had previously seen. However, he blocked Sassower's request to have the first page which Special Agent Lippay had identified marked into evidence because "she didn't originate the document" [A-734]. Upon Sassower's response that Special Agent Lippay had received it, Judge Holeman maintained "Nevertheless, she's not the originator. She cannot lay the foundation for its preparation. It cannot be admitted through this witness." [A-734] Thereupon Sassower requested to "approach the bench with the prosecution" and handed up Ms. Liu's April 9, 2004 fax to her [A-528]. Such had enclosed the same first page of Sassower's May 19, 2003 memorandum as Agent Lippay had identified, along with the fax coversheet from Senator Clinton's office which had transmitted it to Capitol Police on May 20, 2003 [A-531-2]. As to this, too, Judge Holeman stated: "this document cannot be admitted into evidence. Certainly not through this witness because this witness did not originate the document" [A-736]. Notwithstanding Sassower's assertion, conceded by Mr. Mendelsohn, that her May 19, 2003 memorandum to Senator Clinton and her May 20, 2003 voice mail message were the basis for Special Agent Lippay having generated and distributed a bulletin about her Judge Holeman nonetheless maintained "Agent Lippay can only provide the necessary foundation for entry into admission of evidence of the documents that she originated." The ensuing colloquy between Sassower and Judge Holeman was as follows [A-738-9]:

Sassower: She was asked to bring documents. Had she brought the documents, would we have been able to introduce that?

Holeman: Let me address that issue right now. It seems to me that what is occurring here is the questioning of this witness about production of documents, that production having already occurred prior to trial

To the extent that this witness testifies to, as she already has, that documents were produced to the government and to the extent that the government represents to this court that the documents that the government received have been turned over to Ms. Sassower, then that ends the discussion as to the receipt of Capitol police documents...

...

Mendelsohn: Your Honor, I have to ask a quick question. Is she entitled to ask why the subject profile came from this officer last week and not back in August when it was requested?

Holeman: No, no, she's not. What would [Special Agent Lippay] have to do with the U.S. Attorney's handling of that case to the extent that – well, I'll stop it right there.

She can testify as to when the material was turned over. We have that from her.[8] As to what happened to the material after it was turned over to the United States Attorney's Office, she's not to speculate on that...

Although Special Agent Lippay was the prosecution's first witness, Ms. Liu immediately stated, "We'd like to note our standing objection to the witnesses that appear in this case being asked on documents that he or she did not originated." [A-739].

Thereafter, Sassower again sought clarification as to the admissibility of the first page of her May 19, 2003 memorandum [A-1535]. The colloquy was as follows [A-742-4]:

Holeman: She is unable to authenticate its preparation. She would only be able to testify that she received it, which she has already testified to.

Sassower: And in that, in that, on that basis, she, I cannot introduce it as an exhibit, that she received this?

---

[8] In fact, Agent Lippay did not provide any time frame as to when Capitol Police had turned material over to the U.S. Attorney – and only subsequently acknowledged, as to the taped messages, that they were discovered "missing" in "summer of 2003" [A-755].

Holeman: It will not be admitted into evidence, that document, because it hasn't been authenticated. This witness has identified it, she's seen it.

Sassower: Okay.

Holeman: She doesn't know anything about its preparation.

Sassower: May I question her about the document?

Holeman: The contents? If she didn't create them, I don't know how she could –

Sassower: If she received it. She acted on it.

Holeman: Well, she's not going to testify as to the content of it, however. So –

Sassower: But she read it.

Holeman: Yes, she's read it.
...this witness recalls it as being the information that she received, and this document as I understand it, was one of the bases for her proceeding forward.
I've allowed that. That information is already in evidence and I believe unobjected to. The issue becomes whether that exact document may be admitted as evidence through this witness.
...It may not.

Ms. Liu then raised the issue of *Drew* evidence, falsely purporting that Sassower had made reference "once again to the 1996 arrest and events flowing therefrom" – and that the prosecution therefore wanted to ask about the "'96 arrest and that incident on redirect as well as in rebuttal" [A-745]. After ruling that the prosecution could ask about the 1996 arrest on redirect of Special Agent Lippay, Judge Holeman allowed Sassower to be heard. The colloquy was as follows [A-746-8]:

Sassower: Your Honor, it is incumbent upon me to advise the Court that Sergeant Lippay's testimony was materially incomplete, because it was Sergeant Lippay who brought up the 1996 arrest in the phone conversation that she initiated with me.

Holeman: Well –

Sassower: And this was the subject of such discussion that I demanded to speak with Detective Zimmerman as her supervisor.

Holeman: Ms. Sassower, let me, let me say this to you. What seems to be lost here and what I keep attempting to reiterate, is that information that is accumulated during the course of discovery is not necessarily admissible at trial.

To the extent that there was discussion of the 1996 arrest, at least in theory, it has no bearing on the arrest in 2003 and therefore it should be kept out. I've ruled on that.

Sassower: ...Again, I wish to clarify that the 1996 arrest came up because it was put forward by Capitol police in the conversations they had with me by phone. It was the basis of the threats that were made to me by Sergeant Lippay and Detective Zimmerman, and it is reflected by my May 21st fax. That –

Holeman: And if I wasn't clear before, I will be so now and we will conclude discussion on the issue. None of that matters unless and until it is introduced through a witness at trial as testimony...

Sassower's cross-examination of Special Agent Lippay resumed with questions based on the subject profile [A-521], highlighting material omissions of her direct testimony: her omission that she had taped Sassower's May 20, 2003 voice mail message to Senator Clinton's office [A-756] – and that it was "lost" [A-755]; her omission of her contemporaneous assessment of that message that Sassower spoke in a "calm and coherent tone" [A-757-8]; that "No threats or harassing language [were] contained in either the voice mail message or the fax" [A-763]; and that Sassower's voice mail message had stated that she wished to discuss specifics of the misconduct of Senator Clinton's staff and left a call-back number for that purpose [A-759-60].

Based on the subject profile [A-521], Sassower was able to establish through her cross-examination deficiencies in Special Agent Lippay's "investigation" and record-keeping and the conclusory, incomplete, and misleading nature of her entries in her subject profile pertaining to her phone conversations with Senator Clinton's office – the particulars of which Special Agent Lippay was unable to supply by her testimony [A-766-71; 777-9].

As to one of the paragraphs of the subject profile, Judge Holeman would not allow Sassower to question Special Agent Lippay, deeming it "not pertinent to the proof of the elements or the defense thereto" and requiring it to be redacted [A-771, 772-3]. He stated that its content was "the subject of a motion in limine" and "the type of information that [he had] excluded during the ruling on the motion in limine [A-773]. He adhered to this as Sassower pointed out that her cross-examination with respect to that paragraph would expose the falsity of the information included in the subject profile and would impugn Special Agent Lippay's supposed "investigation" [A-775].

In addition to establishing from the subject profile that Special Agent Lippay had prepared and distributed the bulletin about Sassower [A-523] before even speaking with her [A-780], Sassower was able to establish material discrepancies between the subject profile [A-521] and bulletin [A-523]. Sassower established that the bulletin's representation that she had been arrested in 1996 "when she disrupted a hearing" [A-523] was not based on the subject profile [A-783-5]. In response to Agent Lippay's statement that she could not recall the source for such representation [A-785], Judge Holeman interrupted Sassower's request for "a break to pull out [a document]". Ushering counsel to a bench conference, he unilaterally announced [A-785]:

> "...this examination should come to its conclusion in 15 minutes. It's simply lasted too long. Too much time has been consumed unnecessarily.
>
> And I'm gonna give you 15 more minutes with this witness and then be prepared to go on to something else.

Sassower then sought to question Special Agent Lippay about the 1996 arrest report – which had been part of the prosecution's *ex parte in camera* submission [A-420]. Upon Mr. Mendelsohn's objection, Judge Holeman called a bench conference, stating – as if it were some surprise [A-786]:

"You know the – I'm sorry. The 1996 matter keeps recurring in this case and now we have the arrest record being offered as an exhibit.

And what I want is a proffer from the defense as to how it is that you intend to – what it is, what is your intention with regard to establishing the relevancy of the 1996 arrest record with this, this witness"

Sassower answered:

"When she, when she put out a bulletin she identified that I was arrested for disorderly conduct in 1996 for disrupting a hearing.

The arrest record, which she said was the basis for that information, has been now provided and it shows that I was not arrested in connection with any request to testify in 1996.

When she called me the following day, she told me emphatically that in 1996 I had been arrested for requesting to testify.

And I was vehement in saying that was not the reason why I was arrested, so much so that I requested to speak with her supervisor, Detective Zimmerman."

In response, Mr. Mendelsohn asserted that the 1996 arrest report was hearsay [A-787]. Judge Holeman thereupon limited Sassower to asking Special Agent Lippay whether, in preparing the bulletin, she had reviewed the arrest report [A-788][9]. Upon Special Agent Lippay's answering "I don't recall ever having seen this document before" [A-788], Sassower inquired as to what document she had relied upon for the bulletin's representation that Sassower had been arrested in 1996 "when she disrupted a hearing". Special Agent Lippay responded that she had relied on an abstract on the Capitol Police threats database – as to which she stated there was no printout and which had not been provided to the prosecution [A-789].

Sassower then established that Special Agent Lippay had distributed an additional bulletin about her for Senator Clinton's office staff [A-535], and that both bulletins [A-521, A-535] were compiled and distributed before Special Agent Lippay had even spoken

[9] Judge Holeman thereafter sustained, as "asked and answered", Sassower's different question as to whether it was Special Agent Lippay's testimony that she had never seen the arrest record from 1996 [A-789].

to Sassower, and even before Special Agent Lippay had been notified by Senator Clinton's office of Sassower's second voice mail message, left in the morning of May 21, 2003 [A-791-4].

As Sassower had reached the point of questioning Special Agent Lippay about her telephone call to Sassower at about noon on May 21, 2003 – the entry for which appeared at the end of the subject profile [A-522] -- Judge Holeman halted Sassower, stating [A-795], "The matter that I previously discussed at the bench is now effective. So to the extent that there is one remaining question, we'll have that and then redirect by the government". Sassower's next question continued to impugn Special Agent Lippay's subject profile. Sassower asked whether the statement in the subject profile that in their phone conversation she had denied being arrested in 1996 was an accurate description of what Sassower had denied. [A-795]. Upon Special Agent Lippay's answer, "That's what my notes state[], ma'am", Judge Holeman will not allow her to answer Sassower's follow up question "Are your notes correct and accurate?" [A-796]. Nor would he respond to Sassower's query to him "Why".

Testimony of U.S. Capitol Police Detective William Zimmerman

The prosecution's second witness, Detective William Zimmerman, testified on April 14 and 15, 2004. His examination by Ms. Liu was brief [A-797-809]. No substantiating documents were introduced, as, for instance, Sassower's 39-page May 21, 2003 fax to him, "NOT BEING ARRESTED" [A-102], and he testified that he had no notes of his contacts with Sassower [A-809]. As to his two May 21, 2003 phone conversations with her – which he purported lasted for more than two hours [A-801, 803, 811] -- Detective Zimmerman's testimony was devoid of any of the specifics of her May

21, 2003 fax to him, such as the reason Sassower had asked to speak with him as Special Agent Lippay's supervisor, *to wit*, Special Agent Lippay's insistence that Sassower had been arrested in 1996 for requesting to testify at a Senate Judiciary Committee confirmation hearing. His testimony as to their May 21, 2003 phone conversations rested on characterizations and generalities, as did his testimony as to his in-person conversation with her at Capitol Police Station on May 22, 2003 following her arrest.

Sassower began her cross-examination [A-810-32; A-853-79] by establishing that although Detective Zimmerman was testifying as a prosecution witness, he had been served with her subpoena for his testimony, as well as for documents. He did not respond to Sassower's question as to whether he had brought any of the requested documents, except to say that he had "no notes" of his contacts with her [A-811, 866]. Upon Mr. Mendelsohn's objection to Sassower's attempt to introduce the subpoena with its annexed August 12, 2003 discovery demand, Judge Holeman asked what her proffer was as to its relevance. She stated:

> "It is my position stated repeatedly that good faith actual production has not been made. I think it was reflected in the testimony of Detective Lippay. Because certainly she recounted that the loss of the tape, so-called, was apparent somewhere in, I believe she said August/September, somewhere around there, or late summer.
>
> Yet there was no notification of that until as recently as this past week. The documents were not delivered. Any, any responses were not delivered until last week.
>
> So when she speaks about production and a file and Detec, and Detective Zimmerman refers to a file, which apparently contains the 1996 arrest report, I am at a loss.
>
> And apparently, she reviewed some information which may or may not be part of this file, from which she derived this fiction that I was arrested in 1996 for disruptive conduct." [A-817-8].

Without responding to this "proffer" other than that it was "noted for the record", Judge Holeman adopted Mr. Mendelsohn's objection to introduction of subpoenas as

"cumulative" [A-818]. Nonetheless, the next day, after Sassower explained that she was attempting to establish that her arrest was unprecedented [A-854][10], Judge Holeman allowed Sassower to question Detective Zimmerman as to whether he had documents responsive to items of her August 12, 2003 discovery demand [A-70], without quoting from it [A-855-6] – until Sassower's cross-examination disclosed non-production. Thus, after Sassower established that Detective Zimmerman, in response to the demand's item #1 [A-70], had no documents pertaining to arrests of members of the public for respectfully requesting to be permitted to testify in opposition to federal judicial nominees at Senate Judiciary Committee hearings and no personal knowledge of arrests [A-856-7] and, in response to item #2 [A-70], established the existence of Capitol Police guidelines for responding to possible disorderly conduct, what he termed a "use of force policy" [A-857-8], Judge Holeman interrupted with a bench conference:

> "Unfortunately, it seems that we've regressed since yesterday. Let me make this very clear. The last two questions that you asked were matters that were essentially disposed of in the discovery phase of this case.
>
> To the extent that there would have been any disclosure of protocols concerning the Capitol police, that is a matter for pretrial discovery.
>
> And for this witness, the inquiry will be limited to documents originated by this witness...There will be no further inquiry into protocols, procedures, guidelines, any such other document." [A-858-9].

Although Detective Zimmerman acknowledged that he had reviewed the subject profile [A-521] in preparation for his testimony [A-813], Judge Holeman sustained Mr. Mendelsohn's objection to impeaching his testimony with it because he didn't write it [A-814-5, 862]. Likewise, although Detective Zimmerman testified that he had received and reviewed Sassower's 39-page May 21, 2003 fax to him [A-102], Judge Holeman

---

[10] "My defense is that there was no precedent for this arrest. And in fact, Detective Zimmerman had threatened that I would be arrested in the face of that precedent, which is exactly what happened." [A-871].

blocked cross-examination: "There has been no foundation laid that he prepared it" and "in the absence of a foundation being laid, it can't be admitted and he can't read from it. You can elicit testimony from him that this was the document that he reviewed. But as to testifying from specific items within the document, it's not permitted." [A-824, also 866, 876]. Among the "specific items" to which Detective Zimmerman's testimony was "not permitted": Sassower's question as to whether the May 21, 2003 fax to him [A-102] identified a specific reason why she wanted to speak with him as Special Agent Lippay's supervisor [A-825, 826] – all the more important as Detective Zimmerman otherwise purported that he couldn't remember what the reason was [A-822, 825]. Judge Holeman also sustained repeated questions based on the 39-page fax [A-876] – including, on grounds of "relevance", Ms. Liu's objection to Sassower's attempt to clarify its component parts [A-867, 878-9]: these being her May 21, 2003 memorandum to Chairman Hatch and Ranking Member Leahy [A-104], her May 21, 2003 letter to Senator Schumer [A-106], her May 21, 2003 letter to Senator Clinton [A-119], and her July 3, 2001 letter to Senator Schumer [A-120], with its transcript excerpt from the Senate Judiciary Committee's June 25, 1996 hearing [A-129-130, 138-40].

Detective Zimmerman denied that he had threatened Sassower during their May 21, 2003 phone conversations that "if [she] requested to testify at the Senate Judiciary Committee's May 22, 2003 hearing, [she] would be arrested simply for requesting to testify" [A-827]. His response to Sassower's question, "So you did not warn me or threaten me in any way that if I came down to Washington and requested to testify and the chairman banged his gavel, without even directing that I be arrested, I would be arrested by Capitol police" [A-827], included

"...I believe I explained to you in certain terms that if you are recognized by the chair and are allowed to speak, you may, you may do what the chair directs." [A-828, lns. 21-23].

As to whether Sassower had told him "over and again that the precedent of 1996 was that [she] was not arrested for requesting to testify", he did not deny that she had [A-828].

Upon Sassower's attempt to introduce her 1996 police misconduct complaint [A-154] – identified by her May 21, 2003 fax to Detective Zimmerman [A-103] and discussed in their phone conversations -- Mr. Mendelsohn objected that Detective Zimmerman had "absolutely nothing whatsoever to do with this document. It's, there is perhaps more prejudicial value than there is any probative value especially through this witness." [A-874, lns. 13-17]. Without giving Sassower an opportunity to be heard – and in face of the record before him particularizing the relevance of the police misconduct complaint -- Judge Holeman asserted his incomprehension on the subject. The colloquy was as follows [A-874-6]:

Holeman: I cannot possibly see what a police misconduct complaint of 1996 would have to do –

Sassower: Could we just –

Holeman: Or what possible relevance it could have to an arrest in 2003.

Sassower: Sergeant Bignotti was involved in the 1996 arrest and had a motive independently to arrest me in 2003 because I had filed against her –

Holeman: Very well.

Sassower: – a police misconduct complaint.

Holeman: Then I will address issues with regard to evidence that is to come through Sergeant Bignotti if and when she appears.

Sassower: But I just –

Holeman: This witness will not be testifying as to this police misconduct complaint –

Sassower: Can I –

Holeman: -- irrespective of its reference in page two of your May 21, 2003 letter.

Sassower: I can ask whether he's aware of it because we discussed it on the telephone, am I not correct? I can –

Holeman: Ask him about what? This, this –

Sassower: This was the subject of extensive phone conversation.

Holeman: I don't care if you spent days discussing it. This police misconduct complaint from 1996, even if it were admissible under some, for some reason that I could not possibly articulate, it is more prejudicial than probative of anything in this case.

