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July 23, 2003

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Ms. Elena R. Sassower
Center for Judicial Accountability
P.O. Box 69 Gedney Station
White Plains, NY 10605

By FAX and mail

Dear Ms. Sassower:

We received the videotape you sent showing events at the United States Senate hearing last May 22 when you asked to testify and were arrested. As promised, we viewed it with interest.

You would have it that a citizen's "respectful request" to speak, even while a hearing is going on, should never be considered disruptive.

Your goal presumed a continuing hearing you could be allowed to address. To consider the hearing ended would underscore the likely futility of your action: one can't address an event that has ended. But viewing the matter more narrowly, it could be said that there was no hearing, so the law you're charged with breaking simply doesn't apply to the facts of your case. On May 22, arguably the chairman had brought the events to a close by the time you spoke. (You noted that point in your July 7 memo/letter to us, at page 6.) On that view, there was no "hearing before, or any deliberations of, any committee or subcommittee of the Congress or either House thereof" then in progress that could be impeded, disrupted, or disturbed. D.C. Code § 10-503.16(b)(4) (2001); 40 U.S. Code § 5104(e)(2)(D).

If the prosecutor wants to apply the law to you, who addressed a chairman after a hearing appeared to have ended, wouldn't it be equally unlawful if a citizen enters the committee room before the start of a hearing, spies a Senator, and calls out, "Senator, I'd like to speak with you about your vote on the war in Iraq"? And that seems an absurd result. If Congress wants to make it a crime to speak loudly to members even outside of hearings or deliberations, they should have written a different law.

But one must also think practically: congressional hearings are simply not public forums and Congress has undoubted ability to enforce decorum, so a busy misdemeanor court may just go for a desired result of upholding the law and the arrest (no doubt easing the impact by imposing no penalty other than probation) without pausing to parse fine distinctions or question shaky applications of existing law.

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We can't answer whether the ACLU could offer you legal help to defend your charge until our Legal Committee meets and thinks about it further (considering the law, the facts of what you did, your goals and ours, and our resources and priorities). The committee's next session is September 18, and it's impossible to transact any business in the next 6-7 weeks with the start of summer holiday season scattering most Washingtonians. That date of course is after your August 20 court appearance. We imagine the court would readily grant a further continuance if you appeared but explained you were still seeking counsel and would have an answer at least from the ACLU by a date certain.

Unless you tell us for some reason not to, our Legal Director will put your request on the September committee agenda and we'll be in touch after they meet. Of course, you're free to make other arrangements; just keep us posted if you decide in coming weeks to withdraw your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Fritz Mulhauser". The signature is written in a cursive style with a large initial "F" and "M".

Fritz Mulhauser
Staff Attorney