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

----------x

ELENA RUTH SASSOWER,

Appellant

v.

Appellant's Background Affidavit to her Resubmitted July 16, 2004 Motion for Reargument and Other Relief – and in Further Support Thereof and Release under this Court's Rule 9

No. 04-CM-760

UNITED STATES OF AMERICA,

Appellee

----------x

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the incarcerated *pro se* criminal appellant whose July 16th motion for reargument, reconsideration and renewal of this Court's July 7th order (per Steadman, Reid, Nebeker) (Exhibit "A")[1] denying me, without reasons, a stay and release pending appeal was returned to me by the Court, without explanation, on July 29th – the same day as it sent me its July 29th order (per Terry, Steadman, King) (Exhibit "H-1") belatedly recognizing my right to proceed *pro se*.

2. This affidavit is submitted to set forth facts relevant to my July 16th motion and the Court's July 29th order. Such facts, raising additional questions as to this Court's fairness and impartiality, reinforce those branches of my now resubmitted motion as seek disclosure and removal/transfer of this appeal to the U.S. Court of Appeals for the District

[1] Exhibits "A" – "G" are annexed to my resubmitted motion for reargument and other relief.

of Columbia. Consequently, this affidavit is submitted in further support of that relief, as well as release pursuant to this Court's Rule 9.

3. The within recitation should be seen in the context of caselaw recognizing:

> "The harm done to an innocent defendant who serves time before his conviction is reversed on appeal cannot be undone and serves as a continuing affront to our sense of justice...", U.S. v. Thompson, 452 F.2d 1333, 1340 (1971), cert. denied 92 S. Ct. 1251 (1972).

4. Such is here relevant, except that my conviction will not only have to be reversed on appeal, but vacated. This, for the reasons particularized by my April 6th petition for a writ of mandamus/prohibition for Judge Holeman's disqualification, namely, Judge Holeman's violation of this jurisdiction's mandatory disqualification provision (D.C. Superior Court Civil Procedure Rule 63-I, made applicable by Superior Court Criminal Procedure Rule 57(a)). Such barred him from proceeding further in the face of my timely and sufficient February 23rd and March 22nd motions for his disqualification for actual bias – with the result that he had "no lawful right or power to proceed as judge on the trial," Berger v. U.S., 255 U.S. 22, 36 (1921)[2].

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

Table of Contents

* * *

[2] *See* my April 6th mandamus petition (at pp. 13-14). Also, my April 6th motion for a stay (at pp. 3-4, 6).

Facts Relevant to my Originally-Submitted July 16th Motion for Reargument and Other Relief and the Court's July 29th Order – Supporting Disclosure and Removal/Transfer

6. On Friday, July 16th, I mailed the Court, by priority mail,[3] a motion with six branches of relief. The first was for:

> "reargument, reconsideration and renewal of this Court's July 7, 2004 order (per Steadman, Reid, Nebeker) denying, without reasons, my motion to stay D.C. Superior Court Judge Brian Holeman's sentence of incarceration and for my release pending appeal" (at p. 1).

7. This reargument motion consisted of my sworn 18-page [handwritten] affidavit with annexed exhibits "A" – "F". Exhibit "C" was the most important. It was the affidavit I had drafted in jail from June 29th – July 6th to support the June 28th motion for a stay pending appeal and for my release, made on my behalf by my legal advisor, Mark Goldstone. It was to have been submitted on the original motion and, thereafter, upon the U.S. Attorney's service of opposition papers on July 6th, as a reply thereto.[4]

8. The dispositive nature of my Exhibit "C" affidavit was stated by my reargument motion as follows:

> "... it highlights, with particularity, the 'clear and convincing evidence' of Judge Holeman'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 Barry 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" (at ¶17).

---

[3] The mailing was done on my behalf by the Federal Treatment Center's Program Manager, Walter Fulton – whose certificate of service for both the U. S. Attorney and the Court was enclosed with the motion. It is annexed hereto as Exhibit "I".

[4] *See* ¶¶ 12-15 of my reargument motion.

