Expedited Relief 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

Elena Ruth Sassower,
Appellant

v.

United States of America,
Appellee

No. 04-CM-760

Motion for Reargument, Reconsideration, Renewal and Other Relief

ORIGINAL

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

① I am the pro se criminal appellant whose 60-month sentence of incarceration for "disruption of Congress" will be fully served before my meritorious appeal can be perfected, argued, and decided by this Court.

② This affidavit is submitted in support of a motion for the following relief:

ⓐ 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 (Exhibit "A");

ⓑ to sanction the U.S. Attorney for his materially deceitful opposition papers

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to my motion for a stay and release pending appeal and to require the three signators/would-be signators of those 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 U.S. Supreme Court in Liteky v. U.S., 114 S. Ct 1147 (1994);

© to disqualify Judge Nebeker based on his participation in this Court's April 8, 2004 order (per Farrell, Glickman Nebeker) which — without identifying any of the facts, law, or legal argument I presented — denied my April 6, 2004 petition for a writ of mandamus/prohibition to disqualify Judge Holeman and the additional relief of certiorari and/or certification of questions of law as to my entitlement to venue of this case in the US District Court for the District of Columbia pursuant to DC ~~Code~~ 10-503.18 as well as denied my motion for a stay of the trial and to disqualify this Court's judges, without identifying my request for disclosure of facts bearing on their fairness and impartiality (Exhibit "B")

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(d) for disclosure by Judges Steadman and Reid of facts bearing on their fairness and impartiality, with similar disclosure by Judge Webster, if he does not disqualify himself for the actual bias manifested by the April 8, 2004 order;

(e) for removal/transfer of this case to the US Court of Appeals for the District of Columbia for appellate review;

(f) for such other and further relief as may be just and proper, including, if the foregoing is denied:

(1) reinstating Judge Holeman's originally-announced 92-day sentence and vacating the 6-month sentence of incarceration;

(2) deferring the date for my perfecting the appeal herein to 90 days from the date of my release from incarceration.

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Introduction

③ Due to my confinement, I have been severely handicapped in drafting this motion. Not until July 14th was I able to obtain my casefile and I do not yet have a copy of the transcript of the June 28th sentencing. Only now do I have access to the law library, but in a very limited, irregular basis. There has been no one to orient me as to research materials or to answer my question as to whether there is a working photocopier for making copies of relevant law & decisions so that I might read them in my cell unit, rather than hurriedly ~~scan~~ skim them during my very brief library time. As there do not appear to be other pro se litigants, the jail is tackling — perhaps for the first time — the questions I am asking about facilities for typing, copying and procedures for mailing my papers to the Court and to my adversary, the US Attorney. The answers have been tentative and uncertain.

Meanwhile, I have been informed by ~~my~~ my attorney-mother, who has called the Court on my behalf, that it has been extremely reluctant to provide procedural information. This includes confirmation that Rule 27(b)(3) requiring that reconsideration of orders on procedural motions "be filed within 10 calendar days after the order is entered on the docket" applies to substantive motions, and, if so, that July 17th would be the tenth day with respect to this Court's

July 7th order, which, because it falls on a Saturday, would give me to Monday, July 19th for my motion.

④ To avoid any inadvertant forfeiture of my rights, this motion will be given to responsible jail personnel on Friday, July 16th for appropriate transmittal to the Court. The first section pertaining to reargument, reconsideration, and renewal, is complete. The subsequent sections pertaining to the other relief sought by this motion, will be transmitted on Monday, July 19th.

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Reargument, Renewal, and Reconsideration

⑤ 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.#1] 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.

⑥ 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 5 days to respond.

⑦ The US Attorney's opposition papers were faxed at or about 5 pm July 6th to Mark Goldstone, my legal advisor who prepared the original June 28th motion for a stay and for release pending appeal, and to Andrew Frey and Fatima Goss of Mayer,

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fn.#1 By contrast, the court gave reasons for denying the motion made on my behalf to proceed in forma pauperis, to wit, "the affidavit is incomplete."

Such motion which I have not seen was made without my knowledge + consent. I will not be refiling for such relief.

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Brown, Rowe + Maw, LLP, attorneys who prepared the July 2nd supplemental brief — all 3 attorneys working on my behalf pro bono in recognition of the importance of this case. Three days later, Ms. Goss delivered to me in jail a copy of the US Attorney's papers.

(8) The next day, July 7th, two other attorneys called the Court on my behalf, inquiring about the time parameters for responding to the US Attorney's opposition papers. They were each told that the Court withholds decision for 3-5 days. The Court's order denying the stay was that day.

