#4

Expedited Review Requested for Release from Incarceration including pursuant to Rule 8(a)(2)(D) for Interim Ruling by a Single Judge

District of Columbia
Court of Appeals

No. 04-CM-760

Elena Ruth Sassower,
Appellant,

v.

United States of America,
Appellee

Reply Affidavit for Sanctions against the US Attorney, Disclosure by Him, & Disciplinary + Criminal Referrals

Elena Ruth Sassower, being duly sworn, deposes and says:

① I am the incarcerated pro se criminal appellant, fully familiar with all the facts, papers, and proceedings heretofore had herein.

② This sworn affidavit is submitted pursuant to Rule 27(a)(5) and Rule 26(a) and (c) in reply to the US Attorney's unsworn opposition to my motion for reargument, reconsideration, renewal, and other relief, filed with the Court on Friday, September 3rd of the Labor Day weekend.

③ It is also submitted pursuant to whatever statutory and rule provisions govern "fraud on the court" fn#1 since not is what the U.S. Attorney's opposition is: a flagrantly falsifying, distorting, and obscuring my motion's six branches for their content and the relief sought. This, to conceal that it has no answer to their

---

fn #1 During the period in which I have drafted this reply, I have had no access to the jail's law library.

presentation of fact, law, and legal argument entitling me to relief. As such, this affidavit not only reinforces my motion's second branch to sanction the U.S. Attorney and for disclosure, but seeks additional sanctions and disclosure, based on the facts herein recited, as well as disciplinary and criminal referrals against the culpable U.S. Attorney and his Assistants, pursuant to Canon 3(D) of the Code of Judicial Conduct for the District of Columbia Courts.

④ As the U.S. Attorney's opposition fails to identify that two other documents are before this Court for adjudication — my August 12th background affidavit to the resubmitted reargument motion with its application for release from incarceration under this Court's Rule 9 fn#2 AND my August 24th motion for a procedural order, clarification of this Court's July 29th order, and other relief fn#3 — the relief therein sought is unopposed.

⑤ For the convenience of the Court, a Table of Contents follows:

---

fn#2: My Rule 9 application for release appears at paras. 42-45 of my background affidavit.

fn#3: I have received no procedural order with respect to that motion and comparable procedural issues are presented by this motion insofar as "page limits" and "number of copies".

Table of Contents

My Entitlement to My Motion's First Branch Reargument, Reconsideration, and Renewal (paras. 5-24)

⑥ The U.S. Attorney's opposition to my motion's first branch for reargument reconsideration and renewal of this Court's July 7th order denying me a stay and release pending appeal (Exhibit "A") fn#4 is superfluous as he has not opposed my application for release under this Court's Rule 9 — nor denied or disputed any of the facts, law, or legal argument presented by my Exhibit "C" affidavit to my reargument motion on which my Rule 9 application expressly rests.

⑦ As for his opposition to the reargument motion, it is fashioned in a succession of deceits. His most egregious is his claim (at p. 6) that "none of [my] contentions support the conclusion that the Court should reconsider" its July 7th order. This, where he does not deny or dispute — but rather conceals — my motion's foremost contention, set forth at para. 17 as a challenge to him, to wit, that Exhibit "C", the affidavit I had sought to submit on my original motion for a stay and, thereafter, in reply to the U.S. Attorney's opposition,

> "...highlights, with particularity, the 'clear and convincing evidence' of

---

fn # 4: Exhibits "A" - "G" are annexed to my resubmitted reargument motion; Exhibits "H" - "M" are annexed to my background affidavit; Exhibits "N-P" are annexed to my motion for clarification.

Judge Holeran's pervasive actual bias - pretrial, at trial, and post-trial - requiring reversal of my conviction as a matter of law. Whether the standard for a stay is the four-part test of Berry v. Washington Post Co., 529 A2d 319, 320-321 (DC 1987), or the two-part test of D.C Code 23-1325(c), examination of my affidavit shows that I have carried my burden - and I challenge the U.S. Attorney to say otherwise by addressing the evidence therein detailed."