9. The exhibits to my Exhibit "C" affidavit all related to the unconstitutionality of the "disruption of Congress" statute. They were annexed to my reargument motion as Exhibits "D" – "F". Exhibit "D" was my draft memo of law, as to which my motion stated:

> "... since the U.S. Attorney purports (at fn. 2) 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, D.C. 10-503.16(b)(4), as written and as applied – annexed hereto as Exhibit "D". This includes as to the inapplicability of Armfield v. U.S., 811 A2d 792 (DC 2002), and Smith-Caronia v. U.S., 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." (at ¶18).

10. Also sent to the Court in the priority mail envelope containing my reargument motion, were my own copies of three additional documents. These were identified by my motion (at ¶16) as sufficient – even without my Exhibit "C" affidavit – in establishing that "[Judge Holeman's] sentence, both imposed and as originally announced, is without basis in the record." These were:

> (a) D.C. Court Services' May 28, 2004 Presentence Report;
>
> (b) The U.S. Attorney's June 1, 2004 Memorandum in Aid of Sentencing; and
>
> (c) My June 28, 2004 Affidavit Commenting upon and Correcting the May 28, 2004 Presentence Report and in Opposition to the U.S. Attorney's June 1, 2004 Memorandum in Aid of Sentencing.

11. As to the five other branches of relief identified at the outset of my July 16th reargument motion, including disclosure and removal/transfer (at pp. 1-3), their particulars were not set forth, but were promised to be transmitted on Monday, July 19th (at ¶4).

> to not recognize Sassower as pro se. This has led to Sassower being stripped of her pro se designation without her consent, and has limited her ability to communicate with the Court, and to receive important communications from the Court regarding her case."

15. Immediately upon securing my signature to the July 19th joint motion, Mr. Goldstone hand-delivered it to the Court for filing.

16. Notwithstanding the Court had no discretion but to grant the joint motion – a ministerial act accomplished in minutes – the Court delayed granting it for 10 days until its July 29th order (Exhibit "H-1").

17. That the Court is capable of acting expeditiously when it so chooses may be seen from the fact that the Court took only two days to dispose of my April 6th petition for a writ of mandamus, prohibition, certiorari, and/or certification of questions of law, as well as my April 6th motion for a stay and disclosure by, and/or disqualification of, this Court's judges. The Court did not even await response from Judge Holeman or the U.S. Attorney in rendering its April 8th order (per Farrell, Glickman, Nebeker) (Exhibit "B") which identified none of the facts, law, or legal argument I had presented.

18. The Court also acted expeditiously in denying, without reasons, Mr. Goldstone's June 28th motion for a stay and my release pending appeal. Its July 7th order (Exhibit "A") did not even wait the customary 3-5 days so that I might reply to the U.S. Attorney's palpably deceitful opposition papers, not served until July 6th.

19. During this 10-day period between the filing of the July 19th joint motion and the Court's July 29th order, the Clerk's office should have properly brought my July 16th *pro se* reargument motion to the Court's attention. The Court plainly needed to know that a substantive motion bearing on my entitlement to release from jail had been received and was waiting upon the Court's inevitable granting of the procedural joint motion.

12. On July 19th, I wrote and mailed a letter to the Court and U.S. Attorney (Exhibit "J") advising that:

> "due to the complete absence of all library resources, as well as other handicaps resulting from my incarceration, I have been unable to complete the concluding portion of my affidavit. It will be sent later this week."

I then stated:

> "Meantime, the U.S. Attorney can profitably use the time to address the particularized facts and 'clear and convincing evidence' presented by my motion as already sent to him. This would include with respect to Judge Holeman's pervasive actual bias and the sufficiency of my February 23, 2004 and March 22, 2004 motions for his disqualification, as well as my draft memo of law and other exhibits pertaining to the unconstitutionality of the 'disruption of Congress' statute, as written and as applied."

13. Later that same day, Monday, July 19th – and to ensure there would be no delay or other complications when the Court received my *pro se* reargument motion – Mr. Goldstone came to the jail to have me sign a joint motion to permit him to withdraw as my "counsel" pursuant to this Court's Rule 42(b) and to permit me to represent myself pursuant to this Court's Rule 42(c). Such joint motion was necessitated by this Court's Rule 42(a) which transforms "any filing by an attorney in this Court" into an "entry of appearance by that attorney as counsel for the party on whose behalf the paper is filed." As a consequence, Mr. Goldstone had been automatically converted into my "counsel" by filing in this Court his June 28th motion for a stay and my release pending appeal – even though he signed it as "Attorney Advisor to Defendant *Pro Se* Elena Sassower."

