

the village

# VOICE

Sex in  
the First  
Person  
**Love  
Letters**

✿  
[ *Writing  
From the  
Heart* ]  
p26

**THE STORMS**

OF  
CHRISTOPHER  
HITCHENS  
GIUFFO p38

PROTEST  
PEST SQUASHED  
BY COURT

Lombardi p32

**Deputy  
Mayor**

FOR THE  
**OLYMPICS**

Doctoroff Trots the  
Globe to Bring Back Gold  
for Bloomberg

BY TOM  
ROBBINS  
p16

**HEAVY METAL'S**

**GRAVEYARD SHIFT**

BOSLER p40



# The Scourge of Her Conviction

ACTIVIST ELENA SASSOWER ANNOYED CONGRESS, HER TRIAL JUDGE, AND DEFENDERS OF FREE SPEECH—ALL THE WAY TO JAIL

BY KRISTEN LOMBARDI

**T**wo days before Christmas, Elena Sassower walked out of the Washington, D.C., jail where she'd just finished serving a sentence that should frighten anyone inclined to protest in the halls of power.

For reading a 24-word request to testify at a judicial appointment hearing on Capitol Hill, an act that qualified as "disruption of Congress," Sassower was hit with six months' incarceration—the maximum allowed by law. Despite the grave constitutional implications of her case, not one of the dozen civil rights organizations she'd asked for help came to her assistance: not the ACLU, not Public Citizen, not People for the American Way, not Common Cause.

Her real crime, it seems, was her penchant for being a pest. Reached by the *Voice*, attorneys from three such organizations refused to comment or spoke only off the record. One attorney privately told the *Voice* that his group's unwillingness to lend Sassower a hand had "nothing to do with the merits of her claims" and "everything to do with her being a very difficult person." Sassower ended up acting as her own lawyer, doing herself no favors in the trial.

In the days before her May 2003 arrest, Sassower had repeatedly called her home state senators, Charles Schumer and Hillary Clinton, about the confirmation hearing of Judge Richard Wesley, a nominee for the federal appeals circuit. Sassower, of Westchester County, had taken the senators a lengthy letter and several boxes containing thousands of pages of legal briefs about Judge Wesley.

A Clinton aide contacted the U.S. Capitol Police, who told Sassower that "continued contact" would be considered harassment and warned her not to attend the Wesley hearing if she intended to disrupt it. According to police reports, Clinton's staff likened her lobbying tactics to "stalking," although the police found that her messages had "a calm and coherent tone" and contained "no threats or harassing language."

Sassower went to the hearing anyway, rising to speak as the chair gavelled the proceeding closed. "Mr. Chairman, there is citizen opposition to Judge Wesley based on his documented corruption as a New York Court of Appeals judge," she read aloud. "May I testify?"

Elena Sassower is that rare kind of activist who presses her issues as if she won't stop—and maybe she can't. She calls, and then follows up with a fax, maybe several faxes. And then she sends e-mail, along with formal letters, multi-page motions, and box after box of documents. As coordinator of the national Center for Judicial Accountability, based out of her home in White Plains, she has inundated state legislators, oversight agencies, national representa-

tives, the state attorney general's office—anyone and everyone who might listen to her tales of judicial corruption. If she leaves a voice mail and hears nothing back, she just keeps trying. If she talks to you, she may stay on the phone for hours, and if she still goes away unsatisfied, she'll call your supervisor, and that person's supervisor, and so on. "I'm committed and determined," she says. "If nothing comes back, I should be satisfied?"

Jonathan Turley, who teaches constitutional law at George Washington University Law School, finds the Sassower case "extraordinary." Her punishment is unprecedented for a congressional disrupter; it's rare that even raucous outbursts result in charges, let alone jail terms (see sidebar). It also sets up what Turley calls "a worrisome precedent," by which a judge can throw the book at someone simply for expressing political views.

Sassower's sentence means dissidents everywhere will have to think twice before opening their mouths. John Bailey, of the White Plains CitizenNet Reporter, an online news service and one of the few media outlets to write about the implications of the case, sums it up. "Many committed activists are obnoxious and relentless," he says. "Does that mean they should all get six months in jail for speaking out at a Senate hearing?"

**A**t first glance, Sassower, 48, a Hebrew-school teacher from White Plains, seems anything but disruptive. Petite and attractive, she has a bright smile and says "please" and "thank you" almost to excess. Her family and friends paint her as a sincere spiritual leader who lost her two part-time jobs at local synagogues while languishing in jail.

Sassower has dedicated much of her life to judicial reform. In 1989, she and her lawyer mother, Doris, established the Center for Judicial Accountability, which now has several hundred members nationwide. Since then, she has ferreted out corruption on the New York bench, and pressed for public participation in confirmation hearings.