Sassower: But we discussed it at the time.

Holeman: It will not be admitted. Your objection is noted for the record[11]

In addition to blocking inquiry into Sassower's police misconduct complaint [A-873-7] and whether the file jacket of the case contained information regarding her 1996 arrest [A-877], Judge Holeman blocked Sassower's inquiry of Detective Zimmerman as to whether, after his receipt of her 39-page fax [A-102], he had looked at CJA's website and whether she had not discussed with him the basis of CJA's opposition to Judge Wesley's confirmation [A-878]. The following then ensued [A-878-9]:

Sassower: "...Is it not, is it not correct that I told you in our phone conversation that I had received no notification by anyone in a position of authority at the Senate Judiciary Committee that I would not be permitted to testify?

---

[11] Upon Sassower's asking Detective Zimmerman whether she had told him that she would bring and/or did bring with her to Washington her 1996 police misconduct complaint, Judge Holeman instructed that "the question is not relevant to the charges or any defense thereto. You will move along." [A-877].

Zimmerman: I have no recollection of that, that part of the conversation.

Sassower: Is it not correct that as part of this 39-page fax, I included a letter from July 3rd 2001 that I had sent to Senator Schumer?

Liu: Objection, Your Honor.

Holeman: Sustained.

Sassower: Is it not correct that from the 39-page fax, you saw that in 1996 I had received written notification from Chairman Hatch?

Holeman: Sustained.

Sassower: I, I believe that under these circumstances, I have completed my cross.

Testimony of U.S. Capitol Police Officer Roderick Jennings

The prosecution's third witness, Officer Roderick Jennings, testified on April 15, 2004. His examination by Ms. Liu was brief [A-888-910], with testimony based on conclusory characterizations. The sole exhibits introduced into evidence were photographs of the Senate Judiciary Committee hearing room and the videotape of the Committee's May 22, 2003 hearing.

Sassower's cross-examination [A-910-59] began by establishing that although Officer Jennings was testifying as a prosecution witness, he had been served with her subpoena for his testimony, as well as for documents. In response to her question as to whether he had brought any documents relating to the arrest, Officer Jennings responded that he had his "police report, prepared on 5/22/03" [A-911]. Upon Ms. Liu's interjection that a copy had been turned over to Sassower at arraignment, Judge Holeman stated his preference that Sassower utilize that already-produced copy. Office Jennings attested that such police report [A-84-89, 93], consisting of an arrest report, event report, supplement, and citation release documents, were all prepared by him or included his

signature [A-915]. Nonetheless, Judge Holeman sustained Ms. Liu's objection to their introduction. Upon Sassower's inquiry "What is the basis?" [A-915], Judge Holeman called a bench conference. Without asking Ms. Liu to identify the grounds for the objection he had already sustained, Judge Holeman asserted [A-916]:

> "Police reports are hearsay. They're not gonna be admitted into evidence. I will tell you that you can question him with regard to these documents by admitting them. Police reports contain hearsay and therefore they are not admissible."

Sassower's response – and the ensuing colloquy with Judge Holeman -- were as follows [A-916-7]:

> Sassower: That, Your, Your Honor, that supposed hearsay underlies the prosecution against me. Without the completion of those documents, the information and the 'Gerstein' could not have been presented to the court. Before they could be presented, there needed to be underlying documents and these are they.
>
> Holeman: What does that have to do with my ruling? You can ask this witness about his preparation of these reports.
>
> Sassower: Yes.
>
> Holeman: But they will not be admitted into evidence in this case.
>
> Sassower: They're contemporaneous preparation, they're contemporaneous notes.
>
> Holeman: It is a police report. It is inadmissible.
>
> Sassower: They're contemporaneous notes.
>
> Holeman: Your objection is noted for the record. I'm telling you it is not admitted into evidence...

As Sassower sought to impugn Officer Jennings' testimony as to the words she had spoken at the hearing and his claim that he couldn't "say for sure" what she was doing with the pad of paper in her hand, Judge Holeman blocked her from introducing Ms. Belaire's May 23, 2003 letter [A-78] with its stated attached "copy of defendant's

handwritten statement from which she was reading during the disruption (1 page)" [A-79].

Judge Holeman asserted [A-940]:

> "there has been no foundation laid to establish that [Officer Jennings] prepared the document in which that entry is made. Nor could...there be, because my understanding of the preparation of this document is that it would be prepared by the United States Attorney's Office and no one has stated to the contrary. Indeed, I'm looking for a confirmation from the United States Attorney's Office that this document was prepared by you. Is that correct?...So there could not possibly be authentication of this document made through this witness."

He also blocked Sassower from proffering the attached copy of her handwritten words, "Mr. Chairman, there's citizen opposition to Judge Wesley based on his documented corruption as a New York Court of Appeals judge. May I testify?" [A-94], asserting:

> "This witness could not testify as to, so as to lay a foundation of authenticity from that document inasmuch as it has not been established that he prepared those handwritten notes. And indeed, Ms. Sassower indicates that, as I understand it, this is a copy of her notes. Therefore, unless some proffer is made which would establish the, which would establish this witness' preparation of this document, the docu, the document will not be presented to Officer Jennings." [A-941].

Judge Holeman also blocked Sassower from questioning Officer Jennings as to the specific words she had used at the hearing for "wanting to testify", including by introduction of the stenographic transcript of the hearing [A-947-9]:

> Sassower: ...you said I continued –
>
> Liu: Objection, Your Honor.
>
> Sassower: -- to attempt to testify. What did I say?
>
> Holeman: Sustained.
>
> Sassower: What were the words I said in attempting to testify?
>
> Holeman: Excuse me. When I'm making a ruling please be quiet.
>
> Sassower: I'm –

Holeman: The objection is sustained. Next question please.

Sassower: What words –

Holeman: This has been asked and answered. Next question.

Sassower: I, I submit a transcript.

Liu: Your Honor, bef –

Sassower: Marked Exhibit 30.

Liu: Your Honor, before the defendant brings this up to the witness, we object, lack of foundation.

Holeman: Very well. Sustained.

Sassower: Isn't it true that I said Mr. Chairman, there's citizen opposition to Judge Wesley based on his documented corruption as a New York Court of Appeals judge, may I testify? Isn't it true?

Jennings: To the best of my recollection, as I've testified, I believe that you said and I heard – Judge Wesley, look into the corruption of the New York Court of Appeals.

Sassower: And how did I request to test, how did I attempt to testify? What did I, what were my words in attempting to testify? What were my words, Judge Wesley, look into the corruption of the New York Court of Appeals.

Holeman: Sustained.

According to Officer Jennings, when he and Sergeant Bignotti approached Sassower at the Committee hearing, after presiding chairman Chambliss had called for order, he told her, "ma'am, you need to have a seat, you need to have a seat" [A-953, lns. 2-3], but that she did not sit down. Upon Sassower's asking whether this was because Sergeant Bignotti was demanding that she leave the hearing room, thereby preventing her from sitting down as he had told her, Officer Jennings stated he could not recall having heard that. [A-953].

Although Officer Jennings testified to a 14-year tenure with Capitol Police, he admitted that until May 22, 2003 he had never been the arresting officer [A-949] and conceded that Sergeant Bignotti was the actual arresting officer on that date [A-954-5]:

> Sassower: ...recite what happened as we stepped out of the hearing room, what was said, who said it?
>
> Jennings: According to my, the best of my recollection, you were, you were talking a lot and Sergeant Bignotti was answer your questions, answering your questions. I know that she informed you that you were under arrest and I read you your Miranda rights.
>
> Sassower: She informed me I was under arrest, is that your testimony?
>
> Jennings: In response to your questioning.
>
> Sassower: What were my questions?
>
> Jennings: I can't recall.
>
> Liu: Objection, Your Honor, relevance.
>
> Sassower: Okay. At –
>
> Holeman: Sustained.

Judge Holeman then continued to block lines of inquiry that would further establish that Sergeant Bignotti was the true arresting officer. As illustrative, he sustained, on grounds of relevance, Sassower's questions to Officer Jennings as to her contemporaneous protests to him, and in his presence, that he was not the arresting officer [A-958]:

> Sassower: Did there come a time at Capitol station when you became aware that I was representing as false the claim that you were the arresting officer?
>
> Liu: Objection, Your Honor, relevance.
>
> Holeman: Sustained. Anything further?
>
> ...
>
> Sassower: ...Did I not speak over and again to you that you had never laid a hand on me, that you were not the arresting officer?

Liu: Objection, Your Honor, relevance.

Holeman: Sustained.[12]

Judge Holeman also sustained – including on grounds of relevance -- Ms. Liu's objections to Sassower's cross-examination probing Officer Jennings' statement that he had "no recollection" of Senator Chambliss exiting the back door of the Senate Judiciary Committee and passing her while she stood in the hallway [A-955-6].

Testimony of U.S. Capitol Police Sergeant Kathleen Bignotti

The prosecution's fourth and final witness, Sergeant Kathleen Bignotti, testified on April 15, 2004 and her brief examination was conducted by Mr. Mendelsohn [A-962-974]. Immediately before Sassower's cross-examination [A-984-1021], Judge Holeman initiated inquiry with respect to Sassower's 1996 police misconduct complaint [A-154], stating he was doing so "Before there is even the potential of abuse of this document and prejudice to the jury". He then asked [A-977]:

> "Assuming that the complaint was filed, what was its disposition? What was the disposition, what was the outcome...?"

Such question was in face of a record containing that answer – including Sassower's October 30, 2003 discovery/disclosure/sanctions motion, annexing both the September 22, 1996 police misconduct complaint, with certified mail/return receipts [A-154, 156-7], and the February 18, 1997 dismissal letter of Capitol Police Chief Gary Abrecht [A-185]. Sassower's response and the ensuing colloquy were as follows [A-977-83]:

> Sassower: There was a purported investigation in which I was taped. That is I received a phone call. I was asked if I minded being taped, I said no. The next thing I got was a dismissal letter from Capitol police chief Gary Abrecht.

---

[12] This, after Judge Holeman blocked admission of corroborative documents, as for instance the Prisoner's Property Receipt [A-1578] which Sassower refused to sign at Capitol Station because it misrepresented the true arresting officer [A-956-7].

Holeman: Very well.

Sassower: But Sergeant Bignotti was presumably knowledgeable of this complaint, having been questioned as part of the investigation process, according to the ex parte in-camera submission made by the government –

Holeman: Right

Sassower: In January. It was recited that a certain form was placed in the personnel folder.

Holeman: Right.

Sassower: It was conceded that she was one of the subjects of that complaint.

Holeman: Very well. Mr. Mendelsohn, did you want to make representations to me?

...

Mendelsohn: Sergeant Bignotti and as well as the Capitol police have indicated to us that the investigation – there was no disciplinary action ever taken as a result of Ms. Sassower's complaint.

Holeman: Very well.

Sassower: Excuse me.

Holeman: Ask the question. What is it that you need?

Sassower: Thank you, Your Honor. I –

Holeman: We don't need to know about discovery documents.

Sassower: I, well, I requested in discovery –

Holeman: Listen –

Sassower: --all records –

Holeman: oh, --

Sassower: -- pertaining to the investigation –

Holeman: Ms., Ms. Sassower?

Sassower: -- and disposition of that police misconduct complaint, and that was never turned over.

Holeman: Ms. Sass –

Sassower: Nothing was turned over.

Holeman: Ms. Sassower, -- where is the marshal? Get him back up here. I don't know how many times I have to tell you, but when I start to talk you be quiet.

What I was about to say is as follows: To the extent that we are talking about a discovery issue, the door is closed on that. There is no further production of documents. That was addressed some time ago.

What we're dealing with currently is an evidentiary issue and it has to do, as I see it, with the balancing.

On the one hand, if Officer Bignotti would have the, a bias based upon a prior interaction with Ms. Sassower, that potential bias would be relevant to this case and therefore some exploration of the 1996 arrest and Officer Bignotti's involvement in it would be warranted.

However, as the judge presiding, I have to make sure that the jury is not prejudiced by this bias inquiry.

And what I would require is a proffer as follows. Number one, that a complaint was filed. And number two, that a disposition was reached adverse to Officer Bignotti.

It is only when those two requirements are met that I would allow inquiry into Officer Bignotti's involvement in the 1996 arrest for purposes of a bias inquiry.

The information that I have received, first from Ms. Sassower and secondly from Mr. Mendelsohn, is that a complaint was filed, an investigation was undertaken. It went nowhere. There was no adverse action against this officer.

Therefore, my ruling is as follows. There will be absolutely no inquiry, no utterance, no verbiage, no questioning whatsoever with regard to the police misconduct complaint that was filed in 1996 by Ms. Sassower against Officer Bignotti. It is irrelevant to these proceedings.

And to the extent that one might make a colorable argument of relevance based on bias, it is more prejudicial than probative. Don't even mention in open court the complaint for misconduct that you filed in 1996.

Sassower: She was knowledgeable of it, Your Honor.

Holeman: I don't care, don't mention it.

Sassower: It's already been testified to that there was a divergence between Officer Jennings who told me to sit down and Officer –

Holeman: Ms. –

Sassower: Bignotti –

Holeman: Ms. Sassower, --

Sassower: -- who insisted that I be removed.

Holeman: -- what you fail to understand is that this, this –

Sassower: She arrested me.

Holeman: This isn't a negotiation.

Sassower: In fact.

Holeman: It's not a negotiation. I'm instructing you now that that evidence is not to be brought before this jury.

Sassower: May I make a statement for the record?

Holeman: No, you may not. Your objection is noted.

...

Sassower: My legal advisor would like me to be explicit, although I believe I have said in sum and substance the same, that bias does not necessarily have to be the result from adverse action, disciplinary action. Is that it?

Goldstone: Adverse disposition.

Sassower: Adverse disposition.

Holeman: Very well. Your statement is made and any objection that could possibly be made we will assume has been made, even though not articulated by you. My stand, my holding still remains.

That even if this misconduct complaint, its investigation and its disposition might be relevant, relevant evidence may be excluded where it is more prejudicial than probative.

So on those two grounds, one irrelevance and two prejudice, it is excluded form this case.

Sassower: You're staying it's relevant but, but too prejudicial, is that your ruling?

Holeman: I'm saying it's irrelevant. And to, and to the extent that anyone might disagree with my analysis on relevance, it is more prejudicial than probative. I don't know how much clearer I can be with that Mr. Mendelsohn.

Mendelsohn: Might I – I'll just ask for some clarification. Is it the Court's ruling that any evidence of the police misconduct charge is substantially more prejudicial than it is probative in this case?

Holeman: Based upon the information that the, that I currently have, it is absolutely more prejudicial –

Sassower: May I ask –

Holeman: -- than probative.

Sassower: May I ask what information you are relying on?

Holeman: No, you may not. The record is clear, Ms. Sassower, you fail to understand, and I'm gonna say it again, when I rule it is final.

If you want to present me with some authority, legal authority to the contrary of my ruling for reconsideration, you may.

In this case, you cannot, there will be no reconsideration. The record is made. Let's bring Sergeant Bignotti in...

Sassower began her cross-examination [A-984-1021] by establishing that although Sergeant Bignotti was testifying as a prosecution witness, she had been served with Sassower's subpoena for her testimony, as well as for documents. Sergeant Bignotti stated she had no documents – and that "The only document we have is the arrest 163, prosecution report" [A-84]. Sassower thereupon showed her that and other numbered police reports [A-86-89, 93] and she confirmed that they were prepared under her supervision [A-986].

Sergeant Bignotti admitted that upon viewing the bulletin about Sassower on May 22, 2003, she had recognized Sassower's picture and name because in 1996 Sassower had been "arrested for disorderly conduct" and she was there [A-994]. As Sergeant Bignotti began to answer Sassower's overbroad question of her recollection about the arrest, Sassower interjected "Excuse me?". To this, Judge Holeman responded to Sassower, "No, you asked the question", "She's gonna answer it" – and allowed Sergeant Bignotti

to give a lengthy recitation [A-994-5], essentially repeating the content of the 1996 arrest report [A-420]. He thereafter blocked Sassower's cross-examination addressed to what Sergeant Bignotti had recited [A-1001]:

> Sassower: Did you subsequently become aware of certain action taken by me after I was arrested in the hallway at the Senate Judiciary Committee on a charge of disorderly –
>
> Holeman: Sustain, sustained. That has already been addressed. Sustained.

Judge Holeman also blocked Sassower's inquiry as to Sergeant Bignotti's knowledge as to what had occurred at the Senate Judiciary Committee's June 25, 1996 hearing [A-1000]:

> Sassower: And you are aware that at the hearing, as it was being concluded, I rose to request to testify with citizen opposition, are you not?
>
> Mendelsohn: Objection.
>
> Holeman: Step up.
>
> (Bench Conference)
>
> Holeman: All right. This witness has testified with regard to the 1996 event, as I recall the testimony. She responded to [Room] 224. You failed to establish her presence in [Room] 226.
>
> Therefore, this questioning about what may have or might have occurred in 226 all requires her to speculate which I am not going to allow her to do.
>
> It may also conceivably require that she testify as to matters that were written or recorded after the fact. I'm not going to allow that.
>
> So to the extent that you want to explore further what happened in 1996, it begins with the response to 22nd and it goes forward to your arrest. No further.
>
> [A-1020-1021]
>
> Sassower: When did you become knowledgeable...that in 1996 when I respectfully requested to testify at the Senate Judiciary Committee hearing, I was not arrested?
>
> Holeman: Sustained.
>
> Sassower: When did you learn of that fact?

Holeman: Sustained. It's not relevant to this case.

Sassower: Did I tell you when you were arresting me [on May 22, 2003] that in 1996 I had not been arrested for requesting to testify?

Holeman: Sustained. It's irrelevant.

Sassower: It was our conversation at the time of the [May 22, 2003] arrest, was it not Sergeant Bignotti?

Mendelsohn: Objection.

Insofar as the May 22, 2003 Senate Judiciary Committee hearing, Judge Holeman blocked Sassower's questioning of Sergeant Bignotti as to the words she had used in "wanting to testify":

[A-1015]

Sassower: When I, when I – according to you, I screamed that, that I wanted to testify, what words did I say that I was, when I wanted to test – did I use some words?

Mendelsohn: Objection, Your Honor.

Holeman: Sustained.

