

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

----- x
UNITED STATES OF AMERICA

**Notice of Motion to Enforce
Defendant's Discovery Rights and the
Prosecution's Disclosure Obligations**

-against-

No. M-04113-03

ELENA RUTH SASSOWER
----- x

PLEASE TAKE NOTICE that upon the annexed affidavit of defendant ELENA RUTH SASSOWER, sworn to October 31, 2003, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, ELENA RUTH SASSOWER will move this Court at 500 Indiana Avenue, N.W., Washington, D.C. 20001 on December 3, 2003, at the oral argument scheduled on this motion, for an order:

(1) to compel production of the "documents and tangible objects", sought by defendant's First Discovery Demand, dated August 12, 2003;

(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;

(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;

(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.

Dated: October 30, 2003
White Plains, New York



ELENA RUTH SASSOWER
Defendant
16 Lake Street, Apt. 2C
White Plains, New York 10603
(914) 949-2169

TO: U.S. Attorney for the District of Columbia
Assistant U.S. Attorney Aaron Mendelsohn
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 514-7700 / (202) 514-4991

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

----- x
UNITED STATES OF AMERICA

**Affidavit in Support of Motion
to Enforce Defendant's Discovery
Rights and the Prosecution's
Disclosure Obligations**

-against-

No. M-04113-03

ELENA RUTH SASSOWER

----- x
STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the above-named defendant, acting *pro se*, criminally charged with "disruption of Congress" and facing punishment of six months in jail and a \$500 fine.
2. This affidavit is submitted in support of the relief set forth in the accompanying notice of motion.
3. This motion is without prejudice to my contention, presented by my August 17, 2003 motion, 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 advice and consent of the Senate or one of its committees. The decisions by Senior Judge Mary Ellen Abrecht and Senior Judge Stephen Eilperin with respect to that motion reinforce my showing therein of entitlement to change of venue, as do other events in this litigation, to be separately particularized.

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

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Mr. Mendelsohn's Dilatory Response to my August 12, 2003 First Discovery Demand, Designed to Thwart my Ability to Address it at a Court Conference

5. On August 12, 2003, I served Assistant U.S. Attorney Aaron Mendelsohn with my First Discovery Demand, pursuant to Rule 16(a)(1)(c), by fax and e-mail. Nevertheless, and notwithstanding his statement at the August 20, 2003 court conference before Judge Abrecht that he was "working hard to respond" (Exhibit "H-3"), Mr. Mendelsohn delayed providing me with his response until October 16th, more than two months later. He handed it to me just minutes before the court conference of that date, held before Senior Judge Ronald Wertheim. It consisted of a three-page letter to me, dated 13 days earlier, October 3, 2003 (Exhibit "B"), and seven documents (Exhibits "I", "J-1", "J-2", "N-1", "N-2", "N-3", "N-4").

6. In so doing, Mr. Mendelsohn may be presumed to know that I would be unable to do more than glance at his October 3rd letter and would be prejudiced at the conference in framing objections to his deficient production, if the discovery issue came up. Of course, Mr. Mendelsohn was not planning to bring it up and, most likely, he knew the Court would not raise discovery¹ -- not the least reason being its unfamiliarity with the case.

7. Indeed, the Court did not open the conference by any inquiry as to the status of discovery, but, rather, directly inquired as to whether the parties were ready to set a trial date. It then fell to me to identify that such was premature in light of Mr. Mendelsohn's palpably deficient response to my First Discovery Demand, which I had only just received and had not had an opportunity to examine. To enable the Court to see for itself that such examination was essential if I were to intelligently address Mr. Mendelsohn's response, I handed up for its inspection my August 12th Discovery Demand, with its 26 separate requests, and Mr. Mendelsohn's October 3rd letter and accompanying seven documents.

8. Upon seeing the date of Mr. Mendelsohn's letter, the Court rightly asked Mr. Mendelsohn why he had not sent it to me on October 3rd -- nearly two weeks earlier. Mr. Mendelsohn apologized -- and essentially repeated to the Court what he had told me upon handing me his October 3rd letter minutes earlier, *to wit*, that he had

¹ 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.

planned to give it to me at the court conference scheduled for October 7th (8th)², but because it had not been held, he could not do so and made a "mistake" in not sending it to me.

9. In other words, Mr. Mendelsohn was admitting that even as to that earlier court conference it was not his intention to provide me with his October 3rd letter in advance so that I might have an opportunity to examine it beforehand.