⊗ The immediately following paragraph (18) laid down a further challenge based on my draft memo of law as to the unconstitutionality of the "disruption of Congress" statute, which is part of the affidavit:

"Moreover, since the U.S. Attorney purports (at fn. 2 [of his opposition papers]) to 'recognize[] the seriousness of any constitutional claim' he should be expected to confront my draft memo of law as to the unconstitutionality of the 'disruption of Congress' statute, DC 10-503.16(b)(4), as written and as applied - annexed hereto as Exhibit 'D'. This includes as to the inapplicability of Armfield v. US, 811 A2d 792 (DC 2002) and Smith-Garcia v US, 714 A2d 764 (DC 1998), cited by the U.S. Attorney, tellingly with an inferential 'see', for the proposition that 'convictions under sec. 10-503.16(b)(4) have been

repeatedly upheld against both constitutional and sufficiency challenges.' As highlighted by my memo (p. 3), neither case involved a public congressional hearing or conduct that would be consistent therewith."

(9) It is in face of those two unequivocal paragraphs — and the repeated references to the decisive significance of my Exhibit "C" affidavit throughout my papers, fn#5 including as part of my Rule 9 release application — that the U.S. Attorney not only conceals my "contention" that it is dispositive of my right to release, but fails to disclose anything about the affidavit's content, including its nexus of law as to the unconstitutionality of the "disruption of congress" statute, whose very existence is concealed.

(10) As renewal pertains to the introduction of new matter, fn#6 this concealment of my affidavit and memo enables the U.S. Attorney to purport (at p. 10) that my "reconsideration motion" "restates" arguments of my motion papers for a stay and "specifically" that it "reiterates"

---

fn#5 see respondent motion paras. 21, 23, 34, 84
background affidavit, paras 8, 9, 12, 45
motion for clarification paras 9, 22

fn#6 The U.S. Attorney's opposition contains no section of "Applicable Legal Principles and Standards for Review" — such as appeared in his opposition to my motion for a stay — nor otherwise discusses criteria for reopening and renewal, whose distinctions are eviscerated by his use of the single term "reconsideration".

the arguments as to Judge Hellerman's bias and the unconstitutionality of the "disruption of Congress" statute

(11) Such is a further deceit. My Exhibit "C" affidavit and its memo of law do not "rehash" or "reiterate" my original motion papers. Just the opposite. They elaborate, develop, and particularize what was only hastily identified by Mr. Goldstone's original motion on my behalf, filed within hours of my incarceration, and by the Mayer Brown brief, filed four days later.

(12) It is to foster this deceit of "rehash" and "reiterat[ion]" — in other words, that my reargument motion presents nothing "new" for purposes of renewal, that the US Attorney crafts his opposition — beginning at page 1 with his claim that my motion "fails to raise any new argument". To this end, he both minimizes to insignificance my reargument motion and enhances the significance of the original motion papers. Thus, his "Procedural Background" (at pp. 3-4) devotes a paragraph each to the content of Mr. Goldstone's June 28th motion for a stay and release and to the Mayer, Brown July 2nd supplemental brief, but no paragraph — nor even a sentence — to the content of the U.S. Attorney's opposition. This, to conceal the claim put forward by those opposition papers, to wit, that my motion papers had "not "carried [my] burden" (at p. 1), were "conclusory" (at p. 6), and presented "nothing in support" (at pp. 9, 10)

(13) Having concealed this claim, the US Attorney also conceals the response in my reargument

motion (at paras 17, 23): that my Exhibit "C" affidavit rectified these purported deficiencies. This "contention" — not denied or disputed by the U.S. Attorney — is also concealed.

(14) With respect to reargument — which pertains to fact and law overlooked by the Court — the U.S. Attorney purports (at p. 5 & 8) that I am challenging the July 2nd order on two "procedural grounds": that I did not get an opportunity to submit a completed affidavit in support of my motion for a stay and that I did not get an opportunity to respond to the U.S. Attorney's opposition papers before the Court issued its July 2nd order.