Sassower: Was it a question, may I testify?

Holeman: Sustained.

Sassower: May I be permitted?

Holeman: Next line of questioning.

Sassower: Yes, yes, yes.

Holeman: Or we proceed with redirect.

Judge Holeman also blocked Sassower's cross-examination as to Sergeant Bignotti's role as the true arresting officer:

[A-1012-3]

Sassower: Isn't it true that you arrested me?

Mendelsohn: Objection, Your Honor.

Holeman: Sustained.

Bignotti: As I stated, --

Holeman: No.

Bignotti: Okay.

Holeman: It's okay. Once I sustain it, you don't have to answer the question. Next question.

Sassower: What is the basis?

Holeman: Ask –

Sassower: What is the basis?

Holeman: Ask your next question.

Judge Holeman also blocked Sassower from inquiring as to the identity of the complainant to the criminal charge:

[A-1015-6]

Sassower: You supervise[d] the prosecution, the arrest report, the prosecution documents?

Bignotti: I review[ed] it and put my signature on it, that's correct.

Sassower: And you needed a complainant, right?

Holeman: Sustained. Don't an, you don't have to answer that question.

Sassower: Who is the complainant on the arrest report?

Holeman: I just sustained the objection to this line of questioning. Please, please sit down.

Sassower: Who is the complainant?

Holeman: Mis, Mr. Mendelsohn, please sit down. Ms. Sassower, next line of questioning.

[A-1021]

Sassower: ...As the supervisor of the arrest, who called Senator Chambliss and asked him if he would be a complainant on the complaint?

Holeman: Sustained. Redirect?

Sassower's April 16, 2004 Motion for Judgment of Acquittal

Following Sergeant Bignotti's testimony, the prosecution rested its case-in-chief [A-1023] Judge Holeman thereupon announced that the next day, April 16, 2004, before going forward with the defense case "if warranted", he would entertain a motion for judgment of acquittal [A-1024].

On April 16, 2004, Sassower moved for judgment of acquittal. Mr. Mendelsohn's opposition was conclusory boilerplate, wholly unresponsive to Sassower's presentation. Nonetheless, Judge Holeman denied the motion in similarly boilerplate, non-responsive fashion [A-1027-33]:

Sassower: Although I look forward, can hardly wait to putting on the defense case, it has been my position from the outset of this prosecution that the charge against me is not just bogus but malicious.

And that this is demonstrated prima facie by the videotape which is conclusive evidence that there was no act of disruption of Congress within the statute, within the proof, burden of proof.

And, moreover, that the relevant correspondence, in particular the 39-page fax of May 21st, 2003 sent to Detective Zimmerman and acknowledged by him on the stand, establishes resoundingly that there was no intent.

Without the act and without the intent, there is no basis for this prosecution. Indeed, even were there an act, there needs to be intent, and there is none, and [it] was known at the outset by the prosecution that there was no intent.

Now specifically, I have prepared long ago a memorandum containing an analysis of the videotape. The videotape does not speak for itself, unless it is examined carefully with the ear up close so that the words are distinctly heard, slowed down. And I have done the appropriate interpretive analysis.

Before providing the Court with that interpretive analysis of the videotape shown yesterday, I wish the Court to be reminded of the fact that before trial,

repeatedly in my submissions, I asserted without any denial or dispute by the government that the videotape exposed the deceit of the underlying prosecution documents on which this disruption of Congress case rested.

It is undisputed in the record before the court. However, now I will give the particulars as to what the videotape shows.

Holeman: You don't need to do that, just make your next point. You've already established your contention that the videotape does not speak for itself.

Sassower: Yes.

Holeman: Move on to your next point please.

Sassower: Well, may I offer into, for the Court's review, and I'm happy to give a copy to the government so that there can be no doubt here. Because I will go through this analysis on the stand. And rather than –

Holeman: Well, --

Sassower: -- wasting additional court time, I think it would be useful.

Holeman: Well, what you may or may not state on the stand is a matter for me to address at the time that you make the, the proffer. What I want to hear now is the remaining points for your motion for judgment of acquittal.

Sassower: All right. The videotape, as analyzed carefully, evaluated, establishes there's no act.

Holeman: And the 39-page fax establishes –

Sassower: And the 39-page fax --

Holeman: -- no intent. What are your next points? We don't need a reiteration –

Sassower: The additional –

Holeman: -- of that.

Sassower: The additional –

Holeman: When I speak –

Sassower: I'm sorry.

Holeman: -- don't you speak. We already have a record made –

Sassower: Uh-huh.

Holeman: -- of the videotape as establishing no act, of the 39-page fax establishing no intent.

Sassower: I additionally would proffer to the Court the, in addition to the videotape, --

Holeman: Yes.

Sassower: -- the transcript that was handed over by the prosecution to me at the same time as a copy of the videotape was handed over to me. And an analysis of that transcript is also contained in my memo analysis of the videotape.

Further, the analysis of the videotape and transcript to which I referred also contains an analysis of the prosecution document[s] demonstrating by comparison with the videotape and the transcript that they are materially false and deceitful.

Because without that falsehood, without those falsehoods and deceit, the government knew they could not bring this charge.

Finally, I proffer to the Court, and again this, the significance of this particular document was also highlighted in my motion papers, in the record before trial, my May 28th memorandum to Chairman Hatch –

Mendelsohn: Objection, Your Honor.

Sassower: -- And Ranking Member Leahy.

Holeman: I'll allow it for purposes of this motion. Proceed please.

Sassower: Containing my most contemporaneous recitation of what had taken place at the hearing and immediately thereafter in the hallway with respect in particular to chairman, Presiding Chairman Chambliss who is identified in the underlying prosecution document[s] as the complainant.

Finally, I would once again note to the Court that the government was free to offer the complainant to [testify] in support of this charge. The government has not done so. Senator Chambliss has, won't appear, instructed Senate Legal Counsel to move to quash my subpoena.

I have a confron, a right of confrontation under the Sixth Amendment, recognized most recently by the Supreme Court in, in matter of Crawford.

Finally, finally, and once again recognizing the evidence before the Court that there is no precedent, there's no other instance where a citizen's respectful request to testify at [a] congressional committee's public hearing resulted in a criminal charge of disruption of Congress, I submit, as a matter of law, and as an elementary proposition, that a citizen's respectful request to testify at a congressional committee's public hearing is not and must never be deemed to be disruption of Congress.

Holeman: Very well.

Sassower: Thank you, Your Honor.

Holeman: Thank you. Now, any response from the government?

Mendelsohn: Your Honor, viewing the evidence in the light most favorable to the government, as the Court must do at this time, we believe that a reasonable jury could find the defendant guilty beyond a reasonable doubt based on the evidence presented by the government, including the testimony of Special Agent Lippay, Detective Zimmerman, Officer Jennings, the videotape that was introduced into evidence as well as the testimony of Sergeant Bignotti.

And we would ask the Court to deny the defendant's motion for judgment of acquittal at this time.

Holeman: Very well. The standard that must be applied in ruling upon a motion for judgment of acquittal is set forth in Curley vs. United Sates, 81 U.S. App. D.C. 389, page 392, 160 F. Second 229, page 232. It's a 1947 case.

In Curley, the standard was set forth succinctly as follows: if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted.

In this case, the standard has not been reached. There has been evidence presented by the government from which a reasonable mind could conclude guilt beyond a reasonable doubt. And based upon that, the motion for judgment of acquittal must be denied.

Sassower: May I –

Holeman: There's no further discussion on the motion…

Sassower's Defense Case: April 16 & April 19, 2004

April 16, 2004: Judge Holeman's Rulings Preliminary to Testimony of the Defense Witnesses

Before allowing Sassower to proceed with her defense case, Judge Holeman requested Mr. Vinik to come forward and answer "based on [his] review of this case, what was the involvement of Ms. Eve and Mr. Albert, I believe it is, as regards to Ms. Sassower" [A-1034]. This inquiry was notwithstanding that only four days earlier he had denied Sassower's request for reargument/reconsideration of his decision on Senate Legal

Counsel's March 26, 2004 motion to quash her subpoenas [A-539-552, 579-80] – itself issued only four days before that [A-503].

Mr. Vinik recounted that Sassower had had phone conversations with Mr. Albert, culminating in a "conversation of approximately 40 minutes" with him and Ms. Eve – following which Senator Clinton's office contacted Capitol Police out of "concern that the defendant may attempt to approach Senator Clinton at the hearing in a manner that might be misconstrued by her security detail." [A-1034-5]. Judge Holeman then asked the prosecution whether Mr. Vinik's "statement of the general facts" was the same as their "understanding" [A-1035-6]. He thereupon ruled on the scope of Sassower's examination: "basic identification information, where they work, for whom they work, what their duties are" and, "factual" testimony, "essentially a, an opportunity to disclose what occurred during these telephone conversations and any actions that these individuals personally took thereafter" [A-1036].

At Ms. Liu's suggestion, Judge Holeman then ruled on the admissibility of ten e-mails produced by "the Senate witnesses" [A-1036]. These e-mails, handed over to Sassower during the trial [A-1414-1423], were the only production they had made pursuant to his April 8, 2004 order on Senate Legal Counsel's motion to quash her subpoenas [A-503, 507]. Judge Holeman excluded three [A-1414, A-1417, A-1418], without giving reasons [A-1038-9]. Sassower was not afforded an opportunity to be heard prior to these exclusions. Ms. Liu then stated, "for the record", that the prosecution objected to admission of any of the e-mails "on the basis of the speech and debate clause" [A-1039] and, additionally, because they were "irrelevant" insofar as they relate to the

reasons for Ms. Sassower's objection to Judge Wesley. To this, Sassower responded [A-1040]:

> "The Court has already ruled and it is the law of the case, which the Court continuously refers to, has referred to, that the interaction of Josh Albert and Leecia Eve with me that culminated in their notifying Capitol police and taking action that resulted in my arrest is fair inquiry here.
>
> This e-mail each reflect the interaction. And, indeed, the excluded e-mail also materially reflect on misconduct of that office which was the subject of complaint by me in two voice mail messages left for the chief of staff, Tamera Luzzat[t]o, and is germane."

Judge Holeman did not clarify his ruling with respect to the three excluded e-mail. Rather, he ruled that [A-1040-1]:

> "the interactions between Mr. Albert and Ms. Eve and Ms. Sassower I believe were of the administrative sort, falling outside of the deliberative and communicative processes associated with the legislative activity that would give them coverage under the speech and debate clause..."

He then excluded a fourth e-mail, that of May 19, 2003 [A-1420], stating he was doing so:

> "Not so much because of the, the fact of its communication, rather it is the content of the e-mail itself which I believe very much places this document then within the deliberative and communicative process." [A-1041].

This further exclusion was, again, without giving Sassower the opportunity to be heard prior thereto. Upon being heard, Sassower noted the observation of her legal advisor that Judge Holeman had inquired of the prosecution whether it ascribed to Mr. Vinik's presentation, but had not asked her. To this, Judge Holeman interrupted:

> "Let me stop you right there. There was a reason for that. You are going to be the questioner. I don't need to hear from you.
>
> What I needed to hear were the parameters of the involvement that another member of the bar bound by the rules of professional conduct would represent to me, having reviewed the case.
>
> Having had that assessment, I gave a ruling as to the parameters of your inquiry. So your opinion as to their interaction with you is not relevant to my decision.

Counsel's review of the case as their counsel and his representations to me as a member of the bar, that was important. ..." [A-1042-3].

As to the excluded May 19, 2003 e-mail [A-1420], it consisted of Mr. Albert's e-mail to Ms. Eve of Sassower's May 19, 2003 e-mail to him, "for transmittal to Senator Clinton & Leecia Eve". Sassower's accompanying e-mail message was:

> "Attached is CJA's transmittal memo to home-state Senators Schumer & Clinton and memo of today's date to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy – to which they are indicated recipients. These are for the Senators' *own* IMMEDIATE AND PERSONAL ATTENTION so that New York voters can hold them directly accountable should they fail, at this critical moment, to meet their obligations to safeguard the integrity of the judiciary – federal AND state." [capitalization and underlining in the original].

As to the exclusion of this e-mail, Sassower's colloquy with Judge Holeman was as follows [A-1044-6]:

> Sassower: It has already been testified to by Special Agent Lippay and is so reflected in her subject profile, that the basis upon which Senator Clinton's office contacted the Threats Assessment Section of Capitol police was a fax identified as a May 19 fax and a voice mail message of May 20.
>
> Now you have excluded the, the May 19 communication, that is the fax which was the basis upon which Senator Clinton's office contacted the police. They found that fax as objectionable and worthy of scrutiny by Capitol police.
>
> Capitol police, as reflected in the subject profile and [a]s attested to by Special Agent Lippay, found no threats or harassing language. Nevertheless, it was the basis –
>
> Holeman: Which specific e-mail are you referring to as containing the fax? What is the date at the top?
>
> Sassower: The May 19, 2003, 2:00 p.m. e-mail.
>
> Holeman: Very well. I need to hear no further discussion on that issue. The fact of a fax being transmitted and therefore placing into operation certain activity is what's relevant.
>
> The actual content as is reflected in this e-mail, it will not come into this case. It is irrelevant and it is protected by the speech and debate clause. It will not come in.

Sassower: Is it your contention, is it your view, Your Honor, that had Capitol police preserved the voice mail message, that would not be admissible?

Holeman: I'd have to hear it. I'd have to know the content, just as I had to know the content of this document to make a determination as to how it would be protected.

Sassower: Well, --

Holeman: The fact that the fax was transmitted, received and that activity was taken based upon the fact, the fax is the evidence in this case. This information contained here was never recited by Officer Lippay.

Sassower: She, she did recite that she received a one-page fax.

Holeman: Very well. Absolutely, you're absolutely correct. We need argue on this no further. What is your next point? What is your next point?

This, the content of this fax will not come in through these witnesses. It's simply not going to be admitted in this case and it will not come in through you.

Sassower: Are you saying that the May 19 transmittal that was the basis of their, or part of the basis for their contacting Capitol Police cannot be inquired about of these witnesses and presented to the jury?

Holeman: You can inquire whether a fax was received. Yes, it was. Did you take any action based upon the fax? Yes, I did. What did you do? That's what we will hear. This content here is protected by the debate and speech clause. It is not coming in. All right, next.

Sassower: I have a standing objection to this Court's presiding over this trial based upon its demonstrated actual bias before trial and manifested throughout the trial –

Holeman: Very well, what's your next point?

Sassower: -- now most recently by the ruling this morning.

Holeman: What's your next point?

Sassower: To no avail on my points presented.

Testimony of Senator Clinton's Legislative Correspondent Joshua Albert

Joshua Albert, the first defense witness [A-1061-1109], acknowledged that he was appearing pursuant to Sassower's subpoena [A-496], but that beyond what was turned

over to Senate Legal Counsel, he had not brought with him any documents or records [A-1062].

Over and again, in response to questioning, Mr. Albert, a lawyer, stated he did not recall, that his recollection was not refreshed by documents Sassower proffered, and requested that Sassower repeat her straightforward inquiries. He also stated that in his capacity as legislative correspondent, he maintained no diary or log noting telephone calls and summarizing their content [A-1069].

When Sassower sought to refresh his recollection as to the dates and substance of their first contacts by providing him with a copy of her April 23, 2003 letter to Senator Clinton [A-1474], which reflected, on its face, that she had faxed it to the Senator's Washington office on that date, as well as hand-delivered it with a package of substantiating documents to the Senator's New York office [A-1476], and whose very first sentence identified phone conversations with Mr. Albert on March 19 and March 26, 2003, Mr. Albert responded that his recollection was not refreshed [A-1069]. When Sassower sought to impeach Mr. Albert's lack of recollection by introducing his own May 2, 2003 e-mail to Ms. Eve [A-1414], "Leecia, she's stopping by at 1 pm on Monday to meet us. She handdelivered a package to NYC office on 4/23, no way it could have reached us yet even if forwarded from there. She's faxing a coverletter", Ms. Liu rushed to object that IF the e-mail was being introduced to establish Sassower's hand-delivery of the package to Senator Clinton's office, it was "hearsay" [A-1077]. Without hearing Sassower's response, Judge Holeman reinforced that Mr. Albert's e-mail was "hearsay" and could "think of no exception to the hearsay rule that would permit the admission of this document" [A-1077-8]. Upon Sassower's statement as to other respects in which she

was "impeaching the witness" by the e-mail, Judge Holeman still maintained he did not understand [A-1078]. Even as Ms. Liu limited her objection to "having this witness refer to documents that are not in evidence", Judge Holeman agreed that Mr. Albert "can't read from the document" [A-1078-9]. As Mr. Albert continued to be unable to "recall specifically" – this time as to whether Sassower had ever informed him that she had hand-delivered a package to the New York office on April 23, 2003 -- Sassower sought again to have Mr. Albert's May 2, 2003 e-mail to Ms. Eve [A-1414] marked in evidence, Judge Holeman reiterated that it could not be admitted because "We were pretty clear about that you're seeking to offer this for the truth of the matter contained within. It's hearsay. It's not any hearsay exception." [A-1080].

Thereafter, Judge Holeman barred Sassower from incorporating in her questions to Mr. Albert words that were part of their telephone conversations which she was asking Mr. Albert to recall and recollect [A-1084-5]:

> Sassower: Do you recall me telling you that not only was I going to deliver a duplicate copy of those materials to the Senate Judiciary Committee but five boxes of further substantiating evidence establishing [his] unfitness and corruption in office?
>
> Holeman: Sustained.
>
> Sassower: Did I tell you that I was gonna be in Washington D.C. on May 5th expressly for the purpose of making hand delivery of documents establishing the unfitness of Judge Wesley?
>
> Holeman: Sustained.
>
> Sassower: Okay. Do you recollect at anytime – was a meeting tentatively scheduled by you for me with Leecia Eve at 1 P.M. on Monday, May 5th, for purposes of discussing the documentation establishing the unfitness of Judge Wesley?
>
> Holeman: Sustained.

Sassower: Why? Oh, sorry. My, my, my legal assistant, my legal advisor doesn't know what the basis upon which –

Holeman: Well, maybe you and your legal advisor should come to the bench.

Sassower: Yes.

(Bench Conference)

Holeman: I am disappointed that I'm supposed to provide this. You cannot ask a question and include your speech. There is no reason for you in every question that you ask to state your opinion as to the unfitness of Judge Wesley.