10. It must be noted that the October 16th court conference was held in place of the court conference scheduled for September 19th. On September 17th, faced with weather predictions that hurricane Isabel would reach Washington within the next 24-48 hours, I telephoned Mr. Mendelsohn to ask his consent to adjourn the September 19th conference. He adamantly refused, taking the position that I should travel into the hurricane to be at the September 19th conference on this misdemeanor charge. When I asked him whether he had yet completed his response to my Discovery Demand, he told me he would provide it at the September 19th conference. This is set forth in my September 17th letter-application to Judge Patricia Broderick (Exhibit "D-1"), who adjourned the September 19th conference to 9:00 a.m. on October 7th (Exhibit "D-2")

11. Mr. Mendelsohn was thus also not planning to give me his response in advance of the September 19th court conference. Yet, plainly, if his response were going to be ready by September 19th, Mr. Mendelsohn could, thereafter, have easily

² I do not recall which of the two dates Mr. Mendelsohn stated. Although I sent him an October 28th fax (Exhibit "C-2"), requesting that he set forth, in writing, "what [he] stated to me – and then to the Court at the October 16th conference – as to why [he] did not send me [his] October 3rd letter in advance of that conference" – and he acknowledged receipt thereof (Exhibit "C-3") – he has not responded to such request (Exhibit "C-4").

mailed or faxed it to me during the following week – well in advance of the October 7th conference – or mailed or faxed it during the full week after that.

12. For reasons yet unclear, this case did not proceed to a court conference on October 7th. Rather, on September 22nd, in my absence and possibly upon the importuning of Mr. Mendelsohn or some other Assistant U.S. Attorney, Senior Judge Stephen Milliken scheduled the case for an October 21st trial.

13. Upon discovering this on September 29th – which was prior to my receipt of the judicial summons issued for my appearance at the trial – I took appropriate corrective steps (Exhibit “E-1”), of which I gave Mr. Mendelsohn notice (Exhibit “E-2”). The case was then put over to a court conference on October 16th³.

**Examination of Mr. Mendelsohn’s October 3, 2003 letter,
purporting to make discovery**

14. Of the 26 requests itemized by my August 12th Discovery Demand (Exhibit “A”), the first 22 are for “documents and tangible objects”. The final four are for information blacked-out from the redacted “Arrest/Prosecution Report”, “Event Report”, and two “Supplement Reports”, annexed to the May 23, 2003 letter of the U.S. Attorney for the District of Columbia, signed by Assistant U.S. Attorney Leah Belaire (Exhibit “F”)⁴, and given to me at my May 23, 2003 arraignment.

³ The initial date proposed was October 8th – which, upon my request to accommodate prospective counsel, was changed to October 16th.

⁴ As set forth in my August 17th motion (fn. 2):

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

15. To these 26 requests, Mr. Mendelsohn's October 3rd letter has made production as to six (#2, #4, #7, #19, #21, #22)⁵, with only two and possibly three of these being complete (#19, #21, #4). In declining production as to 20 other requests, Mr. Mendelsohn varyingly claims that the requested discovery is "irrelevant to the case" (13x: #1, #3, #5, #6, #8, #9, #10, #11, #13, #14, #15, #18, #20); that the records sought "do not exist" (8x: #5, #6, #8, #9, #10, #12, #16, #17); that they are "protected by USCP privacy guidelines" (6x: #3, #11, #13, #14, #15, #20); and/or that the blacking-out of information is pursuant to *United States v. Holmes*, 346 A.2d 517, 518-19 (DC. 1975) and *Davis v. United States*, 315 A.2d 157, 161 (D.C. 1974) (#23, #24, #25, #26). Although these two cited cases would appear to give the prosecution the right to deny disclosure of the names of its witnesses, sought by the final four requests

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

A copy of my August 19, 1998 certified mail/return receipt letter to Ms. Belaire is annexed (Exhibit "O"), as is the August 11, 1998 letter to ABA President Philip Anderson it enclosed and its exhibits relating to Ms. Belaire.

⁵ Mr. Mendelsohn's production consists of:

- #2: DC Code Section 10-503.16
- #4: USCP General Order on its Citation Release Program and DC Code Section 23-1110
- #7: my 39-page May 21, 2003 fax to U.S. Capitol Police Detective Zimmerman (Exhibit "I")
- #19: my signed notation on May 23, 2003 in the Capitol Police Prisoner's Property Book (Exhibit "J-1");
- #21: my signed notation on June 25, 1996 in the Capitol Police Prisoner's Property Book (Exhibit "J-2")
- #22: U.S. Capitol Police Chief Gary Abrecht's February 18, 1997 letter to me (Exhibit "N-1").

of my Discovery Demand, virtually all of Mr. Mendelsohn's responses to the preceding 22 requests for "documents and tangible objects" are false, in bad-faith, and deceitful.