(15) This, too, is a deceit — as the first of these "procedural grounds" is not the upon which I moved for reargument [fn #7]

---

fn #7 As to this purported first "procedural ground" that I did not get an opportunity to submit a completed affidavit in support of my motion, the U.S. Attorney cites Rule 27(a)(3)(B)(i) as requiring me to have submitted my affidavit at the time the motion papers were filed. Such is in bad faith as Rule 27(a)(6) permits "other pleadings" "with the Court's permission and for extraordinary cause." In view of the no-jail-time recommendations of the D.C. Court Services' Presentence Report and the U.S. Attorney's Memorandum in Aid of Sentencing, Judge Hogan's sentence of 6 months' incarceration to begin immediately is clearly an "extraordinary cause" where, additionally, by reason thereof, I had not seen the motion papers submitted on my behalf before they were filed.

As to the U.S Attorney's assertion (at p. 7) that →

(16) The true first "procedural" was that the July 7th order gave no reasons in denying me a stay and release pending appeal. This could not have been more prominently set forth by my motion — on the very first page in the description of my first branch of relief for reargument, reconsideration, and renewal. This was then restated (at p. 6) in the first paragraph under that section heading as follows:

> "A court that denies a stay of incarceration pending appeal should be able to state its reasons for doing so. This Court's July 7th order (Ex "A") states no reasons for denying that relief [fn] giving rise to an inference that it could not support its denial. It is axiomatic that reasons function as a check against arbitrary and improperly-motivated conduct."

fn #7 cont'd "nothing in [my motion papers] suggested to the Court that [I] was preparing an affidavit... and that such would be forthcoming," this is additionally in bad faith and deceitful, as may be seen from para. 3 of my reargument motion:

> "... jail restrictions and other complications attendant to the initial stages of confinement sharply restricted my ability to speak to counsel by phone and take other steps to safeguard my legal rights. However, I repeatedly requested that the Court be advised that an affidavit from me would be forthcoming and that the motion should not be marked submitted."

(17) Such "contention" as to the importance of reasons — not denied or disputed by the US Attorney — is also concealed.

(18) As to my second "procedural ground," it was stated by my reargument motion immediately after the first as follows:

> "This Court's July 7th order was also rendered prematurely — without affording me the opportunity to respond to the US Attorney's opposition papers — as to which, pursuant to this Court's Rule 27(a)(5), I had 3 days to respond." (at para. 6)

(19) So frivolous is the US Attorney's response to my entitlement under Rule 27(a)(5) that he tucks it in a footnote (#9). He there baldly claims "Although Rule 27(a)(5) permits a party to file a reply to an opposition, nothing in the rule requires the court to await such a filing." He offers no legal authority to support such noxious proposition as would lend itself to arbitrary and improperly-motivated conduct by the Court in favoring some movants with a right of reply, but not others.

(20) Also frivolous is his claim (at pp. 7-8) that because the motion papers sought release so that I would not have to serve my "entire sentence" before the appeal was decided, the Court's swift response was warranted. This is utterly nonsensical as my "entire sentence" was 6 months and I plainly could not be benefited by the Court's speedy denial of the motion subjecting me to such "entire sentence", rather than its affording me

3 days time to respond fn #8 and, based on my reply, granting the motion. It should be self-evident that the only circumstance where the Court might dispense with a movant's reply is where, from the papers before it, it is ready to grant the movant's requested relief, thereby rendering his reply superfluous.

(21) As to the U.S. Attorney's final claim (at p. 8) that "issuance of a prompt ruling by the Court was understandable" because the motion papers for a stay "on their face [did not] establish[] any entitlement to relief"; this is belied by examination of the motion papers which, had they been facially deficient, the Court's July 16 order would have said so. Indeed, had the U.S. Attorney actually viewed them as facially deficient, he would not have had to expunge the material facts they set forth so as to purport in his opposition that I had not "carried [my] burden" (at p. 1) because they were "conclusory" (at p. 6) and presented "nothing in support" (at pp. 2, 10).