Sassower: We discussed it.

Holeman: Listen, I'm telling you now you can ask a question pertaining to communication –

Sassower: Thank you, thank you.

Holeman: -- without expressing your opinion as to Judge Wesley.

Such proscription was notwithstanding Sassower had used the identical words in questioning Mr. Albert minutes earlier -- without objection [A-1079-80]:

Sassower: Do you ever recall my stating to you that I would supply Senator Clinton's office with documents establishing the unfitness of Judge Wesley for a seat on the Second Circuit Court of Appeals?

Albert: Specifically, I don't remember you, I don't recall you saying that you would supply documents.

Sassower: Did you ever receive anything in writing where I stated I was or would be supply documents evidentiarily establishing the unfitness of Judge Wesley for a seat on the Second Circuit Court of Appeals?

Albert: Your question is in the future tense, again I don't recall you saying that you would supply documents.

Sassower further sought to impugn Mr. Albert's lack of recollection by her May 2, 2003 letter to him [A-1493]. Notwithstanding a fax receipt of the successful transmittal of the letter to Senator Clinton's office was attached – Mr. Albert claimed to be unable to

"specifically recall" receiving it [A-1082-3]. Likewise, he claimed no specific recollection of her May 5, 2003 memorandum to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy [A-1495] – a copy of which she had hand-delivered on that date to Senator Clinton's office [A-1087].

Judge Holeman then told Sassower, upon calling a ten minute recess [A-1088]: "The examination of this witness is taking far too long" and directed that she "make inquiry into the, the area that precipitated the events of May 22." To Sassower's assertion that she would just try to introduce Mr. Albert's May 2, 2003 e-mail [A-1414] which "exposes what he says and said as false", Judge Holeman replied "Have we not already gone through this?" and that she wasn't going to be able to admit it into evidence because "you've got to find an exception to the hearsay rule. I can think of none." [A-1089]. Nevertheless, within a few short minutes, Sassower had not only admitted Mr. Albert's May 2, 2003 e-mail into evidence, but – before doing so -- had read from it, as had Mr. Albert – without objection by Judge Holeman or the prosecution [A-1090-1]. Sassower likewise moved to admit another e-mail [A-1415] , and it appeared that but for Mr. Albert's own query as to whether he was permitted to read from the e-mail, to which Judge Holeman replied "No, you are not", he would have done so [A-1094]. As to this e-mail [A-1415], consisting of a chain of three e-mails from and to Mr. Albert, Ms. Eve, and another Clinton staffer, reflecting receipt by the New York office of the package of materials Sassower had hand-delivered on April 23, 2003 under her coverletter of that date, as well as its transmittal down to D.C., Judge Holeman ordered that it be redacted to remove its reference to the term "blue slip" [A-1093], pertaining to the special prerogative of home-state senators to block federal judicial nominations for their state.

In addition to blocking inquiry as to Senator Clinton's special role as New York's home-state senator in stopping a federal judicial nomination from proceeding to confirmation [A-1073, 1081, 1095], Judge Holeman blocked, including on grounds of relevance, Sassower's bias examination of Mr. Albert concerning his knowledge that she had complained about him and Ms. Eve [A-1106-7]:

> Sassower: ...Did you ever listen to the voice mail message I left on May 20th, complaining about you and Leecia Eve in connection with your conduct in this matter?
>
> Holeman: Sustained, next question.
>
> Sassower: Did you ever hear the voice mail message of May 20?
>
> Holeman. Sustained. Next question.
>
> Sassower: Is it your view that without any review of the statement I have provided summarizing the evidence either by you, Leecia Eve or Senator Clinton or anyone else in that office, Senator Clinton could properly endorse the confirmation?
>
> Albert: I'm sorry, could you restate the question?
>
> Sassower: Did you believe that there was an obligation on the part of anyone in Senator Clinton's office to read the overview statement of March 26th?
>
> Holeman: Sustained. His belief is irrelevant to this case.
>
> Sassower: Okay....On May 21st, did you receive a fax and e-mail from me setting forth what I viewed as your professional misconduct and that –
>
> Holeman: Sustained.
>
> Sassower: -- of Leecia Eve?
>
> Holeman: Sustained.
>
> Sassower: Okay.
>
> Holeman. Irrelevant.

Thereafter, Judge Holeman *sua sponte* asserted, "we have now consumed an inordinate amount of time in your questioning this witness whose recollection of these events is limited" [A-1108] and that "unless the next question specifically addresses your arrest and his involvement or not in it, this examination is concluded". Sassower's next question to Mr. Albert was whether there came "a time when [he] learned that [she] had been threatened by Capitol police as a result of the contact between [Senator Clinton's] office and Capitol Police." Upon Mr. Albert's answering no, Sassower endeavored to show him his May 22, 2003 e-mail [A-1422] and, because there are two separate e-mails with that date and time [A-1421, A-1422], as well as a third e-mail with the same date [A-1423], asked whether there might be a break for lunch so that she could sort them. The colloquy was as follows [A-1109-10]:

> Holeman: Unless this document pertains to the arrest, --
>
> Sassower: Yes, it does.
>
> Holeman: --and it doesn't, --
>
> Sassower: Yes, it does.
>
> Holeman: -- your examination is concluded. Is there any cross-examination for this witness?
>
> Sassower: Wasn't the –
>
> Holeman: Is there any cross-examination?
>
> Liu: No cross, Your Honor.
>
> Holeman: Very well. We'll break for luncheon recess. Please be back ladies and gentlemen of the jury, at 2:00 o'clock sharp.

Judge Holeman thereupon excused Mr. Albert and chastised Sassower, stating, among other things, that she had "squander[ed]...time on matters that are completely

extraneous" [A-1109-12]. Although the May 22, 2003 e-mail consisted of Mr. Albert's forwarding to Ms. Luzzatto and Ms. Eve Sassower's May 22, 2003 e-mail to him bearing the title "Not being arrested: May 22nd Wesley Confirmation Hearing" – and attaching her two-page May 21, 2003 fax to Detective Zimmerman -- [A-1422], Judge Holeman declared that it had "absolutely nothing to do with this witness's involvement in [her] arrest" and that he would hear "no further discussion on the matter" [A-1111]. He warned Sassower that any questioning of Ms. Eve as to receipt of packages was "irrelevant" and that "The pertinent issues is what brought to bear the involvement of the Capitol police." To this, Sassower rejoined, "Misconduct of that office, Your Honor, in connection with this nomination." [A-1111-2]. Judge Holeman responded, "The misconduct of that office is certainly not the purview of this Court in this matter. Your misconduct is the focus of the current charge." [A-1112].

Mr. Mendelsohn then stated that he would be redacting the e-mail to remove words which Judge Holeman had ruled "not admissible". Judge Holeman agreed that the words "blue slip" "have specific meaning that has no relevance to the elements of the charge or the defense thereto" [A-1115]. Sassower responded that they were the basis for her communications with Senators Clinton and Schumer's offices [A-1116] – to which Judge Holeman answered, "You've been heard on the issue. The record is made. I won't hear any further discussion of that." [A-1116].

Testimony of Senator Clinton's Counsel Leecia Eve

Ms. Eve was the second defense witness [A-1117-79]. She stated that she was aware that Sassower's subpoena for her testimony had requested that she bring relevant documents [A-495], but had brought nothing [A-1118].

Upon her reciting that judicial nominations were among her duties as Senator Clinton's counsel, Sassower interrupted her further recitation by stating, "We are most interested in federal judicial nominations" [A-1123]. Judge Holeman then interjected:

> "Oh, oh, excuse me, excuse me. The call of your question was for her duties, she was delineating those. Please don't disturb her again....Ms. Eve, you'd gotten to, as I was struggling to write, homeland security and --"

Although Ms. Eve identified that, "as a general matter", she "review[ed] documents, prepare[d] memoranda for [Senator Clinton] with respect to particular nominee's qualifications and backgrounds" [A-1124], she announced, at the outset, "I don't remember particular documents" [A-1126] and "I can't attest specifically to any particular document...I will not be able to testify with any specifi, you know, any great specifi, speci, with any great, with – I will not be able to testify specifically with respect to any particular document that you may have sent to our office." [A-1127]. She stated, however, that "as a general matter" she knew that Sassower had sent "materials" to the office and that "eventually at least some of those materials made their way" to her and had "a general recollection of seeing some of them".

Upon Sassower's proffering the package of documentary evidence transmitted by her April 23, 2003 coverletter to Senator Clinton [A-1474] and inquiring of Ms. Eve whether she had seen anything near identical to it, Ms. Liu asked to approach. The colloquy at the bench conference was as follows [A-1128]:

> Liu: Your Honor, from what I can tell, the same thing is happening with this witness that happened with Mr. Albert.
>
> Holeman: I mean basically we're having this witness lay through documents she's previously testified that she can't testify with any specificity as to any document. Why are we going to waste time with her reviewing the stack of materials?

Sassower: I'm not asking her to review it now. I'm asking whether she received it at some point prior to the hour-long conference.

Holeman: And how else, how else could she be answering the question except to go through the specific documents?

I mean this to me is an exercise in absolute futility. Let's get to the heart of her involvement in this case....

Upon Sassower's inquiring as to whether, prior to the May 20, 2003 phone conference, Ms. Eve had read the April 23, 2003 coverletter to the package [A-1130-1], Judge Holeman responded – without any articulated objection having been made – "Sustained. The testimony was clear. She has no recollection of specific documents that were reviewed." [A-1131]. Although the prosecution did not object as Sassower sought to proffer her faxed and e-mailed May 2, 2003 letter [A-1414], Judge Holeman halted her, "Inasmuch as the testimony has been that she cannot testify with specificity as to any document, why are we proceeding with Exhibit 38" – and pushed Sassower to begin "questions concerning the telephone conference, please" [A-1133] – a comment which followed upon his interjection, "Do you have any questions about the single telephone conference" in sustaining the prosecution's prior objection [A-1132]. He thereafter repeated this in sustaining an unarticulated objection by the prosecution [A-1134]:

Sassower: Did you have any communications with staff of the Senate Judiciary Committee as to their review of the, --

Holeman: Sustained.

Sassower: -- of the March 26th statement.

Holeman: Sustained.

Sassower: -- and the underlying documents.

Holeman: New question, Telephone conversation...

As to the May 20, 2003 telephone conference which Ms. Eve had already stated she did not record and of which she believed she had no notes [A-1129-30], Ms. Eve now purported to have only a "general recollection" and not to remember the specifics of what was said [A-1135]. This became the ultimate ground upon which Judge Holeman *sua sponte* halted inquiry about the May 20, 2003 telephone conference following brief testimony [A-1143]. Before that, Judge Holeman injected his own questions to Ms. Eve – each going to events after the phone conference: (1) "what action, if any" she took based on the phone conversation she had had with Sassower and why? [A-1138]; (2) did she have any contact with Capitol Police following the phone conversation [A-1140]; and (3) what was the nature of her phone conversation with Capitol Police [A-1140-1]. When Sassower resumed her questioning, she immediately returned to the phone conference [A-1141-2]:

> Sassower: Let's turn to the -- did I inform you during our telephone conversation that I was not only concerned, just, that you and Mr. Albert had not read the March 26th overview statement or reviewed the underlying substantiating evidence but that there had been no investigation from the Senate Judiciary Committee? Did I express my concern –
>
> Holeman: Sustained.
>
> Sassower: – on that score?
>
> Holeman: Sustained, irrelevant. Next question please.
>
> Sassower: Did I ask how a hearing could possibly be held on this confirmation when there was no investigation of the evidence?
>
> Holeman: Sustained. Please move forward.
>
> Sassower: Is it not correct that I asked you to bring the March 26th statement to the personal attention of Senator Clinton so that she could make a determination as to its seriousness?
>
> Holeman: Sustained.

Sassower: On what ground?

Holeman: Approach.

(Bench Conference)

Sassower: On what ground?

Holeman: The ground is as follows: Once a witness testified as to nonspecific recollection, I am not going to consume time –

Sassower: Okay.

Holeman: -- allowing you to present point-by-point –

Sassower: Okay.

Holeman: --to which the witness has already testified several times there is no specific recollection. She had a general recollection, she testified to. Now if you want to follow up –

Sassower: Yes.

Holeman: -- with the events that followed the conversation, then let's do that.

Sassower: Thank you.

Holeman: Otherwise cross-examination.

Sassower's immediately following question was then interrupted by Judge Holeman before response from Ms. Eve [A-1144]:

Sassower: Did you become aware that I left a voice mail message for Tamera Luzzatto, chief of staff, at the end of the day on May 20th complaining –

Holeman: Very well.

Sassower: Complaining –

Holeman: Very well. Let's excuse me, the court reporter needs a break. Let's break for 15 minutes and be back at three, 3:15.

Upon resumption, Sassower continued with that line of questioning [A-1146-7]:

Sassower: And when did you become aware that I called and left a voice mail message for your chief of staff, Tamera Luzzatto, complaining of your misconduct and that of Josh Albert in connection with this matter?

...

Sassower: Well, are you aware that in that first voice mail message of May 20th, a couple of hours after our phone conference, I left a callback number so that I could be contacted by Ms. Luzzatto or some other supervisory personnel in Senator Clinton's office? Is that not correct?

Eve: I don't remember the specifics of your message other than you appeared to have been upset in that voice mail. Other than that, I don't remember the specifics of the message.

Sassower: Do you recollect that I was upset because I viewed it as your responsibility to read documents and the evidence substantiating the opposition?

Holeman: Sustained.

[A-1154]

Sassower: And if I was dissatisfied with your conduct during that phone conversation and dissatisfied with the conduct of Josh Albert, it was within my right –

Holeman: Sustained. No, that question is improper.

Sassower: Okay.

Holeman: It's a speech.

Judge Holeman also purported that the following question was a "speech", blocking it, additionally, on grounds of Ms. Eve's "lack of specific knowledge":

[A-1159]

Sassower: Did you make findings of fact and conclusions of law as to this [March 26th] statement for which the most pertinent documentary evidence –

Holeman: Sustained. This is a –

Sassower: -- for two motions –

Holeman: Excuse me.

Sassower: -- that –

Holeman: Ex, excuse me. This is a speech, it is not a question.

Sassower: Did you –

Holeman: The witness has already testified as to her lack of specific knowledge with regard to documents. Please move your examination along.

By then, Judge Holeman had blocked inquiry as to the evidentiary basis of Sassower's opposition to Judge Wesley [A-1137-8]:

Sassower: When you say that I expressed my view as to the unfitness of Judge Wesley, was my view based upon –

Holeman: Sustained.

Sassower: Did I – have you read the March 26th statement that I had prepared, outlining the evidence of Judge Wesley's unfitness for the bench when we had that phone conversation of May 20th? Had you read it prior thereto?

Liu: Objection.

Holeman: Sustained.

Sassower: Isn't it correct that you had not read the summary overview presentation of the evidence against Judge Wesley?

Holeman: Sustained.

Sassower: Isn't it correct that you acknowledged to me that you had not reviewed any of the underlying documentary evidence?

Eve: I don't remember.

Sassower: Don't you believe on such serious and substantial matter?

Holeman: Sustained.

Sassower: Did I express the view that it was your obligation to review the March 23, the March 26th statement and specifically referred to substantiating documentary proof?

Holeman: Sustained...

As Sassower sought to establish Ms. Eve's conflict of interest and bias that would have been apparent to her from examination of the documentary evidence substantiating CJA's March 26, 2003 statement, Judge Holeman interjected "No more questions concerning the documents that she's already stated she has no particularized knowledge of". He thereafter excused the jury and chastised Sassower [A-1162-3]:

> Holeman: ...And the record will reflect that your continued questioning of this witness concerning documents that you may well have provided to the chambers of Senator Clinton, but which this witness has no specific recollection, is in direct violations of orders that I have given you here at the bench.
>
> ...
>
> When I have instructed you that certain evidence would be improper if placed in front of the jury because of my order precluding it, you have nonetheless attempted by speeding up your speech where you should have been asking a succinct question to get that evidence in front of the jury.
>
> I don't want to hear from you now. The question that you will discuss with your attorney advisor in the 10 minutes that I'm going to be off the bench is simply this.
>
> Do you intend to follow my instructions from this bench? Don't respond now. I'll take your answer when I come back. Have the marshal –
>
> Sassower: The answer is of course, Your Honor
>
> Clerk: The court will stand in 10-minute recess until return of court.

Upon return, Sassower attempted to explain the "misapprehension of the court", identifying that "there is a bias cross-examination issue here". The colloquy was as follows [A-1165-7]:

> Sassower: I just want the Court to understand that based upon what she has represented as her credential, it seems that she worked at the Court of Appeals during pertinent periods of time that underlie the misconduct –
>
> Holeman: Bias cross-examination is entirely appropriate. Failure to follow my directives is patently inappropriate.
>
> Sassower: Okay.

Holeman: This has nothing to do with you bias cross-examination. As you were cross-examining this witness about her prior affiliation with the New York Court of Appeals, there was no involvement by me in that examination.

This witness has repeatedly stated her lack of knowledge with regard to specific documents.

And what you appear to be attempting to do is introduce the content of documents totally irrelevant to the elements of the offense in this case through witnesses who could not possibly lay the appropriate evidentiary foundation for those documents.

Therefore, if I instruct you that you are not to question a witness further about documents, your objection is noted for the record and the case will proceed.

Sassower: Okay. I will –

Holeman: You will not speak while I'm speaking. You will not countermand or attempt to countermand my directives. You will not speak back to me with this jury present. Am I making myself clear?

Sassower: I certainly have attempted to follow your orders, --

Holeman: Answer my question.

Sassower. – Your Honor's directives. I have tried. If I –

Holeman: Answer my question, have I made myself clear? I don't care about your past efforts or motives. Have I made myself clear?

Sassower: Yes. And please understand I am trying. If you deem me in breach, --

Holeman: Ms. –

Sassower: -- it's not intentional.

Holeman: Ms. Sassower, that is an example of what I have been speaking of. When I speak keep your mouth shut. If I ask you a direct question you answer it, am I clear?

[A-1167-72]

Sassower: At anytime – was it not apparent to you that having worked on the New York Court of Appeals, you knew judges, had worked for judges, or [were] friendly with judges who were involved in some of the issues that were being presented as they related to Judge Wesley?