A. Mr. Mendelsohn's First Deceit: That the requested "documents and tangible objects" are "not relevant to the case"

16. Underlying Mr. Mendelsohn's bald claim, 16 times repeated⁶, that my requested discovery is "irrelevant to the case" is the deceit that my arrest at the Senate Judiciary Committee's May 22, 2003 "hearing" was a justified response by Officer Roderick Jennings to what occurred at the "hearing". This is the deceit fashioned by the underlying prosecution documents: the May 23, 2003 criminal "Information" (Exhibit "G"), Ms. Belaire's May 23rd letter enclosing the various Capitol Police "Reports", each dated May 22, 2003 (Exhibit "F"), as well as the May 23, 2003 document which I found in the court file on June 20, 2003, but which I had not received, setting forth "events and acts" allegedly committed by me at the "hearing", for which I was being charged with "disruption of Congress"⁷ (Exhibit "H-1").

17. Exposing this deceit are the videotape of the Senate Judiciary Committee's May 22nd "hearing", which Mr. Mendelsohn handed me immediately

⁶ Mr. Mendelsohn's additional 3 claims that requested documents are "irrelevant to the case at bar" is in response to my #7 - as to which he makes at least partial production, *to wit*, my 39-page fax to U.S. Capitol Police Detective Zimmerman (Exhibit "I"); in response to my #21 - to which he has made complete production, *to wit*, my signed June 25, 1996 notation in the Capitol Police Prisoner's Property Book (Exhibit "J-2"); and in response to my #22 - to which he has made inadequate production, *to wit*, the February 18, 1997 letter of U.S. Capitol Police Chief Abrecht dismissing my police misconduct complaint (Exhibit "N-1").

⁷ My discovery of this document in the court file on June 20th is recounted at ¶¶7-8 of my August 6th motion to adjourn the August 20th conference for ascertainment of counsel. Mr. Mendelsohn has repeatedly failed and refused to respond as to whether the Assistant U.S. Attorney who handled my May 23rd arraignment gave a copy of the document to the court-appointed attorney assisting me on that date. [see ¶¶19-22 of my August 17th motion and Exhibit "C" thereto; also my August 21st letter to Mr. Mendelsohn (Exhibit "H-2").

before the court conference on June 20th AND two of the documents produced by Mr. Mendelsohn's October 3rd letter: (a) my 39-page May 21, 2003 fax to U.S. Capitol Police Detective Zimmerman; and (b) my May 23, 2003 notation in the U.S. Capitol Police's Prisoner's Property Book. These establish the true facts of my arrest, namely, that it was, an unprecedented response by Capitol Police to entirely proper conduct by me, orchestrated by, and in concert with, New York Home-State Senators Hillary Rodham Clinton and Charles E. Schumer, as well as the Senate Judiciary Committee, in advance of the "hearing", for which Officer Jennings was the "cover".

18. As to the videotape, I told Mr. Mendelsohn on several occasions that if he viewed it, he would know it does NOT support the underlying prosecution documents and, specifically, his clients' recitation of "events and acts". I also told him – even before serving him with my Discovery Demand – that the Discovery Demand "would establish that the criminal case against me was 'not just bogus, but malicious'". (see ¶17 of my August 6th motion).

19. Such is most decisively proven by Mr. Mendelsohn's production of my 39-page fax to U.S. Capitol Police Detective Zimmerman, bearing a transmittal date and time of "May 21, 2003 21:52" (Exhibit "P"⁸). This, as his sole response to my #7, requesting:

"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

⁸ The fax date and time stamp appears at the top edge of each and every one of the 39 pages. Because it is obscured by the binding of this motion, I have lowered the first page of the fax in copying it so that it can be more visible.

transmittal for Detective Zimmerman – and a copy of that fax transmittal”.

20. 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” (Exhibit “F”, p. 6) -- 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 I “willfully and knowingly engaged in disorderly and disruptive conduct with the intent to impede, disrupt, and disturb...” (emphasis added).

21. The 39 pages of my May 21st fax to Detective Zimmerman (Exhibit “I”) consist of my two-page letter to him, transmitting four documents. These four documents substantiate and reflect my hour-long phone conversations with him and Special Agent Lippay on May 21st – the day before my arrest. They are: (a) my 2-page May 21st memorandum to Senate Judiciary Committee Chairman Orrin Hatch and Ranking Member Patrick Leahy; already faxed and e-mailed to them; (b) my 4-page May 21st letter to Home-State Senator Schumer and its 9 pages of enclosures, already faxed and e-mailed to him; (c) my 1-page May 21st faxed letter to Home-State Senator Clinton, already faxed to her; and (d) my 18-page July 3, 2001 letter to Senator Schumer, with its Exhibit “H” consisting of the transcript pages of the Senate Judiciary

Committee's June 25, 1996 confirmation "hearing", wherein I requested to testify in opposition to New York Supreme Court Justice Lawrence Kahn, nominated to the District Court for the Northern District of New York..