(22) It is to camouflage the actual skimpiness of his opposition to reargument, reconsideration, and renewal, as likewise the skimpiness of his opposition to my motion's other branches, that the U.S. Attorney transforms those branches into further grounds upon which he purports I am seeking "reconsideration". In fact, these branches seek independent relief.

---

fn. #8 In fact, pursuant to the calculation principles of Rules 26(a) and (c), I had 10 days to respond to the US Attorney's opposition papers, ~~identified~~ whose certificate of service identified service "by mail and facsimile". Such 10th day was Friday, July 16th — ironically the date I mailed from jail my original reargument motion (at para. 4).

(23) Finally, although the US Attorney does not directly state that there is any procedural or jurisdictional objection to this Court's ruling on my motion for a stay and release pending appeal, his "Procedural Background" (at p. 3) and footnote 10 to his "Argument" seek to mislead the Court that I did not make a "verbal motion" for same before Judge Holeman after I was sentenced. This, notwithstanding the true facts were set forth at para 24 of my reargument motion as follows:

> "...the transcript of June 28th should reflect that a short time after Judge Holeman sentenced me to 6 months incarceration + ordered me locked up immediately, he had me brought back into the courtroom for the express purpose of informing me of my appeal rights — at which time I reiterated my request for a stay pending appeal, which he denied.
>
> In view of the record of Judge Holeman's virulent and pervasive actual bias, the US Attorney's suggestion that I file a motion before him for a stay is not only 'impractical' (Rule 8(a)(2)(A)(i)), but yet another deceit."

(24) These true facts were then reinforced by para. 42 of my background affidavit where, in the context of my Rule 9 application for release, I quoted from the amended transcript

of the June 28th sentencing[fn#9] (Exhibit "Q-1", pp. 23-24) to show that Judge Holeman's denial of my request was based on:

> "a pre-fixed position not to evaluate whether the facts and law in this case entitled me to a stay and release pending appeal, as was his duty to do."

(25) Both these critical paragraphs are conceded by the US Attorney, whose accuracy he does not deny or dispute.

(26) Insofar as the US Attorney's footnote 10 — shorn of its demonstrated factually false reiterations — asserts that I had not "filed an appeal" at the time I made my "verbal motion" to Judge Holeman after being sentenced by him, Judge Holeman's denial was not on that ground (Exhibit "Q-1", pp. 23-24). Such, moreover, is not a prerequisite to applications in Superior Court preliminary to obtaining relief in this Court, whether by a motion for a stay pending appeal under Rule 8 or release from incarceration under Rule 9. — and the US Attorney does not assert otherwise.[fn#10]

---

fn# 9 On July 6th, immediately upon receiving the US Attorney's opposition to my motion for a stay, with its false representation of what had taken place at the June 28th sentencing, based on a transcript not provided (Exhibit "Q-1"), I notified the attorneys working on my behalf and my attorney-mother that such transcript was incorrect and/or not complete. The amended transcript was the result thereof.

fn# 10 → SEE NEXT PAGE → ~~[illegible]~~

My Entitlement to my motn's Secnd Branch, Sanctns against the US Attorney and Disclosure by Him (paras. 25-40)

(27) The US Attorney's opposition to my motn's secnd branch is deceitful and frivolous. It does not even identify that I am seeking sanctns, except by a passing mettin in his "Procedural Background" (at p. 6) — not repeated in his "Argument" (at pp. 8-10). The basis is not stated. Inferentially, it is because his opposition to my mottin for a stay "concealed relevant facts" and "pertinent facts" (at pp. 5, 8) — purported by him to be a basis upn which I am seeking reconsideratin. Altogether omitted is any mettin of the disclosure this branch seeks.