...

Sassower: Chief Judge Judith Kaye of the New York Court of Appeals was on the Court of Appeals when you worked there, is that not correct?

Eve: Yes, she was.
...She was not chief judge then, she was an associate judge of the court.

Sassower: And did you have occasion to observe that her misconduct was fairly focal in the underlying documents?

Holeman: Sustained.

Sassower: Okay. What were the precise dates that you worked at the New York Court of Appeals?

Eve: ...So I worked for the Court of Appeals from roughly 2000 'til April or May 2002.

Sassower: Did you have occasion to examine documents that related to that very period at the New York Court of Appeals that were part of what was being presented in the Senate Judiciary Committee and your office?

Holeman: Sustained.

Sassower: Is it not correct that a public interest election law lawsuit came up to the New York Court of Appeals in the period in which you were there called *Castracan v. Colavita*.

Holeman: Sustained.

Sassower: Okay. Did you examine any of the documents from which you might see that you were at the Court of Appeals during the period in which the misconduct by the judges of that court were, was alleged?

Holeman: Sustained.

Sassower: Okay. Moving on to a different area as to your employment. You worked at the Senate Judicia – well, you worked for Senator Biden from August '95 to late '96 when he was ranking member of the Senate Judiciary Committee.

Eve: Is that a question?

Sassower: Is that correct?

Eve: Yes, it is.

Sassower: Were you at the Senate Judiciary Committee hearing on June 25th 1996 when I rose to request to testify as to citizen opposition against the nomination of Justice Lawrence [K]ahn to the District Court of the Northern District of New York?

Eve: I don't believe so, I certainly have no recollection. And probably it would not have been a reason for me to be there because my responsibilities when I served as counsel to Senator Biden explicitly excluded judicial nominations.

Sassower: You had no involvement with judicial nominations when you worked for Senator Biden from '95 to '96.

Eve: That's correct.

...

Sassower: For Senator Clinton, you do handle judicial nominations.

Eve: That's correct.

Sassower: Do you recall ever seeing the letter addressed to Senator Clinton dated July 14th 2001 transmitting an extensive letter of July 3rd 2001 that had been addressed to Senator Schumer regarding federal judicial nominations?

Eve: No.

Sassower: Have you ever read it to this day?

Holeman: Sustained.

Sassower: Were you aware that during Senator Biden's chairmanship of the Senate Judiciary Committee in 1992, the predecessor citizens group to the Center for Judicial Accountability had documented the, the Senate Judiciary Committee's disregard for evidence that the bar associations were rendering ratings on federal judicial nominees –

Holeman: Sus –

Sassower: --which were inadequate –

Holeman: Sustained.

Sassower – and dishonest?

Holeman: Sustained. Counsel please approach.

At the bench conference [A-1172], Judge Holeman then stated:

"I gave you the opportunity to pursue the line of bias cross-examination that simply has no bearing with regard to the current line of inquiry. It's more of a speech than is testimony. I'm going to give you 10 minutes and that will be the end of your examination of this witness."

Among the questions that Judge Holeman blocked in these ten minutes were the following:

[A-1173-4]

Sassower: Did you state, as so represented in the subject profile, that you believe that I might travel to D.C., quote, in an attempt to verbally disrupt tomorrow's hearing.

Eve: Again, I don't recall the specifics of my conversation with the Capitol police. I don't know if I used that particular terminology...Whether I used those precise words, I really don't remember.

Sassower: But you had no reason to believe that I was going to disrupt?

Liu: Objection, Your Honor.

Holeman: Sustained.

Sassower: Let the record reflect that the witness was shaking her head no.

Holeman: Both the question and the nonverbal communication will be stricken. Next question.

He also blocked Sassower's inquiry as to Ms. Eve's view as to whether a respectful request to testify at a public congressional hearing warranted arrest and prosecution for "disruption of Congress"

[A-1179]

Sassower: Did you believe that I should be arrested simply for rising to request permission to testify in opposition at the hearing?

Holeman: This witness's belief as the grounds for your arrest are irrelevant.

Sassower: Did you –

Holeman: Next question.

Sassower: Do you believe that a respectful request to testify at a public congressional hearing made at an appropriate point can ever be deemed to be disruption of Congress?"

Holeman: Sustained...

Judge Holeman then cut off any further examination "based upon our prior bench conference". [Tr. 586].

April 19, 2004: Judge Holeman's Rulings Preliminary to Sassower's Testimony

Prior to testifying on April 19, 2004, Sassower stated that she would be analyzing the videotape during her testimony, which she estimated "will take longer than approximately an hour" [A-1192]. She also presented a list of trial exhibits [A-1425], including exhibits she had proffered and/or had anticipated proffering in her questioning of previous witnesses. To this, Mr. Mendelsohn opined: "it's apparent to the government that many of these exhibits are not relevant to the case" [A-1194] – following which Judge Holeman responded:

"...let me just state for the record that I anticipated this to occur. The short of it is that the fact that documents are turned over during discovery does not make them admissible for purposes of trial.

And so what we have to do essentially is to go through these 86 items identified here and make determinations whether there are any of these that would not be remotely admissible into evidence. So as not to consume time when the jury is present, offering them, having objections and then reaching the inevitable ruling that they are not admissible."

Sassower replied that she had not intended to introduce all the listed exhibits, had marked them to prepare for cross-examination, and that to expedite matters, she would go through the most immediate exhibits which she did plan to introduce on her direct case [A-1195]. Shortly thereafter, Judge Holeman announced:

"We're going to be through with this process by 10:15. If you haven't made your case or document by 10:15, we will suspend this process at that time.

This is something that should have been well taken care of. Proceed. We're going much too slowly now.

We will not consume a full morning dealing with records that quite frankly have little chance of being admitted into evidence. What's the next document?" [A-1201].

Sassower thereupon responded, "Yes. I informed the Court this case was not remotely trial ready." [A-1201]. Among Judge Holeman's notable exclusions in the limited time Sassower was permitted[13]:

(1) CJA's March 26, 2003 written statement "summarizing the documentary evidence establishing the unfitness of Judge Wesley" [A-1436]. As to this, Judge Holeman asserted it was a "statement of opinion" and "There may be forums within our society for you to stand up and espouse your opinions. This courtroom is not one of them." [A-1208]. To Sassower's response, "I did not espouse opinions to the Senate Judiciary Committee and to the home state senators. I presented them with a fact specific presentation outlining the evidence", Judge Holeman answered, "Absolutely. You said enough, that's what I needed to hear. It's out." [A-1209];

(2) the official transcript of the Senate Judiciary Committee's May 22, 2003 hearing [A-1550, 1557], which Sassower identified as giving "material clarification" to what she said and as further reflecting that Senator Chambliss had already adjourned the hearing before she spoke [A-1212-4];

(3) the handwritten notes from which Sassower read at the hearing [A-1548] when "[she] rose and stated what [she] stated on May 22nd"-- and which Ms. Belaire's May 23, 2003 letter acknowledged [A-79, 94] she had read from at the hearing [A-1214-5]; and

(4) the Capitol Police Property Receipt [A-1578], which Sassower identified as "a contemporaneous document when I first became aware that Officer Jennings was being represented as the arresting officer and I protested." Judge Holeman's response, "Irrelevant" "Irrelevant, and it won't be proffered" [A-1216].

---

[13] This time limitation was so-noted by Sassower, who stated "because I am being so rushed, I cannot go methodically and properly through the documents so that I can defend myself" [A-1209].

Sassower's Testimony and Its Curtailment by Judge Holeman

Sassower gave narrative testimony [A-1217-44], virtually without objection, as to who she is, what the Center for Judicial Accountability, Inc. (CJA) is, a thumbnail summary of her ten years of interaction with the Senate Judiciary Committee pertaining to federal judicial selection [A-1220-2], culminating in her 1996 request to testify in opposition to a federal judicial nominee at a Senate Judiciary Committee hearing [A-1222-8]. She identified that all this was summarized by her July 3, 2001 letter to Senator Schumer [A-120] – a copy of which she had sent to Senator Clinton under a July 14, 2001 coverletter [A-1487] and included nearly three years later in the package of materials she had hand-delivered to Senator Clinton's New York office on April 23, 2003 [A-1476]. As to CJA's opposition to Judge Wesley [A-1230-44], Sassower also proceeded chronologically: starting on March 14, 2003 [A-1230], with her letter of that date [A-1431] memorializing her first contacts with the Senate Judiciary Committee, notifying it of CJA's opposition, request to testify, and inquiring as to its rules and procedure. She got as far as recounting the events of May 13, 2003 when Judge Holeman stopped her [A-1244]. Calling a bench conference, he stated:

> "This has been now proceeding for about 59 minutes now. And quite frankly, much too ti, too much time has been consumed already.
>
> And I appreciate the fact that the Government has not interposed objections when it could well have and I haven't stricken maters from the record when I could well have.
>
> We're now going to do the following: either you're going to give your tape analysis or you're going to conclude." [A-1244-5].

Although Judge Holeman granted Sassower's request for five minutes [A-1245, ln.8], he halted her after about a minute [A-1245, ln. 25]. During that minute, Sassower identified her May 19 and May 22, 2003 memoranda [A-1522, 1535, 1539] as "recit[ing]

what was going on at the Senate Judiciary Committee" and that between them was her approximately 40-minute phone conference with Ms. Eve and Mr. Albert on May 20, 2003. As she began to summarize what she had related to them during the phone conference, the following ensued [A-1245-6]:

> Sassower: And not only did I relay to Ms. Eve that there had been no investigation by the Senate Judiciary Committee of the, of what had been presented in opposition to Judge Wesley, that I had not gotten any call from reviewing counsel, didn't even know the identity of so-called reviewing counsel. But --
>
> Holeman: Ms. Sassower, analysis of the videotape?
>
> Sassower: -- it, it – well, wait. Can I –
>
> Holeman: To whom are you speaking? Analysis of the videotape or we will conclude your testimony, Ms. Sassower.

Sassower thereupon presented her analysis of the videotape [A-1574] – only to be interrupted by Judge Holeman as she began to describe the tell-tale evidence that she was "set up" to be arrested [A-1249]:

> Sassower: It must be noted that the video which is focused on Chairman Chambliss as he closes the hearing shows no surprise on his face as I begin to speak from the back of the room.
>
> Rather, it shows him re, reaching for his reading glasses and then presumably for the, for the paper from which, after I am taken out of the hearing room, he seems to read.
>
> Holeman: Very well. We will have the playing of the tape.
>
> Sassower: I'm not finished, I'm not finished.
>
> Holeman: You have consumed enough time –
>
> Sassower: I'm not –
>
> Holeman: -- with this explanation.
>
> Sassower: I'm not finished. I have –

Holeman: Well, I'm sorry, Ms. Sassower, that is, that is unfortunate. Play the tape please.

Judge Holeman then excused the jury for a 15-minute recess and granted Sassower's request to place her objections on the record. The colloquy was as follows [A-1250-6]:

Holeman: We are through with the videotape. Very well. Succinctly state your objection on the record so that we can proceed. We're not gonna consume a lot of time with this. Go ahead.

Sassower: The this that Your Honor is referring to is my defense.

Holeman: Right.

Sassower: And I was on the stand for approximately one hour. Your Honor did not indicate at the outset any time restriction.

I believed I would have adequate opportunity to present the most relevant particulars which, having provided the necessary background, I was then reciting.

And Your Honor has completely truncated and blocked me from reciting the outrageous events pertaining to the call that I received from Capitol police at the instance of Senator Clinton's office, which set in motion a chain of events that included the set up by the Senate Judiciary Committee to have me arrested when there was no basis whatsoever for such an arrest, as they knew.

Holeman: Very well, I, I will address –

Sassower: You interrupted as I was describing Chairman –

Holeman: And I'm –

Sassower: -- Chambliss's –

Holeman: And I'm interrupting you now. Be silent, sit down while I address this issue. The record will reflect the representations that were made prior to the testimony being rendered as to the estimate of time.

The record will also reflect that in an effort to move this matter along, neither the Court nor, to their credit, the Government's counsel interposed objections which would, while warranting, while warranting grant, nevertheless refused to do so to move the matter along.

Instead, undue time was consumed in, as I had previously directed the defense, in efforts to get before the jury documents which were clearly inadmissible, clearly referred to by Ms. Sassower in a way to indicate to the jury that there were materials that she submitted to the Senate Judiciary Committee, to Senator Schuman, Schumer and to Senator Clinton.

That point was made several times. The content of the documents were not and will not be disclosed except as previously addressed during the preliminary matters part of today's proceedings.

Therefore, this Court is satisfied that the jury has seen the videotape several times and has received, by way of evidence that was not objected to and not stricken by the Court, the defendant's analysis, such as it was.

Sassower: The defendant has not, has not concluded the analysis.

Holeman: You've made that point and I'm ordering that you have in fact concluded your analysis.

Sassower: You will not permit me?

Holeman: I will not permit any further discussion of this videotape.

Sassower: Of what that tape shows in fact?

Holeman: The tape speaks for itself.

Sassower: No, it doesn't speak for itself.

Holeman: Very well. Sit down, Ms. Sassower. The, the next matter then is, Ms. Sassower, given that there will be no further discussion of the tape and given tha there will be no further testimony from the witness stand, does the defense rest?

Sassower: No, the defense does not rest.

Holeman: Very well.

Sassower: The defense –

Holeman: What is the additional evidence that you will offer? Is there another witness?

Sassower: The defense will testify –

Holeman: Is there –

Sassower: -- as to Officer Jennings, officer, the placement of Officer Jennings and Sergeant Bignotti.

Holeman: If that's your proffer, it is irrelevant –

Sassower: And –

Holeman: -- and it will not be admitted into evidence.

Sassower: And the fact that Sergeant Bignotti alone arrested me, Officer Jennings had nothing to do with it. His testimony is he told me to sit down. He is not the arresting officer, it was Sergeant Bignotti.

Holeman: Very well. You –

Sassower: Against whom I had filed a police misconduct complaint.

Holeman: The police misconduct –

Sassower: -- in 1996.

Holeman: The police misconduct complaint is not in this case. I have directed you not to even –

Sassower: It's properly, it's properly in this, --

Holeman: Not –

Sassower: -- in this case.

Holeman: It is not in this case.

Sassower: It's properly in – Your Honor –

Holeman: Ms. Sassower, --

Sassower: -- has excluded –

Holeman: Ms. Sassower, --.

Sassower: It's relevant to evidence.

Holeman: Ms. Sassower, sit down now. Very well. I am ordering that based upon the proffer that I've heard as to the additional information that Ms. Sassower seeks to get before the jury in the way of evidence, that evidence is not admissible.

It has previously been ruled upon, particularly this issue of a misconduct complaint against an officer involved in the arrest.

And given the extent of the proffer, the Court is ordering that the defense case be closed at this point. The defense rests. Therefore, Ms. –

Sassower: You have rested for me.

Holeman: I have –

Sassower: Defense does not rest, Your Honor.

Holeman: The record is clear. But let me tell you this. When we resume what we will be doing is having closing argument and the jury will receive the case.

Sassower: Well, they have not received the, the –

Holeman: Then, then,

Sassower – the pertinent evidence –

Holeman: Then that's –

Sassower: -- which comes from the witness stand.

Holeman: You don't understand. I'm not entertaining any further discussion on the issue. You have made your objection for the record. It's done. The jury is now going to hear closing argument and receive instruction from me. Sit please. Now –

Sassower: Excuse me. Will the, will the – since Sergeant Bignotti put forward her version –

Holeman: You had ample opportunity –

Sassower: Excuse me.

Holeman: You had ample opportunity to put on evidence in this case.

Sassower: Will the –

Holeman: There will be no further –

Sassower: Will –

Holeman: -- evidence –

Sassower: Will they be told –

Holeman: From the defense.

Sassower: -- that there was no conviction for disorderly conduct?

Holeman: Absolutely not. Sit, sit down.

Sassower: Absolutely not.

Holeman: Sit down

Thereupon, Ms. Liu asked for a bench conference, at which she stated that the prosecution was not opposed to Sassower finishing up her reading of her analysis of the videotape and, additionally, had cross-examination for Sassower [A-1257].

Upon Sassower's concluding of her reading of her analysis from the witness stand, Mr. Mendelsohn began his cross-examination – exclusively about her 1996 arrest for disorderly conduct in the hallway outside the Senate Judiciary Committee. The following ensued [A-1271-2]:

Mendelsohn: In requesting the return of your documents [in 1996], you didn't speak in a loud voice at all?

Sassower: I did not speak in a voice that would warrant any kind of arrest, no.

Mendelsohn: When you say that, will you demonstrate how you asked for the return of your driver's license.

Sassower: How is this relevant? I was not arrested for requesting to testify –

Mendelsohn: Your Honor, --

Sassower: -- at the Senate Judiciary Committee hearing.

Holeman: That testimony is stricken. Ms. Sassower, answer the question as requested.

Sassower: The events have been particularized by me in a police –

Holeman: Ms. –

Sassower: – misconduct complaint against Sergeant Bignotti –

Mendelsohn: Your Honor, --

Holeman: Excuse –

Sassower: -- and the other officers involved, as you know.

Holeman: Excuse me, excuse me. Please have the jury removed. And you will disregard the last comment by the defendant.

Holeman: Very well, it's now 12:24. The Court has previously given instructions to this witness with regard to the manner in which questions would be answered in this courtroom.

Clearly, the response to the last question was not only non-responsive but it was inappropriate, in that the content of that testimony was deemed by this Court to be so prejudicial that it should never be placed in front of the jury.

Nevertheless, despite this preclusion and despite the Court referring several times to the fact that the jury should never hear this prejudicial information, Ms. Sassower chose instead to violate the Court's order and to make a statement as to the information that had previously been ruled precluded.

Therefore, I'm ordering the marshal at this time to step you back.

Sassower: Would you take my, my handbag and my belongings? The police misconduct complaint is right there, Mr. Mendelsohn, with all the particulars of what took place with respect to the trumped-up charge of disorderly conduct.

Judge Holeman thereupon called a luncheon recess. In a bench conference in Sassower's absence he then repeated [A-1273]:

"I think it should be evident to anybody who has ever practiced before me that I did everything I could to avoid the occurrence.

