Final pages of POINT I of Petitioner's June 28, 2005 brief (pp. 94-101): Judge Holeman's pervasive actual bias – post-trial

1-B JUDGE HOLEMAN'S POST-TRIAL RULINGS ARE FURTHER CONFIRMATORY OF HIS PERVASIVE ACTUAL BIAS & ARE FACTUALLY AND LEGALLY INSUPPORTABLE

Judge Holeman's June 28, 2004 Sentencing of Sassower

This Court has recognized that there are circumstances where a trial judge's sentencing of a defendant gives rise to "a presumption of vindictiveness" – and that in such circumstances, the reasons for the sentence "must affirmatively appear" in order for the **[p. 95]** presumption to be rebutted, *Johnson v. United States*, 628 A.2d 1009, 1012 (1993), quoting *North Carolina v. Pearce*, 395 U.S. 711, 726 (1969).

At bar, the circumstances of Sassower's sentencing gave rise to a "presumption of vindictiveness" by Judge Holeman. Pretrial, Sassower had twice moved for his disqualification [A-265, 375], had repeatedly sought supervisory oversight from supervisory judges and administrative personnel [A-426, 435, 454], had stated her intention to file a judicial misconduct complaint against him, irrespective of the outcome of the trial [A-435, 383], had brought a mandamus/prohibition proceeding to remove him [#04-OA-17], and, following a trial permeated with flagrant violations of her rights, had received from him two sentences [A-1722, ln. 1 & A-1728, ln. 15], each dramatically deviating from the recommendations of the D.C. Court Services' presentence report [A-1618] and the prosecution's memorandum in aid of sentencing [A-1619] – with the superseding second sentence imposing the maximum six-month jail time

allowable under the "disruption of Congress" statute.

Judge Holeman gave no reason for departing from the sentencing recommendations in the record before him. Both the D.C. Court Services' presentence report [A-1617 "EVALUATIVE SUMMARY"] and the prosecution's memorandum in aid of sentencing [A-1620-1: "DEFENDANT HAS FAILED TO TAKE ANY RESPONSIBILITY FOR HER ACTIONS"] recognized that Sassower was not remorseful, contrite, and acknowledged no wrongdoing. Even still, the Court Services' "RECOMMENDATION" was not jail, but a "Fine" [A-1618]. The prosecution's recommendation was "five days of incarceration, all suspended, and six months of probation conditioned on completion of an anger-management course." [A-1619].

[p. 96] Judge Holeman's original 92-day jail sentence [A-1722, ln. 1] was 18 times the five days deemed appropriate by the prosecution. The superseding six-month jail sentence he imposed after Sassower declined probation [A-1728, ln. 15] was 36 times. As for the rejected probation, its two-year term [A-1722, ln. 4] was four times what the prosecution had recommended and attached a laundry list of conditions which, with the exception of the anger management course, were entirely Judge Holeman's own. These *sua sponte* conditions, as well as the anger management course, not only had no basis in the record, but were irrelevant to the "disruption of Congress" charge. Their inclusion was to degrade, impugn, and harass Sassower, including by intruding on her CJA employment to the point of surveillance and to prevent her from discharging her professional duties by appropriate First Amendment petitioning of the Senators in matters pertaining to the corruption of federal judicial selection and discipline[33].

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[33] *See* Issue IV, *infra*.

Judge Holeman gave no reason for any of the probation terms – or for his original 92-day jail sentence. He also gave no reason for imposing his superseding six-month jail sentence, except what he termed Sassower's "pride" in withholding her consent to probation [A-1728, ln. 22]. Such conclusory assertion as to Sassower's "pride" was without any inquiry of Sassower as to why she was withholding consent and had no basis in the record.

Yet, Judge Holeman's sentences, both original and superseding, were not only without basis in the record, they were also without basis in precedent. There had never been a "disruption of Congress" case against a citizen for respectfully requesting to be permitted to testify at a public congressional hearing, let alone, as here, where the hearing was already adjourned. Sassower highlighted this at the June 28, 2004 sentencing, wherein she referred to **[p. 97]** what appeared to be a practice of not arresting citizens at committee hearings, even where their conduct was disruptive and provocative. Judge Holeman cut her off as she cited three incidents, two within the previous nine weeks [A-1721].