(28) As to the concealment of facts, the U.S. Attorney does not deny or dispute their omissin, but rather their significance. Thus, he baldly claims — tucked in a footnote (#8) — that "carefully scrutinized... [these facts] simply are not relevant for consideratin of [my] motin for a stay or release pending appeal." Conspicuously, he does not then show how "careful scrutiny" would lead to such conclusin. Instead, he simply lists a few of the concealed facts my reqsted motin identifies: (at paras 9, 36)

In # 10 it seems quite obvius — and evident from the U.S. Attorney's first footnote to his opposition to my stay motin — there is a need for this Court to clarify the interplay between the varius provisins that relate to motions for stays of incarceratin and release pending appeal. This case presents a stellar opportunity for exposition on that subject — an exposition that should be subsequent to my release by an interim order.

that I moved to disqualify Judge Holeman, that "[my] conduct in Congress involved a 'respectful request to testify'," that the US Attorney's sentencing recommendation was a five-day suspended sentence, and that I am co-founder of the Center for Judicial Accountability, Inc. Even as expurgated by him, they plainly are relevant to establishing that Judge Holeman's maximum 6-month jail sentence, maximum $500 fine, and maximum $250 assessment to the Victims of Violent Crimes Compensation Fund are vindictive, retaliatory, and unconstitutional — as to which his opposition papers, by omitting them, had purported that my motion for a stay was "conclusory" (at p. 6), had presented "nothing in support" (at pp. 9, 10) and, therefore, I had "not carried [my] burden". This was so demonstrated by my response motion (paras. 19, 20, 22, 23, 29-31, 36-40) — whose accuracy the US Attorney does not deny or dispute in any respect. fn #11

(29) Such uncontested demonstration rebuts the US Attorney's equally bald claim — in the body of his "Argument" — that "[i]n any event, these facts did not furnish a basis for granting the original motion nor do they provide any new basis for this Court to reconsider its July 7, 2004, ruling." They surely do.

(30) The U.S. Attorney advances only one other claim — in the body of his "Argument" — to wit, that because the facts "were before the Court by virtue of [my motion papers], the U.S. Attorney, therefore, had "no obligation to

---

fn #11 This includes the US Attorney's footnote 10, discussed at paras. 23-26, supra.

mention them." (at pp. 9, 10). No ethical rules or legal authority are offered to substantiate this bald claim — and plainly there is none where, as at bar, the facts are material and ~~those~~ their omission is for purposes of affirmatively misrepresenting the sufficiency of an opponent's papers. This is clear from the District of Columbia Rules of Professional Conduct — prominently cited at para. 25 of my motion.

(31) The foregoing bald claims are the totality of the US Attorney's opposition to my second branch. Altogether concealed is that the requested sanctions were not limited to concealment of material facts, but were for his "materially deceitful opposition papers" (at p. 1). My second branch (at para. 31) identified this to include his material omission, distortion, and misrepresentation of law — whose particulars, undenied and undisputed by the US Attorney, are set forth at paras. 32-36, 78, 81-82.

(32) Additionally concealed is that sanctions are only the first half of the relief my second branch seeks. The other half is for:

> "...the signators/would-be signators of [the U.S. Attorney's opposition] papers to identify their knowledge of the state of the record before Judge Holeman, including my April 6, 2004 petition to this Court for a writ of mandamus/prohibition for Judge Holeman's disqualification based on his pervasive actual bias pretrial, meeting the 'impossibility of fair

judgment standard articulated by the US Supreme Court in Liteky v. US, 114 S. Ct 1147 (1994).

(33) My second branch asserted that the U.S. Attorney's obligation was to verify — not conceal — the material facts presented by my motion and that the record was "replete with overwhelming proof of Judge Holeman's pervasive actual bias 'protecting' the government" (at para. 37), as would be evident to anyone examining my April 6th petition, "identified by my motion [for a stay]" (at pp. 1-2, 5), as providing 'a full factual summary of the case' and whose 'pleadings' were expressly cited as setting forth reasons for the granting of a stay and my immediate release from incarceration" (at para. 38).

(34) I stated:

> "Should the US Attorney oppose this motion for my release, it should be by sworn statement under penalties of perjury. Since this Court disposed of the April 6th petition without awaiting or requiring a response from the U.S. Attorney — sending a copy of its April 8th order to Assistant US Attorney Fisher (Exhibit 'B') — Mr. Fisher should now be expected to address the facts and law presented as to the sufficiency of my February 23rd and March 22nd motions for Judge Holeman's disqualification underlying the petition." (at para. 39).