22. Summarized by these 39 pages is the most immediate and relevant background to my May 22nd arrest. As reflected therein, at approximately noon on May 21st, I received a phone call from Special Agent Lippay, who stated that Senator Clinton's office had contacted Capitol Police to "get involved" because "they didn't understand why I continued to contact that office". In response, I detailed for Special Agent Lippay the clearly-stated and professional nature of my contact with Senator Clinton's office, as coordinator of the non-partisan, non-profit citizens organization, Center for Judicial Accountability, Inc. (CJA) -- including the basis of our citizen opposition to Senate confirmation of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals, as to which Special Agent Lippay specifically asked me. Notwithstanding she could readily verify the truth of what I told her from the documents posted on the homepage of CJA's website (www.judgewatch.org), to which I alerted her, as well as by follow-up with Senator Clinton's office for its response thereto, Special Agent Lippay implied that I would be arrested if I came to Washington for the next day's Senate Judiciary Committee "hearing" on Judge Wesley's confirmation, particularly if I requested to testify. To lend weight to this, she claimed that in 1996 Capitol Police had arrested me for requesting to testify at a Senate Judiciary Committee "hearing". Even after I explained to Special Agent Lippay that this was NOT why I had been arrested in 1996, she

insisted it was. This prompted me to request to speak with her supervisor – and I was put through to Detective Zimmerman.

23. I spoke at great length with Detective Zimmerman – perhaps 45-50 minutes -- reviewing all the pertinent facts and circumstances relating to my contacts with Home-State Senator Clinton's office, with Home-State Senator Schumer's office, with the Senate Judiciary Committee over the previous two months relating to CJA's citizen opposition to Judge Wesley's confirmation. I also reviewed with Detective Zimmerman the pertinent facts and circumstances as to what had taken place at the Senate Judiciary Committee's June 25, 1996 "hearing", when, in response to my request to testify, Capitol Police had NOT arrested me, but had simply warned me that unless I kept quiet I would be removed. I stated that this was the precedent from the June 25, 1995 "hearing" that should be respected and that there was no reason for Capitol Police to deviate from it if, at the next day's "hearing", the presiding chairman did not himself inquire whether anyone present wished to testify, thereby burdening me with having to rise to make so fundamental a request.

24. Nevertheless, Detective Zimmerman asserted that Capitol Police would arrest me if I requested to testify at the May 22nd "hearing" – and would do so even if the presiding chairman did not request that I be arrested.

25. As my 2-page letter to Detective Zimmerman reflects, I not only enclosed such substantiating documents as a copy of my July 3, 2001 letter to Senator Schumer, summarizing what had taken place at the Senate Judiciary Committee's June 25, 1996 hearing and enclosing, as well, its Exhibit "H" consisting of the relevant pages from the June 25, 1996 "hearing" transcript, but I identified that my further

correspondence with "Senator Clinton, Senator Schumer, the Senate Judiciary Committee, etc." were, as I had told Special Agent Lippay, accessible from CJA's website. Additionally, with respect to the police misconduct complaint I had filed against Capitol Police in connection with my June 25, 1996 arrest on a bogus charge of "disorderly conduct" in the hallway outside the Senate Judiciary Committee long after the "hearing" had concluded - as to which Detective Zimmerman had been particularly interested - my letter to him stated that I would bring my file of that complaint, as well as the file of my June 25, 1996 arrest, with me to Washington "should there be any questions".

26. As to these, my 2-page letter to Detective Zimmerman closed with the statement that they showed that

"I am [a] cooperative, conscientious, and law-abiding person, who believes that citizen rights and responsibilities in a democracy should count for something, as likewise evidentiary proof"

-- a conclusion he and Special Agent Lippay could have readily drawn about me from our hour's phone conversations.

27. Mr. Mendelsohn would not have had to do more than read that 39-page May 21st fax to Detective Zimmerman to clearly see the relevance of virtually ALL 22 requests for "documents and tangible objects" itemized by my August 12th Discovery Demand.

28. As to the 16 specific requests which, in whole or in part, Mr. Mendelsohn's October 3rd letter deceitfully purports are "not relevant to the case", they

are herein listed so that the Court may more conveniently compare them with the content of my 39-page fax (Exhibit "I") so as to discern their obvious relevance:

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));
3. 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^{fn.1} 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

fn.1

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

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;
11. Any and all records, including audio recordings, pertaining to assignment of Capitol Police officers to the Senate Judiciary Committee's May 22, 2003 hearing on Judge Wesley's confirmation -- and the personnel records of all such assigned officers, especially Sergeant Bignotti and Officer Jennings;
13. Any and all records reflecting the names of the Capitol Police officers involved in the decision to arrest Elena Sassower on May 22, 2003 -- and the personnel records of all such officers, especially Detective Zimmerman and Sergeant Bignotti;
14. Any and all records reflecting the names of Capitol Police officers involved in the processing of Elena Sassower at Capitol Police Station on May 22, 2003, especially the officer(s) assisting Officer Jennings fill out the Arrest/Prosecution Report, the Event Report, and the two Supplement Reports -- and the personnel records of all such officers^{fn.2};
15. Any and all records reflecting the names of Capitol Police officers involved in the decision to incarcerate Elena Sassower overnight on May 22, 2003 and to deny her citation release -- and the personnel records of all such officers^{fn.3};
18. Any and all documents in the possession of Senator Saxby Chambliss at the time of his "complaint" to Capitol Police pertaining to Elena Sassower's request to testify in opposition to Judge Wesley's confirmation to the Second Circuit Court of Appeals;
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;

^{fn.2} This would include Officer Brown, whose name appears as a "Second Officer" on the Capitol Police May 22, 2003 Event Report (P.D. 251, at #40).

^{fn.3} This would include Sergeant Bignotti and Officer Rinaldi, whose names appear on the Capitol Police May 22, 2003 Citation Release Determination Report (P.D. 778).

21. A copy of the page of the Capitol Police Prisoner's Property Book which Elena Sassower signed with a notation on June 25, 1996, upon recovering her property;
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;
29. However, over and beyond Mr. Mendelsohn's recognition from reading the 39-page fax of the relevance of the requested "documents and tangible objects", he could be expected to recognize that he would be unable to prove the necessary "intent" to sustain the criminal charge against me for the respectful, First Amendment-protected innocent act of requesting to testify at the Committee's public hearing to confirm a "lifetime" federal appellate judge, captured by the videotape.

30. As Mr. Mendelsohn not only failed to drop the prosecution of this case over these many months, but again and again engaged in oppressive, hard-ball tactics to railroad me to trial, without discovery⁹, he must be required to identify when he first read my 39-page fax to Detective Zimmerman.

31. Although I do not recall if I specifically identified it to him on June 20th, when I first met him, I do vividly recall putting him on notice, at that time, that discovery in this case would be extensive and that if he did not then know that the criminal charge against me was "not just bogus, but malicious", it was because his "clients [were] dishonest".

⁹ This includes his unethical attempt to get me to stipulate that if he consented to adjournment of the August 20th court conference, I would agree that this case would come on for trial within 30 days of the rescheduled September 19th conference date. [See ¶14 of my August 6th motion to adjourn the August 20th conference].

32. In any event, Mr. Mendelsohn had knowledge of my May 21st fax to Detective Zimmerman from two documents which I gave him, *in hand*, on June 20th. These were: (a) my May 28, 2003 memorandum to Chairman Hatch and Ranking Member Leahy (Exhibit "K-1"); and (b) my June 16, 2003 memorandum to Ralph Nader, Public Citizen, and Common Cause (Exhibit "L") – each referring to my "May 21st letter to Capitol Police". From reading these two documents, Mr. Mendelsohn could hardly have "missed" the significance of this "May 21st letter to Capitol Police". My June 16th memorandum (Exhibit "L") identified it -- along with my May 21st letters to Senator Schumer and Clinton and my May 21st memorandum to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy (all part of the faxed 39 pages) -- as "meticulously chronicl[ing]" the "extraordinary background to my arrest". Surely this would be something Mr. Mendelsohn would have wanted to read so as to preview my defense. As for my May 28th memorandum to Chairman Hatch and Ranking Member Leahy (Exhibit "K-1"), which my June 16th memorandum described as "summariz[ing] what took place at the May 22nd 'hearing'" – also clearly priority reading for Mr. Mendelsohn in assessing my defense -- it made emphatically clear that my "May 21st letter to Capitol Police" and related correspondence:

"in and of themselves resoundingly establish that the criminal charge of 'disruption of Congress' cannot be sustained – since essential to the charge is that I

'wilfully and knowingly engaged in disorderly conduct...with the intent to impede, disrupt, and disturb the orderly conduct...of a hearing before, and deliberations of, a committee or subcommittee of the Congress or either House thereof.'

These documents make clear that my 'intent' was not to be 'disorderly' or to 'impede, disrupt, or disturb'. Rather, it was to respectfully ask whether I might be permitted to testify as to documentary proof of Judge Wesley's unfitness – consistent with my responsibilities as a citizen in a democracy. This is precisely what I did at an appropriate point at the conclusion of the 'hearing' – as to which there is a videotape[fn], in addition to a stenographic transcript." (emphases in my May 28th memo)

33. My May 28th memorandum to Chairman Hatch and Ranking Member Leahy expressly identified that all correspondence and documents that I furnished

"in connection with CJA's citizen opposition to Judge Wesley, whether by hand, by fax, or by e-mail, whether through the Committee or *via* your Senate offices are EXCULPATORY – and I will demand that they be produced for my criminal trial as dispositive of my 'intent'. They are to be safeguarded in the interim – as, likewise, any notes, memoranda, written messages generated by your staff, whether at the Committee or in your Senate offices with respect thereto." (Exhibit "K-1", p. 4, emphasis in the original).