Judge Holeman's June 28, 2004 Denial of Sassower's Request for a Stay Pending Appeal

> "...when the trial court recognizes its right to exercise discretion but declines to do so, preferring instead to adhere to a uniform policy, it also errs. *Berryman v. United States*, D.C. App, 378 A2d 1317, 1320 (1977), *Springs v. United States*, D.C. App. 311 A.2d 499, 501 (1972)", *Johnson v. United States*, 398 A.2d 354 (1979).

The record showed no basis for Sassower's immediate incarceration such that the propriety of Judge Holeman's sentencing and the lawfulness of her

conviction could not first be tested by the appellate process. In denying Sassower's request for a stay pending appeal [A-1729-30], Judge Holeman made no claim that he believed that either Sassower's conviction or his sentence could stand on appeal. As he knew from his profound due process violations of her rights – such as reflected by Sassower's May 25, 2004 letter for inclusion in the presentence report [A-1685] and her June 28, 2004 affidavit commenting upon and correcting the presentence report and opposing the U.S. Attorney's memorandum in aid of sentencing [A-1641] – they could not.

As to Judge Holeman's asserted reason for denying Sassower a stay, *to wit*, that it would show her "favorable treatment" that he had "not in the past shown any other convicted criminal defendant" and he would not "start the practice now" [A-1730], such represented a prefixed position not to evaluate whether the facts and law in her case entitled her to a stay and release pending appeal, as was his duty to do. From the record before him, he knew she fully qualified for release pending appeal since – over and above the fact that her likelihood of **[p. 98]** success on appeal was 100% by reason of his pervasive actual bias, denying her due process -- she was not a flight risk and posed no threat to persons or property.

Judge Holeman's November 22, 2004 Order Denying Sassower's Motion to Correct an Illegal Sentence

Like his pretrial orders, Judge Holeman's November 22, 2004 order denying, as "devoid of merit", Sassower's October 26, 2004 motion pursuant to D.C. Criminal Procedure Rule 35(a) and D.C. Code §23-110(a) to correct an illegal sentence and denying a hearing was a "judicial lie", being factually and legally insupportable and fabricated.

The November 22, 2004 order [A-10] was fashioned on concealing the very basis upon which the

October 26, 2004 motion [A-1739] was made: that the six-month jail sentence was an illegal second sentence, superseding a legal first sentence of 92 days.

The order nowhere referred to this 92-day sentence. Even in acknowledging Sassower's contention that she was "sentenced twice" and that "the imposition of 6 months incarceration is a *second* sentence, and therefore illegal" [A-13, italics in order], the order purported Sassower "argues that the rejected proposal of probation is a *first* sentence" [A-13, italics in order]. This is untrue. The motion argued that the first sentence was the 92-day sentence, announced by Judge Holeman before setting forth any proposal of probation [A-1743, 1745-6, 1752-4].

As this first 92-day sentence was dispositive of Sassower's entitlement to relief under Rule 35(a) and 23-110(a), the November 22, 2004 order concocted a fiction that Judge Holeman had not imposed any sentence until after Sassower rejected probation:

> "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].

[p. 99] The flagrant untruth of this and similar statements in the November 22, 2004 order is established by the June 28, 2004 transcript [A-1707], which Sassower's motion not only quoted from, but annexed [A-1745]. It shows Judge Holeman's announcement, "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 the execution as to all remaining time." [A-1722] This is then followed by his recitation of probation terms [A-1722-7], after which, upon Sassower's rejection of probation [A-1728], Judge Holeman scrapped the originally announced 92-day sentence with the words, "You are sentenced to six

months incarceration." [A-1728].

Yet, Judge Holeman's November 22, 2004 order was not only factually false in its claim that no sentence had been imposed upon Sassower until after she had rejected probation, it was also without the slightest legal support for such proposition. This would have been evident had the order cited the statutory provision governing the offering of probation to a defendant and his right of consent thereto. It is D.C. Code §16-760 and its pertinent language, quoted in Sassower's motion, states:

> "...the court may, upon conviction...impose sentence and suspend the execution thereof, or impose sentence and suspend the execution of a portion thereof, for such time and upon such terms as it deems best if it appears to the satisfaction of the court that the ends of justice and the best interest of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, or the imposition of sentence and the suspension of the execution of a portion thereof, the court may place the defendant on probation under the control and supervision of a probation officer....A person may not be put on probation without his consent.".