(35) I concluded my second branch by reiterating my position, set forth by my June 28R Affidavit in opposition to the U.S. Attorney's Memorandum in Aid of Sentencing (at pp 2, 24) and repeated at sentencing that

> "... it would be unethical for the U.S. Attorney to oppose a stay pending appeal and my release unless he is willing to affirmatively state that I have had due process" (at para. 40).

(36) Such is the context in which the U.S. Attorney's unsworn opposition papers have been filed, signed by Assistant U.S. Attorney Susan A. Nellor, who, without explanation, has replaced Assistant U.S. Attorney John P. Mannarino, who signed the opposition papers to my motion for a stay. She, like Mr. Mannarino before her, has apparently signed for Mr. Fisher as well as U.S. Attorney Kenneth L. Wainstein. Here, as previously, there is no explanation for why Mr. Wainstein, who bears ultimate supervisory responsibilities, or at least Mr. Fisher, with more immediate supervisory responsibilities, have not signed for themselves to attest to their knowledge and approval to what has been done by a subordinate.

(37) The submitted opposition makes no affirmative representation that I have had due process or that Judge Coleman was a fair and impartial judge — yet maliciously seeks to create such inference. As illustrative, its bald claim that I have "failed to articulate a ground for Judge Coleman's disqualification" (at p. 12) when it has concealed <u>all</u> the facts

pertaining to Judge Holeman's pervasively biased conduct presented by my response motion and its Exhibit "C" affidavit. fn #12 Indeed, so total is this concealment that the U.S. Attorney is able to purport — without his rank dishonesty immediately evident:

> "Based on appellant's original stay motion and her motion to reconsider, it appears that a key ground for attacking appellant's conviction is her claim that Judge Holeman was biased against her." (at fn #4, emphasis added)

fn #12 This includes the pretense (at fn #4) that I asserted "[a]s evidence of bias" that "Judge Holeman refused to permit [me] to testify at trial." I never so-asserted — and the U.S. Attorney's citation to page 16 of my response motion further conceals what I did assert, which is at page 15 (para. 22). I there stated — with a challenge to the U.S. Attorney — that "[t]he most immediately reversable" of Judge Holeman's trial rulings was his

> "... refusal to permit me to testify from the witness stand as to what took place at the [Senate Judiciary Committee] hearing and the three days prior thereto, to wit, May 19-22, 2003. If the U.S. Attorney disputes that Judge Holeman's preclusion of my testimony as to the events at issue and my intent is, in and of itself, sufficient for reversal, I challenge him to provide legal authority.

Rather than provide such legal authority, the U.S. Attorney falsely states that I was "precluded from testifying as to certain irrelevant evidentiary matters" such he deems the events at is

(38) For the U.S. Attorney to purport that "it appears" is an utter deceit as nothing was as unequivocally and repetitively stated as the overarching appellate issue of Judge Holeman's pervasive actual bias. My Exhibit "C" affidavit set forth specifics — including under the heading "Likelihood of Success on the Merits" (at pp. 11-16), where my lengthy recitation began with the statement:

> "The threshold issue to be raised on appeal is Judge Holeman's pervasive actual bias, meeting the 'impossibility of fair judgment' standard of Liteky for which I was entitled to his disqualification pretrial. The likelihood of success on appeal is absolute — as may be seen from the most cursory inspection of my February 23, 2004 and March 22, 2004 motions for Judge Holeman's disqualification and the substantiating record upon which they are based — full copies of which were transmitted to this Court on April 6, 2004 when I filed my petition for a writ of mandamus/prohibition.