14. In pertinent part, the joint motion stated:

> "3. Goldstone never intended to become [Sassower's] attorney, and Sassower never intended to relinquish her pro se status.
> 4. The effect of Goldstone filing a motion with the Court of Appeals has been to have the Court treat Goldstone as 'Counsel' and

20. In any event, the Clerk's office's handling of my July 16th *pro se* reargument motion raises serious questions as to what was going on.

21. At my request, my attorney-mother called the Clerk's office numerous times during the week of July 19th and July 26th to verify its receipt of my July 16th reargument motion. As late as July 28th, she reported to me that she was told by the Clerk's office (Deputy Clerk Brown) that the Court had no record of the motion and that due to security screening of mail, it might not arrive for several weeks.

22. In fact, it appears that my July 16th reargument motion had arrived at least by July 22nd. That is the date appearing on the modified form letter addressed to Mr. Goldstone from the Court's Clerk, Garland Pinkston, Jr. (Exhibit "K-1) signed by Ruth Gantt, whose title was not identified[5]. The letter stated:

> "Dear Mr. Goldstone:
>
> Enclosed (as noted below), is pro se correspondence the court has received from your client in the above matter. Please advise your client that since he/she has counsel, the court will not accept for filing any pleadings that he/she proffers to the court."

The "noted below" enclosure was my "Affidavit in Support of Motion."

23. Such letter was altogether inappropriate in light of the pending joint motion – to which the letter conspicuously made no mention. Obviously, even if the Clerk's office were not going to bring my *pro se* reargument motion to the Court's attention so that its inevitable and purely ministerial granting of the joint motion might be expedited by reason thereof, it should have held the *pro se* motion pending determination of the joint motion, which it had to know was imminent.

---

[5] Ms. Gantt's title is Information Center Supervisor, Public Office of the D.C. Court of Appeals.

24. Nor was Ms. Gantt's letter in conformity with the Court's own Rule 25(e) requiring "If any paper is not accepted by the clerk for filing, the clerk must promptly notify the persons named in the certificate of service." No copy was indicated as being sent to the U.S. Attorney – although named on the certificate of service which had accompanied my July 16th motion (Exhibit "I"). Rather, I was the sole indicated recipient. Yet, the clerk's office was not "prompt[]" in sending me a copy of the July 22nd letter – as reflected by the July 26th metered postal date on the envelope (Exhibit "K-2"). It was not until Thursday, July 29th that the letter, bearing an original signature by Ms. Gantt, reached me, with its enclosure of copies of all the documents I had mailed to the Court on July 16th plus the original of my July 19th letter to the Court and U.S. Attorney (Exhibit "J").

25. Coincidentally, my mother, having grown increasingly concerned about being told by Deputy Clerk Brown that my July 16th motion had not been received, had asked to speak to a supervisor and was directed to Ms. Gantt, for whom she left a voice mail message on July 28th.

26. On July 29th, the same day as I received the July 22nd letter (Exhibit "K-1"), my mother spoke with Ms. Gantt, who confirmed that my July 16th reargument motion had been received by the Court. She stated, however, that it had been returned to Mr. Goldstone as he was still my counsel until the joint motion was decided. She would not give any time frame with which the Court might be expected to rule on the joint motion.

27. That day, the Court ruled on the joint motion by granting it. Its July 29th order (Exhibit "H-1") was mailed in a letter-size envelope, which reached me on Monday, August 2nd – simultaneous with a large envelope from the Court[6]. Inside this large

[6] The same postage meter was used for both envelopes (Exhibits "H-2" and "L-1"). It would appear that the envelope containing the July 29th order was sent first as the jail stamped it

envelope was the same July 22nd letter to Mr. Goldstone (Exhibit "L-2") as I had received on July 29th (Exhibit "K-1"). It, too, bore an original signature from Ms. Gantt. This time, however, the enclosures to the letter were my original July 16th motion papers, including the priority mail envelope in which I had sent them to the Court (Exhibit "L-3"). No cover letter explained this surprising transmittal.