When she talks about issues, her passions take over. She can sound off for hours about the ills of the justice system and the legislative processes that support it, barely stopping to catch her breath. Ask her about judiciary committee hearings, for example. As Sassower talks, she stands and then crouches, her voice growing firmer and louder; she smacks the back of her hand to punctuate her points and offers up countless pages of documentation—each painstakingly researched, with footnotes and cross-references. Just listen:

*The dirty secret about federal judicial nominees is that there is no room for public input. Only when you have nominees with extreme political views on either side is there any interest in investigating these nominees. John and Jane Q. Public have no voice in the judicial-selection process and therefore they don't*



Photograph by Brian Kennedy

*care about what's going on in their own backyard. But they should care. They should want to know about these lifetime appointments that are brokered in political deals, behind closed doors, with no concern for qualifications and no investigation into corruption. People expect this great scrutiny. But the process is a charade, a fraud, and a sham...*

Even her staunchest allies find her tenacity exasperating.

In retrospect, it was probably her persistence that set off the chain of events putting her behind bars. In February 2003, while scanning the *New York*

**Elena Sassower at home with her "silent witnesses"—the boxes of legal documents she brought to her sentencing**

*Journal*, a short item caught her attention. It announced that President Bush was eyeing Richard Wesley, then a New York Court of Appeals judge, for the U.S. Court of Appeals for the Second Circuit, where he now sits. The news stunned Sassower, who'd tangled with Wesley before.

**Sassower's sentence means dissidents everywhere will have to think twice before opening their mouths.**

In 2002, he and five of his former court colleagues committed what Sassower calls a "willful and deliberate act of deceit": They ruled against a motion to reconsider a civil case that the Center for Judicial Accountability had filed. The group was suing the state's judicial-review board, claiming it amounted to a sham. By quashing the case, Wesley, in Sassower's words, "perpetuated the fraud."

She swung into action. First she dialed the office of the Senate Judiciary Committee, relaying that the center "strenuously opposed" the Wesley nomination.

lous detail, the center's opposition, and six boxes filled with legal briefs.

She heard nothing.

On May 20, 2003, she finally landed a phone conversation, lasting 40 minutes, with two of Clinton's aides. Over the next two days, according to court records, she left two phone messages and sent a fax to Clinton's office.

On May 21, 2003, the records show, the Capitol Police contacted the activist after getting a report from Clinton's office about "a telephone call and fax" from Sassower. She had become such an irritant that the police effectively ordered her to stop calling Clinton's office and cautioned her against speaking out at the hearing on May 22.

Sassower was determined to be heard. "The is-  
»Lombardi p34



Lombardi from p32

sues were too important for me not to go down there," she says. Besides, she didn't intend to cause a scene. All she wanted was "to respectfully request to testify."

She arrived at the Dirksen Senate Office Building's room 226, the site of the hearing, and sat in the last row. For two hours, she kept her mouth shut. Only after she heard Senator Saxby Chambliss, of Georgia, who was presiding over the proceedings, bang the gavel and declare, "We will stand adjourned," did she rise from her seat. What happened next remains in dispute.

Sassower admits she read from her statement, asking to testify. But prosecutors claim she yelled over Chambliss. "Judge Wesley, look into the corruption of the New York Appeals Court," they quote her as saying in court documents. "I want to testify." When Chambliss directed police to restore order, the charging papers say Sassower "continued to shout" and "loudly demanded three times, 'Are you directing that I be arrested?'" Prosecutors say she clung to a chair to prevent the officers from escorting her away.

The official version sounds dramatic and disorderly, but a videotape of the hearing—which Sassower admitted into evidence at her trial—corroborates her story. On the tape (linked from her group's website, [judgewatch.org/disruptionofcongresscase.htm](http://judgewatch.org/disruptionofcongresscase.htm)), Chambliss strikes the gavel and calls the meeting to a close. A faint voice says something about corruption. Chambliss says, "There must be order in the room." Yet there is no ruckus. No protest. Within seconds, the video shows two officers ushering away a calm Sassower.

Watching the video today, Sassower cannot quite shake the absurdity of what has transpired. Amazed, she asks, "How could what I did ever support a disruption of Congress charge?"

That's a good question, since her actions don't fit the profile of a disrupter. Mark Goldstone, the D.C. attorney who advised Sassower on her defense, has spent 20 years representing thousands of activists charged with disrupting Congress. Many got arrested after conducting sit-ins and other protests inside the galleries or the Capitol rotunda. The ones, like Sassower, who attended public hearings really shook things up. They unfurled banners, read petitions, hollered obscenities, blew whistles. In short, he says, "They did all kinds of crazy stuff."

Goldstone figured the U.S. Attorney's office would drop the charges. But it didn't. Spokesperson

Channing Phillips says the office weighed the evidence—including the video—and considered it substantial. "We don't make the law," he says. "We just enforce it."

By all accounts, the April 2004 trial, held in D.C. Superior Court, bordered on spectacle. In preparing her defense, Sassower had clashed frequently with the presiding judge, Brian Holeman. She filed gargantuan pre-trial motions that questioned his impartiality and described him as "blind as a bat." More than once, she tried to have the judge removed from the case.