34. Mr. Mendelsohn could have been expected to have procured these expressly-identified "EXCULPATORY" materials. Such would, moreover, have enabled him to locate the "e-mail" I had "sent" "to the Committee saying she wanted to testify", which is what Ms. Belaire's May 23rd letter identifies as a "Post-arrest" "statement" I had made "spontaneously" to Capitol Police, both "Pre-rights" and "Post-rights" (Exhibit "F", p. 4).

35. It must be noted that on June 20th, when Mr. Mendelsohn handed me the videotape of the May 22nd "hearing" (which I had already viewed on the internet), along with a copy of the stenographic transcript (whose pertinent pages I already purchased and received), I believed he did so because my May 28, 2003 memorandum

had expressly requested the videotape¹⁰. Indeed, Mr. Mendelsohn seemed to indicate he was already familiar with my May 28th memorandum when I gave him, *in hand*, at least one, if not two, copies of it for the U.S. Attorney and Capitol Police, each indicated recipients. I know he stated that he was familiar with my May 30, 2003 letter to the Miller Reporting Company, to which the U.S. Attorney and Capitol Police were also indicated recipients (Exhibit "K-2") – copies of which I proffered to him.

36. In any event, if Mr. Mendelsohn's production on June 20th of the videotape and transcript was not in response to my May 28th memorandum (Exhibit "K-1"), sent to his Senator-clients, it was, presumably, pursuant to the mandatory disclosure obligations which the law imposes on the prosecution. Such obligations are reflected by the outset of Ms. Belaire's May 23rd letter:

"This letter contains both a plea offer and discovery for the above-captioned case. This discovery is, to the best of our knowledge, current and comprehensive. If we learn of any additional discoverable information or evidence, we will disclose that to you as quickly as possible." (Exhibit "F", p. 1)

37. My 39-page May 21st fax to Detective Zimmerman – whether procured from Capitol Police, with its date and time stamp reflecting transmittal, or from the Senate Judiciary Committee -- 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.

38. The second significant document exposing the deceit of the prosecution's case is Mr. Mendelsohn's response to my #19, requesting:

¹⁰ See fn. 1 to my August 6th motion to adjourn the August 20th court conference.

"A copy of the page of the Capitol Police Prisoner's Property Book which Elena Sassower signed with a notation on May 23, 2003, upon recovering her property;"

39. The notation on such page, produced by Mr. Mendelsohn (Exhibit "J-1"), challenges the representation in the Prisoner's Property Book that "Jennings, R." was the "Reporting Officer". With an arrow from my name "Elena Ruth Sassower", it states:

"protests repeated falsification of record to transform PFC Jennings to "arresting officer". It was Sergeant Bignotti alone." (underlining in the original).

40. Had Mr. Mendelsohn adequately investigated this case – as he was duty-bound to do, especially in light of my comments to him on June 20th that if he did not know that the case was "not just bogus, but malicious", it was because "his clients [were] "not honest" – he would have discovered that it was Sergeant Bignotti who arrested me, acting unilaterally and without the slightest consultation of rookie officer Jennings. He would also have discovered why Capitol Police had transformed rookie officer Jennings to the "arresting" and "reporting" officer". Firstly, Sergeant Bignotti, the senior officer, would have been "briefed" by Detective Zimmerman and/or the Senate Judiciary Committee as to what Capitol Police was to do when – as anticipated - - I rose to request to testify. Secondly, Sergeant Bignotti had independent knowledge of the precedent of the Senate Judiciary Committee's June 25, 1996 "hearing".

41. Upon information and belief, Sergeant Bignotti was at the June 25, 1996 "hearing" when I was NOT arrested for requesting to testify AND participated thereafter in my arrest in the hallway outside the Senate Judiciary Committee on the trumped-up "disorderly conduct" charge. Indeed, I believe her to be the female

sergeant about whom my September 22, 1996 police misconduct complaint bitterly complained (Exhibit "M", pp. 5-7)¹¹. If so, and if she was the subject of a disciplinary inquiry based thereon, Sergeant Bignotti may have had a personal *animus* and bias motivating her one-track, irrational fixation on arresting me on May 22nd, separate and apart from any direction she received from Detective Zimmerman and/or the Senate Judiciary Committee – and then keeping me incarcerated overnight by her peremptory decision to deny me citation release (Exhibit "F", p. 17) in violation of Capitol Police General Order #4430 and DC Code 23-1110 (Exhibits "N-2", and "N-3").