This Court in *Schwasta v. United States*, 392 A.2d 1071, 1073 (1978), has provided the obvious interpretation of this statutory language, *to wit*, that it "permits the trial court to grant probation only after it has imposed a sentence and suspended its execution." Consequently, had Judge Holeman done what his November 22, 2004 order claimed, namely, **[p. 100]** not imposed any sentence until after Sassower rejected probation, such would have violated D.C. §16-760 and its explicit interpretation in *Schwasta*.

A multitude of other deceits permeate the November 22, 2004 order – worthy of note only because they further demonstrate the unremitting pervasiveness of Judge Holeman's dishonesty, the consequence of which was to wrongfully incarcerate Sassower for the last remaining month of the six-month sentence – rather than release her in time for Thanksgiving. Among these deceits, (1) his repetition of the fact that the six-month sentence was within the maximum allowed by the "disruption of Congress" statute [A-10, 12, 13] – when that was completely irrelevant to the basis upon which Sassower's motion contended the sentence was illegal; (2) his repeated assertion that the motion was untimely for purposes of "correcting a sentence imposed in an illegal manner" and implication that the motion was brought on such ground [A-11, 12] – when it was not; (3) his pretense that Sassower's motion rested on "mere conclusory allegations, the authority cited inapposite and non-controlling, and the argument confusing" [A-11, 12] – for which he offered not a single example; (4) his pretense that Sassower's motion was "in substantial part, a critique of the *proposed conditions* of probation presented to Defendant prior to the imposition of sentence." [A-3, italics in his order) – when most of the motion was addressed to the legality of his superseding six-month sentence, not any of the probation conditions; (5) his pretense that Sassower's motion had contended that Judge Holeman's first sentence was "the rejected proposal of probation"[34] [A-13] – when her **[p. 101]** motion clearly stated that the first sentence was his announcement of 92 days; (6) his pretense that "Defendant's current argument that she was sentenced twice is inconsistent with the

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[34] As to Judge Holeman's assertion that "a proposal of probation is not a sentence under any reading of authority" [A-13], the law review article cited by Sassower's motion, "*Coercion, Pop-Psychology, and Judicial Moralizing: Some Proposals for Curbing Judicial Abuse of Probation Conditions*", 57 Wash & Lee L. Rev 75, 93 (2000) [A-1750] reflects that that is not the case. "A small minority of states, as well as, notably, the federal legislature have explicitly declared probation to be a sentence...". *See,* 18 U.S.C. 3551(b) (1994) "identifying probation as sentence".

record" [A-13] – when the transcript irrefutably established that she had been "sentenced twice"; (7) his declaration that "The sentencing judge is empowered to offer a defendant sentencing alternatives from which the defendant may choose" [A-13-4] – falsely implying that he had offered Sassower the choice of probation or six months incarceration as "sentencing alternatives", when, in fact, he imposed the six-month jail sentence without the slightest prior notice to Sassower, who he had already sentenced to 92-days; (8) his pretense that there could be no challenge to his jurisdiction [A-10-11, 12], when, as he knew from Sassower's April 6, 2004 petition for a writ of mandamus/prohibition, he was without authority to proceed further by reason of her sufficient February 23 and March 22, 2004 motions for his disqualification [A-265, 375]; (9) his misrepresenting D.C. Code §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], when its plain language confers discretion on the judge to entertain further motions; (10) his misrepresentation of Sassower's motion as "nothing more than a reiteration of issues" presented by her September 23, 2004 motion for release to preclude mootness [A-1732] and her virtually identical prior motion to this Court [A-13] – when, in fact, both those motions were limited to precluding mootness on appeal of the issue of the legality of the six-month sentence; (11) his pretense that Sassower was not entitled to a hearing pursuant to D.C. Code §23-110 because her "constitutional claims are not only conclusory, they are palpably incredible" [A-13]; because her "claims do not merit a hearing" [A-14] and because "On its face the Motion fails" and "the existing record provides an adequate basis for denying the Motion" [A-14].