28. The Court's return to me of my original July 16th reargument motion was completely inexplicable since the motion was then properly before the Court for adjudication upon its granting of the joint motion. Certainly, had the Court had any question about the reargument motion – as, for instance, whether I had ever transmitted the balance of my moving affidavit particularizing the five branches of relief apart from reargument, reconsideration, and renewal, and, if not, whether I wished the Court to nevertheless proceed to adjudicate that relief – it could have embodied that in its July 29th order in the same way as it embodied its questions pertaining to whether I had paid the $100 appeal fee and "made a deposit for any necessary transcript" (Exhibit "H-1").

29. It was not until Wednesday, August 4th, in my first conversation with Mr. Goldstone since he had brought me the July 19th joint motion for signature, that I learned that he had never received the purported July 22nd letter addressed to him nor the motion papers it purported to enclose. It then became clear that the July 22nd letter with Ms. Gantt's original signature which I had received on August 2nd with my original July 16th motion papers (Exhibit "L") were the very documents not previously sent to Mr. Goldstone and which now, with the July 29th order vacating Mr. Goldstone's appearance (Exhibit "H-1"), could no longer be sent to him. Rather than entering my July 16th reargument motion

---

"received" on July 30th. The envelope containing the July 22nd letter and my original July 16th motion papers was not stamped "received" until August 2nd.

on the Court's docket – as is the duty of the Clerk's office pursuant to this Court's Rule 45 and as should have been done days earlier upon its receipt – the Clerk's office returned it to me.

30. The only purpose served by the Clerk's office's return of my original July 16th reargument motion – both in purporting to send it to Mr. Goldstone and, thereafter, in sending it to me – was to delay adjudication of my entitlement to a stay and release pending appeal, established by "clear and convincing evidence" by Exhibits "C"-"F" annexed to the motion.

31. The Court should disclose its knowledge of its Clerk's office's handling of my July 16th reargument motion – which it should explain.

32. Likewise, the Court should explain why, with a Clerk's office available to provide it with such basic administrative and procedural information as to filing fees and transcripts, the July 29th order purports that the Court does not know what its Clerk's office's records should reflect: that the $100 appeal fee was paid on July 19th (Exhibit "M-1") and that a "Statement Regarding Transcripts" was filed with the court by Mr. Goldstone on July 20th (Exhibit "M-2"), with an additional statement provided by my Amended Notice of Appeal, filed on July 27th (Exhibit "M-3") that "transcripts of all court proceedings and trial were long ago ordered, excepting arraignment and voir dire. All were fully paid for and delivered to me, except for 6/1/04 proceeding relating to sentencing. Transcripts have yet to be proofed and corrected for errors."[7] Indeed, it might be reasonably inferred that the Court's introduction of such matter into its July 29th order was both to create a false illusion of possible non-compliance by me with this Court's rules and

[7] See also August 3rd affidavit of George McDermott attesting to payment of $100 appeal fee and filing of statements regarding transcripts.

procedures, as well as to conceal that the only issue before the Court – which it took 10 days to adjudicate while I sat in jail – was the joint motion which it had no discretion but to grant.

33. Finally, unless it is this Court's custom to gratuitously instruct *pro se* litigants and intimidate them from safeguarding their rights by wholly appropriate procedural, non-substantive inquiries of the Clerk's office, there is no basis for its ordering that

> "appellant is hereby directed that she must comply with the rules of this court and may interact with this court only through properly filed pleadings that conform with the rules of this court and are properly served on the appropriate United States Attorney listed on this order. Requests made by telephone, whether made by appellant or persons on behalf of appellant, will not be entertained."

34. Apart from the incomplete *in forma pauperis* application which I did not authorize Mr. Goldstone to make on my behalf and about which I knew nothing (see fn. 1 of my reargument motion (at p.6)), I have fully complied with this Court's rules to the extent those rules are clear. That they are not clear and the reluctance of the Clerk's office to provide such basic clarifying information as the time parameters for reargument motions are reflected by paragraphs 3 and 4 of my reargument motion. This Court's decision on the motion should provide such clarification.