42. The records pertaining to Capitol Police's investigation and disposition of my September 22, 1996 police misconduct complaint, requested at my #22, are *Brady* material – all the more relevant because of the notice given by Ms. Belaire's May 23rd letter that the prosecution expects to use the June 25, 1996 arrest as "*Drew/Tolliver* evidence" (Exhibit "F", p. 6):

"Def is known to Capitol Police for being disruptive in the past; Def was arrested in 1996 for disorderly conduct on Capitol grounds."

B. Mr. Mendelsohn's Second Deceit: That the requested "documents and tangible objects" "do not exist"

43. Mr. Mendelsohn's claim, 8 times repeated, that requested documents "do not exist" is patently preposterous and unbelievable. No police station – and certainly not a "Threat Assessment Section" of the elite U.S. Capitol Police Station, during a period of "Orange" Terror Alert no less -- would so completely fail to maintain the

¹¹ In any event, according to the June 25, 1996 Prisoner's Property Receipt, annexed to the complaint as Exhibit "E", Sergeant Bignotti searched me.

normal and customary records that ANY professionally functioning office, not connected with criminal law enforcement, would reasonably maintain.

44. If Mr. Mendelsohn is to be believed, records "do not exist" for the following relevant documents:

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; [**** other than the 39-page fax, which Mr. Mendelsohn produced**]
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^{fn.1} 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;

^{fn.1} This would include communications with the office of Senator Charles Schumer, a member of the Senate Judiciary Committee.

12. Any and all records, including audio recordings, of statements made to Capitol Police by Elena Sassower on May 22, 2003... following her arrest, whether in the corridor outside the hearing room, upon being transported to Capitol Station, at Capitol Station, upon being transported to the Metropolitan Police Station, or at the Metropolitan Police Station;
16. Any and all records, including audio recordings, of the "interview" identified in one of the two May 22, 2003 Supplement Reports of Capitol Police as having been conducted by Detective Zimmerman of Elena Sassower "at prisoner processing";
17. The "complaint" of Senator Saxby Chambliss, identified as the "complainant in the two May 22, 2003 Supplement Reports of Capitol Police;

45. Additionally, as to my #22, requesting:

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 has joined his objection on grounds of relevance, with production of a single document, "a copy of a letter from the USCP to Ms. Sassower, dated February 18, 1997" (Exhibit "N-1"), as to which he states:

"This is the only record pertaining to the investigation and disposition of Ms. Sassower's September 22, 1996 police misconduct complaint by the USCP and the Metropolitan Police Department."

46. Again, it is hard to imagine such a total failure of record keeping when this February 18, 1997 letter of U.S. Capitol Police Chief Gary Abrecht purports that a "prompt and thorough investigation" of my police misconduct complaint was conducted. Surely, such "thorough investigation" included interviews of the complained-against police officers, as to which, assuredly, notes were taken..

47. So that the Court may see for itself the serious and substantial nature of my September 22, 1996 police misconduct complaint, which should have generated a

substantial investigative record by BOTH Capitol Police and Metropolitan Police, with findings of fact and law, a full copy is annexed, including its extensive, substantiating exhibits (Exhibit "M"). Indeed, it is impossible to read my September 22, 1996 complaint and not believe that it led to the March 18, 1997 issuance of Capitol Police's General Order #4430 pertaining to its "Citation Release Program" (Exhibit "N-2"). Such General Order, along with DC Code Section 23-1110 on the issuance of citations (Exhibit "N-3"), were produced by Mr. Mendelsohn in response to my #4, requesting:

"Any and all documents pertaining to procedures and guidelines of Capitol Police for citation release".

48. Also obvious from Capitol Police General Order #4430, implementing DC Code Section 23-1110 by particularized procedures and standards for citation release, is that Capitol Police must have similar General Orders implementing other regulations, such as DC Code Section 10-503.16 relating to unlawful conduct on Capitol grounds (Exhibit "N-4), produced by Mr. Mendelsohn in response to my #2 for

"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".

Indeed, Mr. Mendelsohn, who produced no General Order for my #2, conspicuously does not assert there is none – or that his production of DC Code Section 10-503.16 constitutes full compliance with my #2 request. For that matter, he does not assert that his production of the General Order on Citation Release Program and D.C. Code Section 23-1110 constitutes full compliance with my #4.

49. It must be noted that insofar as my #1, requesting:

“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));

Mr. Mendelsohn does not state that they “do not exist”, which he plainly could have. Rather, he states they are “not maintained by the United States Capitol Police”. As my request was not limited to records maintained by Capitol Police, Mr. Mendelsohn must identify where such records are elsewhere maintained, as, for instance, the Senate Judiciary Committee, and provide the relevant existing records.