When she made it clear to me that she would try and get before the jury the information concerning the police misconduct complaint, that evidence is so prejudicial.

And my directives had been so explicit that there was no other way to interpret her action but as a direct, intentional, willful, knowing violation of the court order. And on that basis she was stepped back."

As to the remainder of the trial, Judge Holeman stated [A-1278]:

"...we've already wasted a good chunk of the morning. They should already have this case. Okay. It's 12:30. There's no, there's no reason that that couldn't have occurred."

Following the lunch recess [A-1283], Sassower was brought back to the witness stand from the court's holding cells so that Mr. Mendelsohn could continue his cross-

examination, now focused on the events of 2003. The jury was then excused and jury instructions reviewed.

The Single Jury Instruction that was the Subject of Substantive Discussion: "Evidence of Acts Not Charged in Information"

Only a single jury instruction was the subject of substantive discussion: Judge Holeman's revision of the prosecution's proposed jury instruction for "Evidence of Acts Not Charged in Information". In place of the prosecution's sentence:

> "That [other crimes] evidence was admitted for various collateral purposes, such as to show motive, opportunity, intent, preparation, planning, knowledge, identity or absence of mistake or accident with respect to the crime with which the defendant is actually charged here." [A-1412],

Judge Holeman substituted:

> "That [other crimes] evidence was admitted by the defendant solely for the purpose of showing bias against her." [A-1413, underlining added].

The discussion, initiated by the prosecution, was as follows [A-1299-1307]:

> Liu: It says here that, that evidence was admitted by the defendant solely for the purpose of showing bias against her.
>
> Holeman: Yes, right.
>
> Liu: It appears to the government that in some of the defendant's testimony, that she was also suggesting that the 1996 offense and how it played out suggests that there was no intent on her part when she acted in 2003.
>
> And we don't have a problem with the instruction the way it reads if she's not gonna argue that what happened in 1996 doesn't go at all to her intent in 19, in, in 2003.
>
> But it seems to me that what she has suggested in her testimony –
>
> Holeman: Right.
>
> Liu: -- is that because she was not arrested for disruption of Congress, even though she said something in the hearing in 1996 that she somehow thought that in 2003, that if she said something in that hearing she would also not be arrested and that she was not being disruptive.
>
> If she's trying to make that argument, Your Honor, then I think it should be reflected in the instructions.

Holeman: Very well. I think that the government's position on that is well taken. And it is simply this, Ms. Sassower, and you can consult with Mr. Goldstone on this point.

The evidence of the 1996 arrest was initially introduced to the jury not by the government. I specifically instructed them not to do so. It was introduced by you.

It seems to me, as I heard the evidence, that your reason for bringing up the 1996 event was because you believed that a bias existed. The Capitol police was out to get you, that they set you up, and that is the reason for your even mentioning 1996.

If my understanding is correct, and there is no argument by you that you did not intend to testify in 2003, then this jury instruction will stand as it is.

Sassower: I am clueless, quite frankly, as to what you are referring to. I, the May 21st, 39-page fax to U.S. Capitol police Detective Zimmerman could not have been clearer in saying that what took place in 1996 was the precedent.

That a respectful request to testify, a request to be permitted to testify –

Holeman: Let me just ask you the question simply put.

Sassower: -- could not be punished by arrest.

Holeman: The question simply put is this. In your closing argument, do you intend to argue that you did not intend to disrupt, did you, did not intend to testify or disrupt the, the proceedings?

Sassower: That's right, I did, the, as reflected by the 39-page fax, my intent was simply to respectfully request to be permitted to testify if the chairman did not independently inquire whether there was anyone present who wished to give testimony.

Holeman: Ms. Liu.

Liu: Your Honor, it still seems to me that the argument Ms. Sassower is making is that when she did something in 1996, she wasn't arrested.

When she did something similar to what she did in 1996, in 2003, she therefore had no reason to think that she would be arrested because she would not be disrupting Congress.

Holeman: And therefore, she would be arguing effectively an absence of intent in 2003.

Liu: That's right, Your Honor. And so because of that, I have two suggestions, which is that perhaps we should say in this jury instruction that the evidence was

admitted for the purpose not only of showing bias against Ms. Sassower but also because it goes to her intent, if that's what she intends to argue.

In addition, and this is looking forward to our rebuttal closing, if Ms. Sassower intends to argue that what happened in 1996 suggests that she had no intent in 2003, then we would respectfully request to be able to argue exactly the opposite, that what happened in 1996 shows that she did in fact have the intent required for this crime in 2003.

Sassower: My, my contemporaneous May –

Holeman: That's, that's really not –

Sassower: 21st fax –

Holeman: It, it's it's not a point for discussion. The question is during your closing argument, are you going to make –

Sassower: To which I was not permitted to testify.

Holeman: Are you going to make a statement to the effect that because of the manner in which the 1996 event played out, that you had no intent in 2003 to disrupt the, the committee's proceedings.

Sassower: I never intended to disrupt. I intended to request respectfully to be permitted to testify. And my position was that that could never be deemed disruption of Congress or, or disorderly. It's a public congressional hearing.

Holeman: Ms. Sassower, --

Sassower: A respectful request to testify by definition.

Holeman: Ms. Sassower, the, all of that having been said, my concern is when you close the case, what is it that you intend to express to the jury as between the 1996 events and those that occurred in 2003? Why are they relevant, the events of 1996?

Sassower: Because at the time I said that was precedent, that, that there was no basis for me to be arrested simply for requesting to testify.

What happened in 1996 was correct. The officer requested me to be quiet. I was not removed, I was not arrested. That was the proper procedure.

Officer Jennings testified that he did not ask me to be removed. He told me to sit down. His was the correct response. It was Sergeant Bignotti whose response was not correct.

Holeman: Very well. Ms. Liu, given that argument, given that argument, what's your position?

Liu: Your Honor, given that argument, it seems to me that the evidence of 1996 is being admitted by the defendant for something else other than showing bias against her.

Sassower: I –

Mendelsohn: Your Honor, perhaps I can make a suggestion that perhaps we can add to say that the evidence was admitted for various collateral purposes.

Sassower: What collateral?

Mendelsohn: Collateral purposes such as to show motive, opportunity, intent, which are things that the government is seeking to introduce.

In addition, the evidence was admitted to, to illustrate bias that the defendant claims existed. So if we can perhaps accommodate both interests in this very complicated Drew/Toliver analysis.

Holeman: Ms. Liu.

Liu: We would be fine with that, Your Honor.

...

Sassower: I would remind the Court that I was not permitted to testify as to the content of that 39-page May 21st fax reflecting my conversation with Detective Zimmerman and Officer Lippay with respect to the 1996 arrest.

Holeman: So noted...

...

Liu: Your Honor, I've now finished my proposed corrections to number [24]. I've handed it over to Mr. Goldstone and Ms. Sassower.

Sassower: I'd like it to reflect that, that my position was that there was no precedent for my arrest for simply requesting respectfully to be permitted to testify.

Holeman: Nobody cares what your position is at this point...

Ms. Liu thereafter noted disagreement by Sassower and Mr. Goldstone as to her proposed written change to this jury instruction, but that she could "pass it up". The following ensued [A-1316]:

Holeman: Very well, pass it up.

Sassower: It is unprecedented, unprecedented.

Holeman: Mr. Goldstone.

Goldstone: Yes, Your Honor.

Holeman: Since I asked you to be involved in this technical legal presentation here, is the language that is handwritten here, is this language that you felt would address the recommendation that you had met, made to me?

Goldstone: I do, Your Honor.

Holeman: Very well. Very well. The sentence will read as follows: That intro, in, evidence was introduced by the defendant for the purpose of showing the defendant's intent or any bias against her. All right.[14]

Sassower: That's not clear.

Holeman: Yes. Okay. Well, Ms. Sassower, please sit down.

Judge Holeman's Exclusion of the "Defense Theory of the Case" from His Jury Instruction

While the jury instruction of "Evidence of Acts Not Charged in the Information" had yet to be resolved, Judge Holeman noted that he had received a "handwritten defendant's theory of the case", which he had not read, and requested Mr. Goldstone to read two specific paragraphs [A-1308-9]. These two paragraphs were

> "Ms. Sassower, a citizen with a strong, a citizen with a strong interest in judicial nominations and who is co-founder and coordinator of a non-profit named Center for Judicial Accountability, respectfully asks the presiding chairman, Senator Chambliss, following adjournment of the Senate Judiciary Committee hearing on May 22nd 2003, whether she would be allowed to testify at that public hearing."

and

> "A citizen's respectful request to testify following adjournment of the public hearing is not disorderly and disruptive conduct as it does not hinder or interfere with the peaceful conduct of government business."

Judge Holeman asked the prosecution whether it had any objection. Ms. Liu objected:

---

[14] Judge Holeman's reading of the instruction to the jury appears at A-1350.

"This is the first time that we're seeing this. We haven't had a chance to fully look it through. We haven't had a chance to come up, you know, including writing our own theory of the case. And there's absolutely nothing in this document that Ms. Sassower or Mr. Goldstone cannot address in argument. What this is is a written version of Ms. Sassower's closing argument."

The following colloquy then ensued [A-1310]:

Goldstone: Your Honor, I need[ed] to address. The defense, the defense testimony, cross-examination just concluded.

We were adjusting the defense theory of the case dependent on the Court's complicated rulings with respect to complicated evidentiary matters and exhibits.

Sassower: Excuse me. I, excuse me. I do not authorize –

Holeman: I don't care what you authorize.

Sassower: -- my legal advisor to speak –

Holeman: I'm, I –

Sassower: -- because that's not my position.

Holeman: Well. I'm giving –

Sassower: There is nothing complicated about this case.

Holeman: Ma'am?

Sassower: This case should have been resolved without trial –

Holeman: Ms. Sassower, --

Sassower: -- because it needed to be thrown out on the papers.

Holeman: Ms. Sassower, would you like to be stepped back or would you like to sit down?

Sassower: You are not authorized to speak.

Goldstone: Understood.

Holeman: Very well. Mr. Goldstone?

Goldstone: Yes, Your Honor.

Holeman: Continue. If this theory of the case is going to be in any way entertained by this Court, I want you to explain it to me now and I'm ordering you to do so.

Mr. Goldstone recited the prefatory paragraphs of his handwritten "defendant's theory of the case", which reiterated the three elements from Judge Holeman's "Elements of the Offense" [A-1403]. Judge Holeman then turned to Ms. Liu. She accepted the prefatory paragraphs as they "simply address[] the elements of the offense", but "took issue" with the two paragraphs Mr. Goldstone had previously read and "particularly", the paragraph reading, "a citizen's respectful request to testify following adjournment of a public hearing is not disorderly and disruptive conduct". She stated, "I think that's an argument of law. It's certainly not well established that that's the case." [A-1313]. To this Judge Holeman remarked, "I believe that Ms. Liu's point is well taken" and ruled that those two paragraphs would "not be given to the jury as an instruction in the defendant's theory of the case." [A-1314][15]. Mr. Goldstone noted an objection for the record – to which Judge Holeman answered, "You have and it is preserved" [A-1314]. An exchange between Sassower and Judge Holeman followed [A-1314]:

Sassower: And I'd like to just clarify that the proposition, as stated by me, was considerably stronger than that stated by Mr. Goldstone.

Holeman: Well, that's because Mr. Goldstone is an officer of the court and understands –

Sassower: Ah –

Sassower: -- what he's doing. Ms. Sassower, I don't care what your proposition is. I don't want to hear from you at this time. Please be seated...

---

15 Judge Holeman's recitation to the jury of "[t]he defendant's theory of the case" appears at A-1348-9.

Judge Holeman's Ruling on Exhibits that Could Go Before the Jury

Judge Holeman also ruled on exhibits that could go before the jury – most of these being exhibits about which Sassower had been unable to testify by reason of his aborting of her testimony [A-1317-25]. He ruled that Sassower's April 23, 2003 package to Senator Clinton [A-1476], which he had initially allowed prior to her testimony, was not coming into evidence [A-1318-9]:

> Sassower: Why is that, Your Honor?
>
> Holeman: Well, the content of those documents pertaining to the specifics of your reasons for having this specific judge disqualified.
>
> Sassower: It shows the serious and substantial nature of my presentation.
>
> Holeman: Very well.
>
> Sassower: As to which there needed to be findings of fact and conclusions of law by counsel at Senator Clinton's office, by the Senate Judiciary Committee, by Senator Schumer's office.
>
> Holeman: Your record's made. It's not coming in.

Judge Holeman also excluded Sassower's April 23, 2003 coverletter to the package [A-1474]– notwithstanding his initial indication that it was admissible based on his belief that Ms. Eve had a recollection of it and that he had "allowed inquiry based upon that recollection" [A-1321]. The colloquy with respect to this exclusion was as follows [A-1322-3]:

> Holeman: ....My ruling is that this will not come in. I've reviewed it. And certainly it would be, if this were a true cover letter simply identifying the documents contained therein, I would have, I'd hear argument. But I would be more inclined to have the jury review this.
>
> This document contains a page and a half of statement of opinion by Ms. Sassower as to matters such as the, and I'm quoting here, 'documenting their grotesquely inadequate where not outrightly fraudulent judicial ratings'. That type of reference –

Sassower: It was sent to you by the government that's part of the packet that you have excluded.

Holeman: Right. And the packet's not coming in and neither is the –

Sassower: Well, --

Holeman: Exhibit Number 12.

Sassower: Well, that's a substantiation of what the American Bar Association and the City Bar –

Holeman: Very well.

Sassower: -- had been doing –

Holeman: Next.

Sassower: -- with their judicial ratings.

Holeman: Very well. The, Exhibit 38 will come in, Exhibit 12 will not. Next...

Sassower's April 19, 2004 Motion for Judgment of Acquittal

After assembling the exhibits, Judge Holeman announced that the jury would be called, that Sassower would be resting her case, and that he would charge the jury. This, without asking Sassower whether she had a motion for judgment of acquittal. He then cut her off from developing that motion and -- following Mr. Mendelsohn's opposition, which was non-responsive to what she had to say -- denied the motion with similarly non-responsive boilerplate [A-1325-30]:

Holeman: ...When we resume in 10 minutes, we'll call the jury in, the defense will rest its case and we will then begin with my-

Sassower: Excuse me.

Holeman: -- charging the jury.

Sassower: I have a motion, as is my right.

Holeman: Very well.

Sassower: And may the record reflect that the Court is resting for me. I do not rest, as I was precluded, prevented from giving direct testimony from the stand as to the crucial facts pertaining to this –

Holeman: What is your motion?

Sassower: -- bogus, malicious –

Holeman: What is your motion?

Sassower: I –

...

Sassower: Again, I make a motion for judgment of acquittal for this case which fails as a matter of law. The evidence now resoundingly shows that the Senate Judiciary Committee hearing was adjourned.

That at issue is a public congressional hearing at which a respectful request was made to testify. That is consistent with what a hearing is supposed to be about.

Holeman: The question –

Sassower: The taking –

Holeman: The question –

Sassower: --and receiving of testimony.

Holeman: The question for purposes of your motion is whether or not a reasonable fact finder could find proof beyond a reasonable doubt. That is your argument. There is the scope of it and make the argument now.

Sassower: Well, there is no precedent and none has been shown of another case where a citizen's respectful request at a public congressional hearing has resulted in an arrest. This, the, you not only have no act of disruption.

The whole idea that a respectful request at a public hearing to testify is disruption is an anathema, cannot be. And you have no appearance here by the complainant, Senator Chambliss, in support of this prosecution.

Apparently no one at the Senate Judiciary Committee is willing to put their name to such a proposition that a respectful request to testify at a congressional hearing is disruption of Congress.

Now, there is no evidence in the record that I intended anything but to respectfully and appropriately request to testify, which is what I did.

And that intent is clear as a bell stated over and again and most particularly in the 39-page May 21st fax to, to Capitol police, copies of which went to the Senate Judiciary Committee, to Senator Schumer, Senator Clinton.

Holeman: What's your next point, Ms. Sassower?

Sassower: Okay. Again –

Holeman: No.

Sassower: There is no sign at the Senate Judiciary Committee – don't even think about requesting to testify. There is no presentation of any rules or regulations as relates to requests to testify at a public hearing.

And there is no, there is evidence that I inquired as to the rules and procedures and none were forthcoming.

Finally, again critical to this charge is that when someone claims the right to speak in a public place, the crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.

Again, we are talking about a public congressional hearing, hearing.

Holeman: Very well.

Sassower: And –

Holeman: Very well. I've heard enough.

Sassower: -- consistent with the –

Holeman: Please be seated.

Sassower: -- purpose of a hearing.

Holeman: No, excuse me. We're done. Mr. Mendelsohn.

Mendelsohn: Your Honor, viewing the evidence in the light most favorable to the government, as the Court must do at this time, we believe the evidence more than sufficiently shows that a reasonable mind could find beyond a reasonable doubt that the defendant committed the offense of disruption of Congress on May 22nd 2003.

Holeman: Very well. The standard for ruling on a motion for judgment of acquittal, as I previously stated for the record, is set forth in Curley vs. United States, 81 U.S. App. D.C. 389, 160 F.2d 229, page 232. It's a 1947 case.

Simply put, the standard is as follows: If there is no evidence upon which a reasonable mind might conclude guilt beyond a reasonable doubt, the motion must be granted.

In reviewing the facts of this case in the light most favorable to the government, as the Court must do in such a motion, certainly there has been the

presentation of evidence from which a reasonable fact finder could find guilt beyond a reasonable doubt.

On that basis, the motion for judgment of acquittal is denied.

Judge Holeman then confirmed with Ms. Liu that the prosecution's closing and rebuttal was estimated to be about 20 minutes. Upon asking Sassower her estimated time for her closing, she stated, "I don't know. I haven't been able to even present the direct case from the stand". He thereupon gave her 20 minutes [A-1330].

Judge Holeman's Curtailment of Sassower's Closing Statement

Judge Holeman interrupted Sassower's closing statement [A-1366-76] mid-sentence with the words "Time, Ms. Sassower". He then told her to "be seated" – to which she responded, "Five minutes." His answer, "No, please be seated." [A-1377]. He then turned to Ms. Liu for rebuttal. Immediately thereafter, at 4:44 p.m., Judge Holeman sent the jury to begin their deliberations, returning it to the courtroom 15 minutes later and adjourning until the following day.