(39) The US Attorney's failure to contest the sufficiency of my February 23rd and March 22nd motions in requiring Judge Holeman's disqualification as para 39 of my reargument motion called upon him to do is because — as he well knows — he would be forced to concede that Judge Holeman had "no lawful right or power to proceed as judge at the trial, Berger v. US, 255 US 22, 36 (1921). Without more, such would constitute a concession by him that my conviction cannot stand on appeal and,

additionally, that I was entitled to this Court's granting of my April 6th petition to compel Judge Holeman's disqualification.

(40) Finally, so that there is no doubt as to the length of time that the US Attorney had to correct paragraphs 39 and 40 of my reargument motion and take proper remedial steps — beginning with himself petitioning this Court for my immediate release from incarceration — it is not the week's time as the "Procedural Background" (at pp. 4-5) falsely makes it appear. On August 12th the resubmitted reargument motion with background/Rule 9 affidavit were hand-delivered to the US Attorney's office, to the attention of Mr. Fisher, whose acknowledgment of receipt is recounted at para. 5 of my August 24th affidavit for a procedural order, etc. clarification of this Court's July 29th order, and other relief. Even before that, on July 16th, the US Attorney was served by mail with my original reargument motion which it received by mail the following week[fn #13] giving it notice of the sanctions/disclosure relief to be sought by the second branch.

(41) Thus, as to the first branch, the U.S Attorney had approximately five weeks within which to rest its three express challenges as to: the dispositive nature of my Exhibit "C" affidavit (para. 17); the dispositive nature of my Exhibit "D" memo of law as to the unconstitutionality of the "disruption of Congress" statute (para. 18); and legal authority

---

fn #13 See para. 41 of background/Rule 9 affidavit.

that would allow my conviction to stand where Judge Holeman had precluded me from testifying as to the events at issue and my intent (para. 22).

(42) that the U.S. Attorney would oppose this motion where he could not meet any of these challenges (paras. 17, 18, 22, 39, 40) — all of which he concealed — nor come forward with any precedent for Judge Holeman's 6-month jail sentence (paras. 28-29) — is grand for which judicial inquiry, as well as disciplinary and criminal referrals are mandated.

My Entitlement to My Motion's Third Branch Disqualification of Judge Webster for Demonstrated Actual Bias (paras. 41–62)

(43) The totality of the U.S. Attorney's opposition to my motion's third branch is his deceit (at p. 11) that "in my view" my April 8 mandamus petition to compel Judge Hellerstein's disqualification was "erroneously denied". This is a complete concealment and mischaracterization of my third branch — which did not present some unverifiable subjective "view", but, rather, a painstaking eight-page analysis of the April 8 order denying the petition and accompanying motion, belying any interpretation that it is simply "erroneous".

(44) Conspicuously, the U.S. Attorney does not put forward his own "view" of the April 8 order. Nor does he deny or dispute the accuracy of my analysis showing that the order is "demonstrably and pervasively dishonest" (para. 61) or the conclusion based thereon that

> "No judge participating in such order can lay claim to being fair and impartial — or properly adjudicate the further proceedings it generated — all null and void by reason of Judge Hellerstein's violation of Rule 63-I — the subject of my mandamus petition." (at para. 62).

(45) Consequently, my showing of entitlement to Judge Webster's disqualification is unopposed.

My Entitlement to My MOTION's Fourth Branch Disclosure by Judges Steadman, Reid, and Nebeker (paras. 63-70)

(46) The US Attorney's opposition to my motion's fourth branch conceals that the sole relief it seeks is disclosure by the three members of the panel which issued the unsigned July 7th order ~~[illegible]~~ making it appear instead as if reconsideration and/or disqualification are the relief at issue (at pp. 11-13). fn#14

(47) Since the US Attorney has not denied or disputed the accuracy of my eight-page analysis of the April 8th order, nor denied or disputed any of the paragraphs of this branch, my showing of entitlement to disclosure by the panel members is unopposed.

---

fn#14 The "Argument" does not identify disclosure which is only mentioned in the "Procedural Background" and there incorrectly as not pertaining to all three panel members. (at p. 6)

My Entitlement to My Motion's Fifth Branch Removal/Transfer to the U.S. Court of Appeals for the District of Columbia (paras. 71-74)

(48) The U.S. Attorney conceals that my requested relief for removal/transfer is a separate branch and relegates ~~it~~ his opposition to a footnote (#11).