The sparring continued at trial. "Things were pretty out of control," recalls George McDermott, a Maryland activist who attended the proceedings to offer Sassower moral support. On the first day, the judge set the tone by positioning a U.S. marshal to guard Sassower for the duration. To McDermott, the message seemed clear: Say anything, and you'll go to jail.

At one point, while Sassower was testifying, the judge had her removed from the courtroom and placed in a holding cell for an hour. (Citing the pending appeal, Holeman declined to comment for this article through a court spokesperson.)

Given the environment, Sassower's supporters weren't surprised that a jury found her guilty. But no one was prepared for what happened next. Prosecutors had recommended only a suspended five-day jail term, six months of probation, and a course in anger management. A report by D.C. Court Services—which aptly called Sassower a "dedicated" activist whose "passion to demand change is often perceived as overzealous"—suggested community service.

At the June 28 sentencing, Holeman disregarded this advice. At first, he handed down a 92-day prison term, offering to suspend jail time if she'd agree to a two-year probation. He laid out the elaborate conditions: Sassower would have to perform 300 hours of community service, pay up to \$750 in fines, maintain a daily log of activities, stay away from the Capitol grounds, avoid writing or calling senators, undergo anger management therapy, and write letters of apology to, among others, Clinton, Schumer, and Judge Wesley.

Sassower viewed this last as the "most odious" of the conditions. "I am not remorseful," she declared, "and I will not lie."

"Be quiet," the judge said. "Any effort to communicate additional information will constitute a violation of your probation."

He continued: "Ms. Sassower, the answer is yes or

»Lombardi p36

## Truth in consequences

The law against disrupting Congress—"to utter loud, threatening, or abusive language, or to engage in any disorderly or disruptive conduct . . . with the intent to impede, disrupt, or disturb the orderly conduct of any session of Congress"—leaves room for interpretation. Which may explain why Elena Sassower had the book thrown at her and dissenting citizens have not. Consider these recent incidents:

- In May 2004 eight protesters at a Senate Armed Services Committee hearing unfurled a banner and hollered, "Fire Rumsfeld for war crimes!" They were not arrested.
- In April 2004 a human rights activist went to the confirmation hearing of John Negroponte, the U.S. ambassador to Iraq. As Negroponte testified, the activist stood up and called the then appointee a "state terrorist." He was merely asked to sit down and be quiet.
- In September 2003 a protester interrupted the testimony of L. Paul Bremer, the former head of the Coalition Provisional Authority in Iraq, at a Senate Foreign Relations Committee hearing. He was escorted away without incident. The next day, he returned and protested again. Only then was he charged with disrupting Congress. In July, he was convicted on two counts and sentenced to the maximum of six months for each. K.L.

**Lombardi** from p34

no. Do you accept the conditions of your probation?"  
"No."

Holeman retracted his offer and doubled his sentence—to 180 days.

Court watchers were shocked. "Elena deserved no more than six seconds in jail," Goldstone says, let alone six months.

It's hard to say whether those who took Sassower to court—or got her arrested—agree. Asked if prosecutors believe she got what she deserved, Phillips said: "I expect her appeal will deal with whether her sentence was fair, and this office does not comment on cases pending before the appeals court." Requests from the *Voice* seeking comment from senators Clinton and Schumer were not answered.

**S**assower fulfilled her six-month stint at the Correctional Treatment Facility, a D.C. medium-security jail, languishing in a wing populated by drug offenders. She was confined to her cell for 23 1/2 hour a day. She tried to occupy herself by drafting legal briefs on scraps of paper—filing three unsuccessful motions for early release before a team of pro bono attorneys took on her case last September.

"Jail is a dreadful place," says Sassower. "People regarded me with suspicion. They were hostile. I was frightened."

That Sassower had the courage to withstand prison has made her a cause célèbre within the judicial-reform movement. Her case has caught fire on the Web, appearing on legal-victims' sites and citizen-rights listservs. She's enjoyed an outpouring of support—from letter-writing campaigns to peti-

tions to honorary poems. Last month, after getting a flurry of e-mails from across the country, the *CitizetNet* Reporter named Sassower a "White Plains person of the year" and "defender of the Constitution."

Her criminal case, in many ways, has done more than her years of dogged activism to expose abuses in the justice system. After all, the system failed Sassower at every turn—from her arrest to her sentencing. If her ordeal can shed light on misconduct, she says, "maybe what happened to me will force real reform."

'I am not remorseful,'  
she declared, 'and I will not lie.'

For now, there is Sassower's planned appeal. Alyza Lewin, one of the four leading attorneys working on the case, says the legal team is now researching its brief, which the court will probably hear in the spring. The appeal will argue that Sassower's actions don't fit the definition for disrupting Congress, and may challenge the law's constitutionality.

Her attorneys say citizens shouldn't have to feel cowed by the prospect of six months in jail. "I hope we get her conviction vacated," Lewin says, "not just for Elena's sake, but for the public's." ♦