Jury Deliberations: April 20, 2004

On April 20, 2004, there were two notes from the jury. The first from juror #13 stated:

> "In reviewing the exhibits, there is a reference to a 'Luke Alby', who works for Senator Leahy. Although he is not a friend of mine, he is a neighbor. During voir dire it was not clear to me that having such a neighbor would be problematic. Is this a problem?" [A-1388, 1390]

The second note, also from juror #13, was for the jury to seek the videotape again – and led Judge Holeman to infer that juror #13 was the foreman [A-1388-9].

As to the first note, Judge Holeman called in juror #13 who stated that he could be fair and impartial and that he'd "never spoken to [Mr. Alby] really." The colloquy between Judge Holeman and Sassower was as follows [A-1392]:

Sassower: I believe this is the same juror whose wife was seeking a position with either the Senate or House Judiciary Committee, legal counsel. We want to just inquire on that.

Holeman: No, because that has no bearing on the reason that this question was brought to us. We dealt with the issue of this tenuous employment application relationship previously. That was dealt with in the initial voir dire.

This is a separate matter, separate issue; it will be dealt with separately. And I am certainly not going to go back into matters that have previously been disposed of. That being the case, we will keep juror 13 on. There won't be any disturbing of his service."

The jury returned to the courtroom at 10:35 to view the videotape. Three minutes later, at 10:38, it returned to the jury room. At 11:16, a note, signed by juror #13, stated that the jury had reached a verdict. The jury then returned to the courtroom and the foreperson, juror #13, read the guilty verdict [A-1393-4].

Sassower's April 20, 2004 Oral Motion to Set Aside the Verdict as Against the Weight of Evidence and Contrary to Law

Upon Judge Holeman's announcement that he would not render sentence that day and would entertain proposed dates, Sassower interjected, "I move to set aside the jury verdict as against the weight of evidence and contrary to law". [A-1397]. Judge Holeman did not respond other than to state she could file a motion "within the time limit prescribed."

With regard to sentencing, Mr. Goldstone stated that he assumed that Judge Holeman would order a presentence investigation. Judge Holeman asked Ms. Liu if there was a pretrial report. She responded that she believed there was one from almost a year earlier. Judge Holeman then stated "Based on this record, I don't need a presentence investigation, so I don't need seven weeks prior to sentencing." [A-1398]. Sentencing was thereupon scheduled for Tuesday, June 1, 2004. The colloquy that ensued was as follows [A-1399-1400]:

Sassower: If Your Honor would wish to sentence me now, that will be fine.

Holeman: Well, --

Sassower: I have no objection. This matter is going up on appeal and could not be sustained.

Holeman: Very well. Well, while you're getting your appeal ready, just be back here for sentencing. Give her a warning please.

Clerk: Ms. Sassower, if you fail to – there's no presentence investigation?

Holeman: No.

Clerk: If you fail to appear for sentencing, failure to appear for sentencing is a felony offense. If you are convicted of felony failure to appear –

Sassower: Could we have sentencing now?

Clerk: Just a minute.

Sassower: -- or not?

Holeman: Hey, do you want to step back? Be quiet while you receive your warning.

...

Sassower: I'd like the transcript immediately.

Holeman: This matter is, is now adjourned. Ms. Sassower, you won't disrupt this courtroom again or I'll have the marshal step you back. Keep your mouth shut and leave my courtroom once you're through signing your notice.

Presentence Proceedings

D.C. Court Services' May 28, 2004 Presentence Report, the Prosecution's June 1, 2004 Memorandum in Aid of Sentencing, and Judge Holeman's Belated Acknowledgement of Sassower's Rights Pursuant to D.C. Superior Court Criminal Rule 32(b)(3)(A)

Approximately two weeks later, on or about May 5, 2004, Judge Holeman ordered a presentence report from the Court Services and Offender Supervision Agency for the District of Columbia, which assigned it to Erika Westry. By 11:35 a.m. on May 28, 2004, Sassower had not received a copy of the presentence report and faxed Judge

Holeman a letter [A-1678] requesting a postponement of the June 1, 2004 sentencing until such time as she had received and had adequate opportunity to review it with Mr. Goldstone, who was then out of town for the Memorial Day weekend. She 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."

Sassower further stated that she had spoken to Ms. Westry the previous afternoon, who had assured her that the report would not be finalized until Sassower had spoken with her supervisor, Karen McDaniel, "concerning matters that had arisen with respect to the report's content and [her] rights". Sassower recited that she had left four separate telephone messages for Ms. McDaniel, all unreturned – and that Ms. Westry had also not returned her subsequent telephone messages.

Within minutes, Ms. Westry's 18-page presentence report [A-1601] approved by Ms. McDaniel [A-1603, 1618], was faxed by Judge Holeman's chambers. Its section entitled "THE OFFENSE" [A-1603] directly quoted Officer Jennings' arrest report (PD 163) [A-85], although without identifying such fact. This was followed by a section entitled "U.S. ATTORNEY'S STATEMENT" [A-1603], whose single sentence was "AUSA Jessie Liu reserves commentary for sentencing". As for "DEFENDANT'S STATEMENT" [A-1603], the report noted that Sassower had "submitted an 8-page memo" which was being excluded as it "detailed the events of the Court proceedings" and "various injustices experienced during the trial proceedings" [A-1604]. It identified, however, that "excerpts" from Sassower's July 7, 2003 memo to the ACLU [A-1565] were being included. These "excerpts", filling nearly eight pages of the report [A-1604-

1611], consisted of Sassower's analysis of Officer Jennings' arrest report and the other underlying prosecution documents, showing, by comparison to the videotape and transcript of the May 22, 2003 Senate Judiciary Committee hearing [A-1549], that they were "knowingly and deliberately false and misleading"[16]. The report also included a section entitled "VICTIM IMPACT STATEMENT" [A-1611] which, although remarking that "A Victim Impact Statement is not applicable in this matter", stated:

> "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." [A-1612].

Under the section entitled "EVALUATIVE SUMMARY" [A-1617], the report noted that Sassower had been "arrested in 1996 for a similar charge although that case was nolled" and in 1993 had been convicted of obstructing government in North Castle Town Court and conditionally discharged. It then stated:

> "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 selection – The Center for Judicial Accountability (CJA). The defendant serves as co-founder and coordinator of the non-profit, non-partisan 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 the documents listed on the website, as well as the 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 denies any wrongdoing stating that the account of what transpired is bogus...
>
> It is clearly evident that the defendant remains steadfast in her tireless efforts. As she feels she has been unfairly persecuted, she has taken extreme

---

[16] It was from this July 7, 2003 memo [A-1565] that Sassower's written analysis of the video [A-1574] to which she referred in her April 16, 2004 motion for judgment of acquittal [A-1027-1032] and thereafter read from on the witness stand [A-1246-49; 1265-7] was taken.

measures to document and expose every element of the judiciary as evidenced by her website..."

The report concluded with a one-sentence "INTERVENTION PLAN" [A-1617] that "Appellant shall perform community service" and a single-word "RECOMMENDATION" of a "Fine" [A-1618].

Three hours later, without any response to her adjournment request, Sassower faxed a second letter to Judge Holeman [A-1681], setting forth the legal authority she believed substantiated her request for adjournment, D.C. Superior Court Criminal Rule 32(b)(3)(A). Sassower stated that unless Judge Holeman disputed her entitlement to an adjournment thereunder, her unopposed request should be granted. Nearly two hours later, with no response from Judge Holeman, Sassower faxed him a third letter [A-1684], enclosing the purported "8-page memo" that the presentence report had excluded, *to wit*, her 6-page May 25, 2004 letter to Ms. Westry. Bearing a RE: clause, "'DEFENDANT'S VERSION' for Inclusion in Pre-Sentence Report", the letter [A-1685] highlighted Judge Holeman's exclusion of Officer Jennings' arrest report into evidence, as well as his other rulings that had resulted in her being "wrongfully convicted". Again, there was no response from Judge Holeman -- necessitating that she travel from New York to Washington for the June 1, 2004 sentencing.

On June 1, 2004, shortly before the case was called, Sassower was handed the prosecution's "memorandum in aid of sentencing" [A-1619]. The memorandum did not deny or dispute the accuracy of her "DEFENDANT'S STATEMENT" in the presentence report nor the accuracy of the recitation of fact and law in Sassower's excluded May 25, 2004 letter to Ms. Westry. Nonetheless, it recommended "five days of incarceration, all suspended, and six months of probation conditioned on completion of an anger-

management course" [A-1619]. This, because Sassower showed "no remorse whatsoever for her actions" [A-1620], was "not a first time offender" and, therefore, should receive "A harsher sentence" than the "conditional release" of her 1994 conviction [A-1621], and because "the evidence at trial" and "her post-trial correspondence" purportedly showed that Sassower was "an angry individual who could benefit from anger-management treatment." [A-1621].

Upon the case being called, Judge Holeman announced "we are here for sentencing" [A-1624]. Without acknowledging Sassower's faxed adjournment requests, he allowed Ms. Liu to be heard as to sentencing [A-1624]. Sassower thereupon handed up a hard copy of her May 28, 2004 faxes and reiterated her request for adjournment [A-1626].

Judge Holeman then required Sassower to orally particularize "errors of the presentence report that would warrant grant of additional time for [her] response" [A-1628]. Neither Mr. Mendelsohn nor Ms. Liu responded, except to defer to Judge Holeman as to the continuance – which Judge Holeman then granted to June 28, 2004 based on the very same rule provision as Sassower had cited and quoted in her second May 28, 2004 fax. [A-1635-6, 1681]. In so doing, Judge Holeman discounted the significance of the errors in the presentence report that Sassower had orally identified [A-1636-8]. This, after having interrupted, as if insignificant, Sassower's assertions that the U.S. Attorney's memorandum in aid of sentencing was "a document for which the U.S. Attorney's Office should be sanctioned", including by a "disciplinary referral", because "it is a false document" and that if she were not given time to respond to it, it should be rejected [A-1633-4].

Sassower's June 28, 2004 Affidavit Commenting Upon and Correcting D. C. Court Services' May 28, 2004 Presentence Report & in Opposition to the Prosecution's June 1, 2004 Memorandum in Aid of Sentencing

On June 28, 2004, before the call of the case, Sassower provided Judge Holeman's law clerk, as well as to the prosecution, with her "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" [A-1641]. Consisting of 35 pages, it detailed that the presentence report, although highly favorable to her, was rife with errors. Sassower attributed this to the fact that it had been completed in less than half the seven weeks that is normal for presentence reports [A-1654: ¶31]. Moreover, by particularizing the conduct of Ms. Westry and Ms. McDaniel in connection with the report, she questioned whether D.C. Court Services was independent, rather than "protective", of the Court [A-1653: ¶29].

As to the exclusion of her May 25, 2004 letter [A-1685] from the presentence report, Sassower pointed out that her July 7, 2003 memo to ACLU [A-1565] – whose relevance the presentence report had recognized by replicating virtually its entire content [A-1604-1611]-- had been an enclosure to the letter and that the letter itself explained

> "why, in the 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." [A-1649: ¶20].

She asserted:

> "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 fundamentally unfair trial." [A: 1649: ¶21].

Sassower further pointed out that she had requested that the presentence report "include a recommendation for a stay pending appeal" and that:

> "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. [A-1652: ¶26].

Sassower also noted that although the presentence report had not identified the basis for her request that Senator Chambliss be contacted, she had not only discussed this with Ms. Westry, but had set it forth clearly in her May 25, 2004 letter [A-1689-90], *to wit*, that Senator Chambliss was the "complainant" according to the underlying prosecution documents Sassower stated that to the extent Ms. Westry was expected to contact the "complainant", Senator Chambliss' statement was a necessary component to the presentence report -- and all the more so because he had chosen not to testify at trial and Judge Holeman had quashed her subpoena for his testimony. Moreover, it was her position – made known to Ms. Westry – that Capitol Police had "no authority to arrest [her] for respectfully requesting to testify at the Senate Judiciary Committee hearing unless so-directed to arrest[] [her] by the Presiding Chairman." [A-1657].

Sassower described that she had sought to ascertain whether Judge Holeman had received any statement from Senator Chambliss. She had sent Judge Holeman a June 24, 2004 fax with such inquiry [A-1701], but had received no response from him – nor from any of the fax's other indicated recipients: Senator Chambliss, Ms. Westry, Ms. McDaniel, Mr. Mendelsohn, Ms. Liu, and Mr. Vinik [A-1702]. Sassower had also independently sought comment from Senator Chambliss, as likewise from Chairman Hatch, Ranking Member Leahy, and Senators Clinton and Schumer. By a May 28, 2004

memorandum to them [A-1696], she had called upon them to deny or dispute the material facts, "corroborative of [her] innocence", set forth in her published Letters to the Editor in Roll Call and the New York Law Journal [A-1692, A-1694] and to respond to the question her Roll Call Letter had publicly posed, namely, "how much jail time they deem[ed] appropriate" for such "concocted crime". Sassower stated that she had received no response from the Senators – to whom she had also sent a follow-up June 24, 2004 memorandum [A-1703].

As for the presentence report's "EVALUATIVE SUMMARY", Sassower noted [A-1661] that she had fully explained to Ms. Westry that her 1996 arrest was "NOT a similar charge" – and that it was an "unfair and misleading simplification" for Ms. Westry to have stated that the charge had been "nolled".

As for its "INTERVENTION PLAN", Sassower pointed out [A-1661-2] that the presentence report did not explain why "community service" was appropriate or what it should consist of. Sassower asserted that she was already engaged in "full-time 'community service'" by her "non-partisan championing of meaningful and effective mechanisms of judicial selection and discipline" – as should have been obvious to Ms. Westry. She then stated:

> "Nonetheless – 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:
>
> > '...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]. 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)" [A-1662]

Sassower identified [A-1662] that she had received no response from the Senators – nor from the U.S. Attorney's Office or Senate Legal Counsel, to whom she had sent copies [A-1703, 1705].

As to the "RECOMMENDATION" of a "fine", Sassower noted [A-1662-3] that the presentence report did not explain why a "fine" was appropriate or what amount. She further remarked that no purpose would be served by a fine and that the record before Ms. Westry made obvious that she had already expended vast sums of money in defending herself and "upholding fundamental citizen rights against this bogus and malicious charge".

With regard to the prosecution's memorandum in aid of sentencing [A-1619], Sassower asserted that it was "not only knowingly false and misleading, but altogether unethical in urging a sentence where it has made NO representation that [she had] had due process". She stated [A-1642: ¶4] that Mr. Mendelsohn and Ms. Liu's own personal knowledge of the truth of the essential facts and evidence presented by her May 25, 2004 letter [A-1685] made the memorandum "all the more sanctionable" and reinforced her entitlement to sanctions and disciplinary and criminal referral of the U.S. Attorney's Office, which she had "demonstrated time and again throughout this litigation".

Sassower pointed out that although she had demanded that the prosecution's sentencing recommendation be informed by the Senators' responses to her May 28, 2004

memorandum to them, its memorandum in aid of sentencing did not so-indicate. She also asserted that if all the prosecution had been seeking upon her conviction was 'five days of incarceration, all suspended, and six months of probation conditioned on completion of an anger-management course" – 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." [A-1664: ¶39]

She stated:

> "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" and that that this inquiry appears on a form entitled, 'MISDEMEANOR STATUS HEARING FORM' [ ] – a copy of which had been 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 [fn]." [A-1665: ¶40; A-1706].

Sassower asserted [A-1664-75] that it was all the more sanctionable for the prosecution to object that she showed "no remorse" and did not acknowledge that her actions were "in any way wrong", where its memorandum in aid of sentencing had not denied or disputed the accuracy and significance of ANY of the facts and evidence presented by her May 25, 2004 letter to Ms. Westry [A-1685] and by her May 28, 2004 memorandum to the Senators [A-1696] to establish that she had been wrongfully charged and convicted. She also demonstrated the untruth of each of the memorandum's claims in support of its sentencing recommendation – including as to her 1994 conviction in North Castle Town Court and that she had an "anger management problem".

June 28, 2004 Sentencing

Upon the case being called on June 28, 2004, Judge Holeman noted that sentencing had been continued from June 1st "at the request of Ms. Sassower", that the U.S. Attorney had filed its sentencing memorandum, that Ms. Liu had made argument with respect thereto and that "what remains is Ms. Sassower's statement" [A-1712]. Sassower thereupon clarified that the continuance was in deference to her right to review and comment upon the pre-sentence report and the prosecution's memorandum – and that she had now submitted a 35-page affidavit with respect to them [A-1641]. She stated, "At the outset, I think it is important to emphasize that neither Court Services nor the Government, represented by the U.S. Attorney's Office, feel that incarceration [is warranted]. They do differ as to their recommendations, and I will address that as follows. Is that what you wish your Honor?" [A-1713]. Judge Holeman responded by telling Sassower that she would have "about four minutes with this" [A-1713, lns. 17-8] and that "we need not have a reiteration of the lengthy affidavit that you filed. That matter is made of record, it's been reviewed and the question from the Court is whether there is anything you wish to add to that." [A-1714].

Sassower summarized her affidavit as having demonstrated that the prosecution's memorandum in aid of sentencing was "throughout, false and misleading, as well as unethical in urging a sentence where it has made no representation that [she had] had due process" and that both Mr. Mendelsohn and Ms. Liu personally knew, from the trial as well as from the pretrial proceedings, that she had been "denied due process...railroaded to trial...wrongfully convicted" [A-1714]. She pointed out that notwithstanding they recognized that she was "unrepentant" and "not remorseful", the prosecution's

memorandum had not recommended that she be jailed. In this regard, she highlighted the incongruity of the prosecution having "wasted tens of thousands of taxpayer dollars" on the case, "never once offering a plea here when the end game, as they knew, was not going to be any jail time." [A-1714-5].

Sassower noted that although Ms. Westry hadn't given any explanation why "community service" was appropriate and notwithstanding her public interest work was already full-time "community service", she had made a counterproposal to the Senators. This, "to be accommodating and to constructively move forward, if the Court is inclined to that particular recommendation, notwithstanding it is not substantiated" [A-1717]. Sassower identified that her June 24, 2004 memorandum to the Senators [A- 1703] had stated "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" [A-1717]. Judge Holeman thereupon interjected that "the senators really have no responsibility to you to respond", following which Mr. Mendelsohn asked to approach the bench. The transcript does not record what Mr. Mendelsohn said, except that it was "indiscernible" [A-1718]. His words were to the effect that he had been informed that Senate Legal Counsel takes "no position" or has "no opposition" [A-1779][17].