35. There are a plethora of procedural, non-substantive questions whose answers are not contained in the Court's rules or which are otherwise confusing. If it is the Court's directive, by its July 29th order, that requests for procedural, non-substantive information cannot be made by telephone to its Clerk's office, but must be presented to the Court by "pleadings" served on the U.S. Attorney, the Court should clearly set that forth.

36. Any such directive would be totally unwieldy – and I do not for a minute believe that attorneys or *pro se* litigants in other cases are so directed. If I am being

invidiously treated – and the Court should make disclosure thereof – this would be further grounds for removal/transfer to the U.S. Court of Appeals for the District of Columbia.

37. To my knowledge, all telephone requests made on my behalf concerned procedural, non-substantive issues – and have been entirely proper. If the Court disagrees, it should specify the objectionable requests and by whom they were made. Such would comport with the due process expected of a fair and impartial tribunal.

My Resubmitted July 16th Motion for Reargument and Other Relief and Release under this Court Rule 9

38. The original July 16th reargument motion, as transmitted by me to the Court on that date – and as returned to me by the Court on July 29th – is herewith resubmitted.

39. Other than a handful of corrections to inadvertent errors which I have penned in, no changes have been made to my moving reargument affidavit or to its Exhibit "C" affidavit. Exhibits "E" and "F" to the motion now respectively include the anticipated affidavits of Andres Thomas Conteris and Gael Murphy about their disruptions of Senate Committee hearings, for which they were not arrested. Exhibit "F" now additionally contains a photo layout from Roll Call showing the unfurled banner of protestors "FIRE RUMSFELD" at the May 7, 2004 Senate Armed Services Committee Hearing.

40. The continuation of my moving affidavit relating to the five branches of relief apart from reargument has now been added after the July 16th notarized signature page (at p. 18), beginning at page 19 and concludes with its own notarized signature page bearing today's date, August 12, 2004 (at p. 47).

41. Such continuation was continually drafted and redrafted over the weeks in which my attorney-mother, acting on my behalf, struggled to ascertain whether the original July 16th mailed transmittal had been received by the U.S. Attorney and the Court. It took a

week to obtain confirmation of receipt from the U.S. Attorney (July 23rd) and nearly two from the Court (July 29th). Clear from this experience was that further transmittals of substantive papers would have to be hand-delivered – arrangements for which are complicated matters at the jail, as likewise the making of necessary copies. As for the minimal legal research reflected by the continuation, it took weeks to accomplish because access to the law library was limited to once a week, for three hours, with no working photocopier available for me to copy statutes and decisions so that I might study them in my jail unit, rather than hurriedly skim them on library time.

42. To the extent my release from incarceration is guided by this Court's Rule 9 ("Release or Detention in a Criminal Case") – to which the U.S. Attorney made no reference in his July 6th opposition papers and to which this Court's July 7th order did not refer (Exhibit "A"), the (amended) transcript of the June 28th sentencing shows that the only reason Judge Holeman gave for not granting my request for a stay pending appeal was:

> "... To do so would be to show you favorable treatment that I have not in the past shown any other convicted criminal defendant in this courtroom and I won't start the practice now..." (p. 24, lns. 1-4)

In other words, Judge Holeman announced 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.

43. As for the affidavit which Rule 9 requires "addressing each point enumerated in Form 6", the information sought by items 1-8, except as to the non-issue of financial ability/support, is provided by D.C. Court Services' May 28th Presentence Report with my corrections thereto in my responding June 28th Affidavit. Both these documents were

transmitted by me with my original July 16th motion, returned to me by the Court and herewith retransmitted.

44. As to financials (#5, 6), there is no question that I am gainfully employed and self-supporting. Should posting bail be required – and there is no reason why it should be – I have the ability to post bail/bond and to obtain the financial assistance of others for such purpose.

45. As for items #9-14, they are all presented by this resubmitted motion, indeed by the original July 16th reargument branch – the heart of which, for purposes of my release, be it under Rule 9 or otherwise, is my Exhibit "C" affidavit.

46. For the convenience of the Court, a Table of Contents to the resubmitted motion has been inserted as page 2, directly after the summary of the requested six branches of relief.

Elena Ruth Sassower, #301340
Correctional Treatment Facility

Sworn to before me
this 12th day of August 2004

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

TABLE OF EXHIBITS