

[Appellant's Appendix: 1027-1033]  
**Transcript of petitioner's April 16, 2004 trial motion  
for judgment of acquittal**

Sassower: I am advised that to preserve my rights I should be moving for a judgment of acquittal. And I am prepared to argue that motion.

Judge Holeman: Please proceed.

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.

[1028] 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 21<sup>st</sup>, 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 [1029] videotape exposed the deceit of the underlying

prosecution documents on which this disruption of Congress case rested.

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

Judge 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.

Judge 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 –

Judge Holeman: Well, --

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

Judge 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 [1030] analyzed carefully, evaluated, establishes there's no act.

Judge Holeman: And the 39-page fax establishes –

Sassower: And the 39-page fax --

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

Sassower: The additional –

Judge Holeman: -- of that.

Sassower: The additional –

Judge Holeman: When I speak –

Sassower: I'm sorry.

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

Sassower: Uh-huh.

Judge 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, --

Judge 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 [1031] 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 28<sup>th</sup> memorandum to Chairman Hatch –

Mendelsohn: Objection, Your Honor.

Sassower: -- And Ranking Member Leahy.

Judge 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 appear in support of this charge. The government has [1032] not done so. Senator Chambliss has, won't appear, instructed Senate Legal Counsel to move to quash my subpoena.

I have a confro, a right of confrontation under the Sixth Amendment, recognized most recently by the Supreme Court in, in the [M]atter 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.

Judge Holeman: Very well.

Sassower: Thank you, Your Honor.

Judge 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.

Judge 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 States*, 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 –

Judge Holeman: There's no further discussion on the motion...