Judge Holeman then proceeded to question Sassower as to the number of hours she worked each week as CJA's coordinator. Following her response that she worked "24/7" and that her work was evidenced by all she had done and was so-reflected by the presentence report [A-1718], Judge Holeman turned to questioning her as to the disposition of the 1993 charge heard in North Castle, New York. Sassower answered that

---

[17] This was the subject of Sassower's June 13, 2005 letter to AUSA Mendelsohn and Liu [A-1773] -- to which no response has been received [A-1784].

this was "reflected in the presentence report" and that to the extent it was not, the report was "deficient" [A-1719].

Judge Holeman thereupon announced he was "ready to impose sentence". The colloquy was as follows [A-1720-2]:

Sassower: May I just add something, please?

Holeman: Very briefly.

Sassower: Yes. We are all familiar with what took place on May 7th with the Senate Armed Services Committee hearing at which Donald Rumsfeld testified because, among other things, there were protesters in the back that unfurled a banner and shouted out for Defense Secretary Rumsfeld to be fired.

What is not well known, at all, is that with their disruptive conduct, they were not arrested. Now it has come to my attention that not only were they not arrested for disruptive conduct, but apparently there have been other incidents at committee hearings where individuals have interrupted questioning, engaged in colloquy with witnesses while they were testifying, even to the extent of accusing a witness of being a state terrorist or so considered by the people of Honduras."

Holeman: I'm ready to pronounce sentence.

Sassower: The point I'm trying to make is –

Holeman: You've had ample opportunity to make your point.

Sassower: -- they were not arrested for –

Holeman: Please be quiet.

Sassower: -- conduct during a hearing.

Holeman: Please be quiet. I'm about to impose sentence. Very well. Sentence will be as follows:

Ms. Sassower, I'm sentencing you to 92 days; I'm going to give you credit for any time served in this case. I'm going to suspend execution as to all remaining time.

I will place you on two years probation. During the probationary term – well, let me backup then before I get into the probationary term.

You will pay a $500 fine, within 30 days of the sentencing date, so that's within 30 days of today.

You will pay $250 to the Victims of Violent Crimes Compensation Fund within 30 days of today." [underlining added].

To this latter assessment, Sassower interjected and the colloquy was as follows [A-1722]:

Sassower: Who is the victim of the violent crime? Where is the violent crime?

Holeman: It's a mandatory assessment, Ms. Sassower.

Sassower: I was told –

Holeman: It's a mandatory assessment.

Sassower: But this is not a violent crime.

Holeman: It doesn't matter. You're a convicted misdemeanant, be quiet while I complete this order.

Judge Holeman then proceeded to set forth "general terms of probation" – including a requirement that Sassower "abstain from illegal drug use" and accept "graduated sanctions that may include brief periods of residential treatment in the event of illegal drug use or other violations of conditions of probation"; requirements that she "notify [her] probation officer of any change in...address within 48 hours" and obtain his permission "if [she] plan[ned] to leave the jurisdiction of [her] residence for more than two weeks" [A-1722-3]. Judge Holeman then added the following additional terms: a requirement that Sassower keep daily time records, "to the nearest tenth of an hour" of her employment as CJA's coordinator to prove she was working a minimum of 40 hours weekly, with a warning that "block entries are not acceptable" [A-1723]; a requirement that she perform 300 hours of community service – not to be satisfied by CJA work or related activities: 200 of these hours in New York, with 100 in D.C., broken down into 25 hours every six months [A-1723-4]; a requirement that she submit to "substance abuse, medical and mental health assessments" for each year of probation and compliance with

"any testing or treatment regiment determined appropriate" by D.C. Court Services or its reciprocal New York entity [A-1724]; a requirement that she undergo "anger management therapy" for every six-month period, with its form, setting, and duration during each six-month period determined by D.C. Court Services or its reciprocal entity [A-1724].

Upon Judge Holeman's reciting a further requirement that Sassower stay away from the U.S. Capitol Complex – consisting of 15 separate buildings including the Supreme Court and Capitol Power Plant, for which "maps are provided herewith" [A-1724] – she interjected. The colloquy was as follows [A-1726]:

Sassower: Excuse me. May I say something?

Holeman: No. Don't interrupt me again.

Sassower: Will I be able to speak afterwards?

Holeman: Well you may not. Be quiet while I complete this.

Judge Holeman noted that Sassower would be prohibited from accessing two metro stops within the forbidden Capitol Complex area. [A-1726]. He then went on to the following requirement: that Sassower have "no verbal, written, telephonic, electronic, physical or other contact" with Senators Clinton, Schumer, Hatch, Leahy, Chambliss – and their staff members Ms. Luzzatto, Ms. Eve, Mr. Albert, Mr. Tobman – Judge Wesley, Officer Jennings, Special Agent Lippay, Detective Zimmerman, and Sergeant Bignotti. Since Senators Clinton and Schumer were Sassower's own senators, Judge Holeman allowed a relaxation of the restriction as to them, barring her from referencing "events giving rise to, resulting in, or consequent to, [her] arrest of June 25, 1996 and [May] 22, 2003" – with a

warning that "any facially legitimate contacts may be scrutinized for cause and if found to be pretextual, will constitute a violation of [her] probation." [A-1726-7].

Judge Holeman then continued with another requirement – as to which Sassower also interjected. The colloquy was as follows [A-1727-8]:

> Holeman: "Finally, letters of apology. Within 30 days of today, you shall prepare and forward to Senators Hatch, Leahy, Chambliss, Schumer, Clinton and to Judge Wesley letters of apology which stated the fact of your conviction for violation of D.C. Code Section 10-503.16(B)4 and your remorse for any inconvenience caused –
>
> Sassower: I am not remorseful and I will not lie.
>
> Holeman: And your remorse for any inconvenience caused by your actions. Copies of these letters must be sent to me, the presiding judge.
>
> Sassower: They will not be sent because they will not be written.
>
> Holeman: Be quiet. Any effort to communicate additional information will constitute a violation of your probation.
>
> Now, Ms. Sassower, in this jurisdiction, when a convicted criminal is given probation –
>
> Sassower: Wrongfully convicted.
>
> Holeman: When a convicted criminal is given probation, they must accept the probation. The question is simple. Do you accept the terms of the probation as they have been expressed during my presentation to you?
>
> Ms. Sassower, the answer is either yes or no. Do you accept the terms of the probation as I have stated them to you?
>
> (Pause)
>
> Sassower: I am requesting a stay of sentence pending appeal. This case will be appealed.
>
> Holeman: Ms. Sassower, the answer is yes or no. Do you accept the conditions of your probation?
>
> Sassower: No.
>
> Holeman: Very well. Then sentence is imposed as follows:
>
> You are sentenced to six months incarceration.

You will pay, within 30 days, following your incarceration, $500 as the fine that attaches to the penalty -- to the offense for which you've been convicted.

You will also pay, within 30 days, following your incarceration, the $250 compensation – contribution to the Victims of Violent Crimes Fund.

Ms. Sassower, once again, your pride has gotten in the way of what could have been a beneficial circumstance for you. This incarceration begins forthwith; step her back."

Sassower was then locked up – but thereafter brought back into court because Judge Holeman had failed to give her notice of her "right to appeal" [A-1729]. By then, Mr. Mendelsohn and Ms. Liu had gone – and a different Assistant U.S. Attorney stood in. Upon Judge Holeman's informing Sassower of her appeal rights, she asked whether he would "consider staying sentence pending appeal?" [A-1729]. His reply:

> "No. To do so would show you favorable treatment that I have not in the past shown any other convicted criminal defendant in this courtroom and I won't start that practice now. So you may step back." [A-1730].

Sassower's Post-Sentence Motions to Judge Holeman & His November 22, 2004 Order

On September 23, 2004 – two days before Sassower would have been released from incarceration under the original 92-day sentence – *pro bono* counsel on her behalf made an "Unopposed Emergency Motion for Defendant's Release to Preclude Mootness of Appellate Issue"[18] [A-1732]. The "substantial legal issue" sought to be preserved for appeal was "whether a sentence in excess of the 92 days initially announced is lawful" [A-1736]. Notwithstanding the motion was unopposed, Judge Holeman denied it, without reasons, by order dated September 24, 2004 [A-1738].

On October 26, 2004 -- following this Court's denial of an unopposed emergency appeal of Judge Holeman's September 24, 2004 order – Sassower's counsel returned to

---

[18] Such motion followed upon this Court's September 23, 2004 order denying, "without prejudice to refiling in the Superior Court", a near identical motion by Sassower's counsel.

Judge Holeman with a motion "to correct an illegal sentence" pursuant to D.C. Criminal Rule 35(a) and D.C. Code §23-110(a) [A-1729]. The motion challenged the legality of his "doubling of an announced criminal sentence from 92 days to 180 days" upon Sassower's declining to consent to probation [A-1743]. Expressly preserving "the full panoply of [Sassower's] challenges to both the conviction and sentence" [A-1744], it presented four constitutional and statutory arguments:

> (1) that requiring Sassower to write the apology letters was unconstitutional under the First Amendment and Due Process Clause of the Constitution in that it compelled her "to espouse a political view with which she did not agree" – for which the motion quoted Supreme Court decisions and cited two law review articles in substantiation [A-1748-52];
>
> (2) that because, under D.C. Code §24-304(a), it would have been unlawful for Judge Holeman to have sentenced Sassower to more than 92 days had she agreed to the probation requirement of letters of apology, but then failed to comply, it was, *a fortiori*, unlawful for him to have doubled her sentence for declining probation [A-1752-3];
>
> (3) that a defendant's right under D.C. Code §16-710(a) to decline probation is "meaningless" if, upon exercising that right, the judge can punish a defendant by increasing the sentence [A-1753-4];
>
> (4) that under D.C. Superior Court Rule 32(c)(2), it is unlawful for a judge to alter an orally pronounced sentence, where there are no new facts or circumstances other than that a defendant has declined probation, as at bar [A-1754].

Additionally, the motion stated:

> "D.C. Code §23-110 requires that unless the records of the case 'conclusively show that the prisoner is entitled to no relief' – a standard that we submit cannot be met in light of the constitutional and statutory arguments set forth above – the Court grant a prompt hearing on this motion and in ruling on the motion 'make findings of fact and conclusions of law with respect thereto' D.C. Code §23-110(c). We request such a hearing and such findings." [A-1754-5].

On November 9, 2004, the prosecution interposed opposition, signed by Mr. Mendelsohn [A-1756]. As to Sassower's constitutional argument that the apology letters

"would have required [her] to espouse a political view with which she did not agree", Mr. Mendelsohn countered that Sassower was simply being required "to apologize for her criminal conduct towards Congress" [A-1761]. He did not address Sassower's presentation of law and argument, other than to state, in a footnote [A-1760], that she had not cited "a single case from this jurisdiction" and that her argument was "meritless". Nor did he himself come forward with any case from the District of Columbia – or elsewhere – that such apology letters did not violate Sassower's constitutional First Amendment and Due Process rights.

Mr. Mendelsohn also did not address Sassower's argument pertaining to D.C. Code §24-304(a), Criminal Procedure Rule 32(c)(2), and D.C. Code §16-710(a), other than to state that her citations to these provisions was "misplaced" [A-1763] and "unavailing" [A-1763]. His essential argument – in a footnote [A-1763, fn. 2] – was that Judge Holeman had not in fact either imposed or announced any sentence until after Sassower had rejected probation – the 92-days having only been "offered" [A-1757]. He presented no legal authority for the proposition that a judge could "offer" probation without first announcing sentence.[19]

As to Sassower's request for a hearing pursuant to D.C. Code §23-110, Mr. Mendelsohn was completely silent.

---

[19] Such is belied by D.C. Code §16-760, interpreted by this Court in *Schwasta v. United States*, 392 A.2d 1071, 1073 (1978) as "permit[ting] the trial court to grant probation only after it has imposed a sentence and suspended it execution" (underlining added). Sassower brought such dispositive case to the prosecution's attention by her August 12, 2004 reargument/reconsideration/renewal motion, whose sixth branch of relief sought vacatur of the superseding six-month sentence (¶80). The prosecution's September 3, 2004 opposition to the motion not only did not deny or dispute the significance of *Schwasta*, but its "Procedural Background" section recited that Judge Holeman had "initially sentenced [Sassower] to 92 days' incarceration" (p. 2).

By order dated November 22, 2004 [A-10], Judge Holeman stated that Sassower's motion was "devoid of merit" and denied all relief, including a hearing. Acknowledging that Rule 35(a) provides for correcting an illegal sentence and that his doing so is not governed by any time limitation, Judge Holeman purported that the motion had presented "no *prima facie* showing that the sentence imposed was illegal within the application of Rule 35(a)" [A-11]. This, because the six-month sentence was within the statutory maximum. He further asserted, *sua sponte*, that there could be "no viable challenges to [his] jurisdiction to impose that sentence" [A-10-1].

Although Sassower's motion had not sought vacatur under Rule 35(a) to correct a sentence imposed in an illegal manner, Judge Holeman stated that it was not timely for such purpose – from which he went on to broadly assert, "the Motion must be denied on procedural grounds alone. There is no cognizable basis supportive of a grant of the relief Defendant requests under Rule 35(a)." [A-11]

As to Sassower's entitlement under D.C. Code §23-110(a), Judge Holeman asserted that she had failed "to make the required showing" [A-11]. He purported that "[her] claims that the imposed sentence is in violation of the Constitution or District of Columbia law are mere conclusory allegations, the authority cited inapposite and non-controlling, and the argument confusing" [A-11-2] – without providing a single example of what was "conclusory", "inapposite", "non-controlling" or "confusing". Instead, he characterized Sassower's motion – falsely -- as "in substantial part, a critique of the *proposed conditions* of probation presented to Defendant prior to the imposition of sentence."[A-12, italics in his order] – from which he asserted, "Clearly, Section 23-110 does not pertain to *proposed* conditions *rejected* by Defendant *prior* to imposition of

sentence." [A-12, italics in his order]. Completely obliterated – as if it did not exist – was the fact that prior to announcing probation conditions he had imposed upon Sassower a 92-day jail sentence – a fact not only established by the sentencing transcript [A-1722, ln. 1], but constituting the very basis for Sassower's motion [A-1743, 1745-6, 1752-54].

Although Sassower's motion had not sought relief under §23-110(a) for any reason having to do with Judge Holeman exceeding his jurisdiction in imposing sentence, or because the six-month sentence exceeded the legal maximum, Judge Holeman denied relief on those grounds, implying that she had. He further purported that "to the extent" she sought to classify her motion as a collateral attack pursuant to §23-110(a), such was unavailable to her, as it could only be predicated on a contention that the sentence was imposed in an illegal manner, which was time-barred.

Additionally, Judge Holeman misrepresented §23-110(e) as "expressly prohibit[ing] consideration of a second or successive motion for similar relief on behalf of the same prisoner." [A-12-3] and misrepresented Sassower's motion as "nothing more than a reiteration of issues" presented by her unopposed September 23, 2004 motion for release to preclude mootness [A-1732] and her immediately prior virtually identical unopposed motion to this Court [A-13].

Finally, Judge Holeman stated that Sassower was not entitled to a hearing since under §23-110(a) a hearing was not required when claims were "conclusory and palpably incredible". Purporting that Sassower's "constitutional claims" fell into that category [A-13], Judge Holeman stated:

> "Defendant's current argument that she was sentenced twice in inconsistent with the record. On June 28, 2004 Defendant was offered probation, Defendant rejected probation, and only following Defendant's

clear and unequivocal rejection of probation was sentence imposed." [A-13]

Additionally, he stated:

> "Defendant argues that the rejected proposal of probation is a *first* sentence and the imposition of 6 months incarceration is a *second* sentence, and therefore illegal. This argument is clearly incredible because a proposal of probation is not a sentence under any reading of authority. The sentencing judge is empowered to offer a defendant sentencing alternatives from which the defendant may choose...Here, Defendant chose not to abide the proposed conditions of probation and was thereafter sentenced. Defendant's claims do not merit a hearing." [A-13-4].

Judge Holeman further denied a hearing on the ground that it would "not add to the available information on the question whether the Court's sentence was proper." This, because the motion failed "on its face" and that "existing record provide[d] an adequate basis for denying [it]" [A-14].

Addendum – Judge Holeman's June 17, 2005 Order

By letter to Judge Holeman, dated June 3, 2005 [A-1766], Sassower quoted from, and annexed, page 18 of the transcript of the June 28, 2005 sentencing wherein, in announcing the probation terms, he had stated:

> "You will stay away from and inside of any of the buildings that collectively comprise the United States Capitol Complex; maps are provided herewith." [A-1768, underlining added]

Sassower requested a copy of these "maps" for inclusion in the appendix to her appellate brief. She followed this up, ten days later, with a further letter to Judge Holeman [A-1768].

By order dated June 17, 2005 [A-1769], Judge Holeman *sua sponte* treated Sassower's June 3, 2005 letter [A-1773] as a "Motion for Correction or Modification of the Record on Appeal under D.C. Court of Appeals Rule 10(e)" [A-1769] – and denied

the motion because it had "failed to set forth facts to support correction or modification of the trial court record or other relief provided by Rule 10(e)". [A-1771].

As to the record, Judge Holeman stated that because Sassower rejected the probationary conditions, they "were neither ordered, adopted, filed, nor otherwise made a part of the trial court record" [A-1770] and that although

> "included in the verbatim *recording* of the sentencing hearing, now transcribed, none of these proposed conditions, including the stay away-area and explanatory maps, became part of the official trial *record* for appellate review. Simply put, the proposed conditions of probation and the related maps, which Defendant now requests, were never reduced to an order, form or otherwise, or attachment thereto, since Defendant expressly rejected the proposed probation. The requested documents are not part of the trial court record....
>
> In conclusion, the trial court record contains no order imposing probation for Defendant. As such, the trial record does not contain the documents Defendant currently seeks." [A-1770-1, italics in the order].