50. Finally, as to my #3 for:

“Any and all documents pertaining to the establishment, function, procedures, and staffing of the ‘Threat Assessment Section’ of Capitol Police – including the personnel records of Special Agent Lippay and Detective Zimmerman”,

Mr. Mendelsohn does not assert that the clearly relevant requested documents pertaining to the “establishment, function, procedures, and staffing of the ‘Threat Assessment Section’” “do not exist”. Clearly, they do.

C. Mr. Mendelsohn’s Third Deceit: That the requested personnel records are “protected by USCP privacy guidelines”

51. Mr. Mendelsohn’s response to my six requests for personnel records, sought at #3, #11, #13, #14, #15, and #20 of my Discovery Demand, is that they are “protected by USCP privacy guidelines”.

52. By letter dated October 24, 2003, faxed and e-mailed to Mr. Mendelsohn (Exhibit “C-1”), I stated:

"I presume you have these 'USCP privacy guidelines' to which you refer -- and would appreciate your furnishing them to me, by fax or e-mail, whichever is more convenient for you."

53. Four days later, with no response from Mr. Mendelsohn, I sent him a second letter, dated October 28, 2003, by fax and e-mail (Exhibit "C-2"):

"Please respond, as soon as possible, as it is an integral part of my motion to enforce your compliance with my August 12, 2003 First Discovery Demand."

54. Late in the day, I received a fax from Mr. Mendelsohn (Exhibit "C-3"), acknowledging receipt of both letters and stating:

"I am writing to assure you that I am making all efforts to comply with your requests, and I hope to have a response to you by October 29, 2003."

55. I did receive a fax from Mr. Mendelsohn on October 29th (Exhibit "C-4") stating:

"Attached are the United States Capitol Police privacy guidelines to which the government referred in its responses to your discovery requests #3, #11, #13, #14, #15, and #20."

56. These "privacy guidelines" (Exhibit "C-4") are but a single page from a "Collective Bargaining Agreement" of Capitol Police. It contains no specific prohibition against releasing "personnel records" to a criminal defendant, where such release is shown relevant to his defense. Indeed, the single page indicates that there are five separate components to employee personnel files -- only one of which is actually called "Confidential File". Further, both the "Definition" section [13.01] and "Access to Files" section [13.03] refer to release of personnel files in accordance with "established Department policy, Standard Operating procedures and this agreement" --

meaning that the "Collective Bargaining Agreement", and certainly the single page from it that Mr. Mendelsohn has furnished, is not exclusive of the issue.

57. For the Court's convenience in establishing the relevance of my requests for personnel files as they appear in my Discovery Demand, they are as follows (with underlining for emphasis):

3. Any and all documents pertaining to the establishment, function, procedures, and staffing of the "Threat Assessment Section" of Capitol Police -- including the personnel records of Special Agent Lippay and Detective Zimmerman;
11. Any and all records, including audio recordings, pertaining to assignment of Capitol Police officers to the Senate Judiciary Committee's May 22, 2003 hearing on Judge Wesley's confirmation -- and the personnel records of all such assigned officers, especially Sergeant Bignotti and Officer Jennings;
13. Any and all records reflecting the names of the Capitol Police officers involved in the decision to arrest Elena Sassower on May 22, 2003 -- and the personnel records of all such officers, especially Detective Zimmerman and Sergeant Bignotti;
14. Any and all records reflecting the names of Capitol Police officers involved in the processing of Elena Sassower at Capitol Police Station on May 22, 2003, especially the officer(s) assisting Officer Jennings fill out the Arrest/Prosecution Report, the Event Report, and the two Supplement Reports -- and the personnel records of all such officers^{fn.2};
15. Any and all records reflecting the names of Capitol Police officers involved in the decision to incarcerate Elena Sassower overnight on May 22, 2003 and to deny her citation release -- and the personnel records of all such officers^{fn.3};
- 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

^{fn.2} This would include Officer Brown, whose name appears as a "Second Officer" on the Capitol Police May 22, 2003 Event Report (P.D. 251, at #40).

^{fn.3} This would include Sergeant Bignotti and Officer Rinaldi, whose names appear on the Capitol Police May 22, 2003 Citation Release Determination Report (P.D. 778).

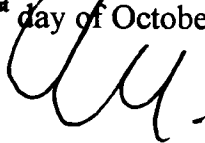
date for "disorderly conduct" in the corridor outside the hearing room --
including the personnel records of all such officers;

* * *

WHEREFORE, it is respectfully prayed that the relief sought in the accompanying
motion be granted in all respects.


ELENA RUTH SASSOWER

Sworn to before me this
31st day of October 2003



Notary Public

ELLEN DELLA VELLA
Notary Public, State of New York
No. 01DE5035676
Certificate Filed in Westchester County
Commission Expires 11-01-06