(49) None of the facts which my fifth branch presents as a basis for relief are there—or elsewhere—denied or disputed by the U.S. Attorney and essentially all are concealed.

(50) As to the U.S. Attorney's opposition, citing to 28 USC 1291 and D.C. Code 11-721, relating, respectively, to the jurisdiction of the U.S. Court of Appeals for the District of Columbia Circuit and this court, he does not purport these to be the exclusive jurisdictional provisions. They are, moreover, non-responsive to the fifth branch (~~para~~ para. 74) which explicitly seeks removal/transfer by way of this Court's interpretation of DC Code 10-503.18—the venue provision of the "disruption of Congress" statute.

My Entitlement to My MOTION's Sixth Branch Such other and further Relief as may be Just and Proper (paras 75-88)

Alternative #1: Reinstating Judge Holeman's originally-announced 92-day sentence and vacating the 6-month sentence of incarceration (paras 77-83)

(51) The U.S. Attorney does not deny or dispute any of the facts, law, or legal argument presented in support of this relief. All are instead concealed, as likewise the second half of the compound relief, to wit, "vacating the 6-month sentence of incarceration." This enables him to purport (at pp. 14-15) that I am seeking sentence reduction — and to make completely irrelevant argument based thereon fn #15 including that this Court lacks jurisdiction which, by an incongruous final phrase to his last sentence, he ambiguously extends not only to reduction of sentence, but to "immediate release from incarceration". (at p. 15). All this is wholly deceitful!

(52) As stated in my concluding paragraph 83 — without contradiction from the U.S. Attorney:

---

fn #15 The US Attorney also introduces a dehors the record letter which my sister wrote to Judge Holeman for sentence reduction. Such letter was without my knowledge, consent, or approval — and I do not now consent or approve of it.

"Absent legal authority to sustain Judge Holeman's scrapping of his originally-imposed 92-day jail sentence for no reason other than my withholding consent to his terms of probation, I am entitled to its reinstatement as a matter of law."

Alternative # 2: Deferring the date for my perfecting the appeal 90 days from the date of my release from incarceration (paras. 84-88)

(53) The US Attorney altogether conceals that this relief has even been requested. As such, it is unopposed. Indeed, it is conceded by his purported concern that I am "severely handicapped by the fact that I have chosen to represent [myself] on appeal." (at p. 13).

(54) This concern, by a "note for the record" (at p. 13) is a deceit. I am not "severely handicapped" because I am representing myself — as to which the U.S. Attorney devotes six sentences to proposing that "[I] and this Court should reconsider [my] self-representation on appeal" (at p. 14). Rather, and as clearly stated, it is because I am incarcerated — a material fact wholly omitted by his six-sentence "note".

(55) As the handicap caused by my incarceration is a temporary condition, I have proposed a reasonable remedy of deferring the date by which my perfected appeal must be filed to 90 days after my release — ~~further~~ asserting (at para 88), without contradiction by the US Attorney, that there is no prejudice thereby and that

> "such would resoundingly serve the interest of justice, which is the very purpose of the ~~judicial~~ appellate process."

Conclusion

The US Attorney's opposition is no opposition in fact or law, but a fraud on the Court mandating judicial inquiry and disciplinary and criminal referrals pursuant to Canon 3(D) of the Code of Judicial Conduct for the District of Columbia Courts.

Based on the "clear and convincing evidence" presented by my response motion — Exhibits "C" - "G", entirely undenied and undisputed by the US Attorney — my release from incarceration must be immediately ordered.

Elena Rue Hargrove

Sworn to before me
this 13th day of September
2004

Andrea Hargrove
Notary Public, District of Columbia
My Commission Expires 07-31-2006

Table of Exhibits

Exhibit "Q-1" Amended Transcript pp 21-24
June 28, 2004 sentencing

Exhibit "Q-2" Transcript, p 22
June 28, 2004 sentencing