(9) Even without the benefit of my reply, the Court could readily recognize that the US Attorney's opposition papers were materially deceitful in that they omitted the following pertinent facts presented by Mr. Goldstone's motion and/or the Hager, Brown supplemental brief:

(a) that I had moved to disqualify Judge Holeman for "demonstrated bias" and had presented this Court with a writ of mandamus/prohibition; (motion pp 1, 2, 5);

(b) that the "disruption of Congress" crime for which I was charged, prosecuted, and convicted, and incarcerated consisted of my respectful request to testify in opposition

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at the Senate Judiciary Committee's May 22, 2003 "hearing" to confirm the nomination of New York Court of Appeals Judge Richard Wesley to the Second Circuit Court of Appeals (motion, p. 1; supp brief, pp. 2-3);

(c) that Judge Coleman's 6-month jail sentence was sua sponte and without basis in the record, to wit,

> "the government did not ask for jail time or even a stay away order in their sentencing memorandum, and the US Capitol Police or Senate Judiciary ~~Committee~~ did not put in papers requesting jail time. CSOSA did not recommend jail time." (motion, p. 4);

(d) that there was nothing violent, threatening, or abusive in my crime warranting the stay away order and other conditions of Judge Coleman's probation infringing upon my "constitutionally protected freedom of speech, association and rights to petition government" (motion, p. 4; supp. brief, p. 3);

(e) that I am co-founder and coordinator of the Center for Judicial Accountability, Inc. (CJA), a non-profit judicial reform organization (motion, p. 2); that Judge

Holeman's terms of probation infringed upon my ability to discharge my professional duties (motion, p. 4); and that those terms included submission to Judge Holeman of signed daily time sheets, accurate to 1/10 hour of my employment as CJA's coordinator (motion, p. 2).

(10) It is by omitting entirely these material facts from its opposition papers that the US Attorney is able to purport that I made "only conclusory assertions about the legality of [my] conviction and sentence" (at p. 6) and have presented "nothing in support" of my claim that the sentence, both imposed and original, is "unconstitutional and vindictive" (at pp. 9, 10). Indeed, only by such concealment is the US Attorney able to pretend that Judge Holeman's 6-month sentence is not only appropriate, but that his original 92-day suspended sentence ~~is~~ was lenient, "indicat(ing) [his] desire to address rehabilitation and recidivism without the need for a six-month jail term." (at pp 10-11)

(11) The Court could reasonably infer that affording me the 3-5 days response time to the US Attorney's opposition would enable me to reinforce my entitlement to a stay arising from the material facts it had concealed.

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(12) It must be noted that on July 6th when Ms. Goss delivered to me a copy of the US Attorney's opposition papers, I handed her the third and last installment of an affidavit in support of a stay that I had begun drafting within the first hour of my waking up in jail on June 29th — the first morning of my confinement.

(13) Throughout the ~~following~~ week in which I drafted the affidavit, 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.

(14) On June 30th, I gave Mr. Goldstone the first installment of my affidavit, simultaneous with his giving me a copy of the motion for a stay and release pending appeal that he had filed on my behalf, which I had not yet seen. fn #2 On July 3rd, I gave his assistant a

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fn. #2 There is a materially erroneous statement at p.3 of Mr. Goldstone's motion that "[I] did not agree to the presentence report writer's request for [my] statement of remorse." This is not true. DC Court Services' May 28, 2004 presentence report contained no request for any "statement of remorse" by me. →

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revised and extended version. On July 5th, I gave Mr. Goldstone the second installment and the following day, July 6th, gave Ms. Goss the third installment, at which time she gave me, in addition to the US Attorney's opposition papers, the Mayer, Brown supplemental brief which I had not yet seen! fn #3

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fn. #2 cont'd

Additionally, in the same sentence of Mr. Goldstone's motion, he states that "[I] took the witness stand" — giving the misleading impression that I was permitted to testify. This is not so. Judge Huvelle cut me off and would not permit me to testify as to my arrest and the critical days prior thereto, to wit, May 19-22, 2003 — a fact set forth in my May 25, 2004 letter to D.C. Court Services for inclusion in the Presentence Report (annexed as Exhibit "C" to my June 28, 2004 affidavit commenting upon and correcting the May 28, 2004 Presentence Report and in opposition to the US Attorney's June 1, 2004 memorandum in aid of sentencing).

fn. #3 There is a materially erroneous statement in the first paragraph of the Mayer, Brown supplemental brief that "[I] contacted the Capitol Police to inform them of [my] desire to present testimony in opposition to the nomination in advance." This is untrue. It was Capitol Police that contacted me — and the facts and circumstances of their doing so are recited by my May 21, 2003 fax to Capitol Police, annexed as Exhibit "I" →

~~AFF~~ 3 cont'd
to my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions.

(15) The three handwritten installments of my affidavit, copied over in a single document signed by me, is annexed hereto as Exhibit "C", with its three exhibits pertaining to the unconstitutionality of the "disruption of Congress" statute, as written and as applied, attached hereto as Exhibits "D", "E" and "F". The affidavit with exhibits was to be submitted on the original motion, and, upon the US ~~Attorney~~'s filing of his opposition papers, in reply thereto.

(16) It was also my instructions to counsel assigned me that they provide the Court with a copy of (a) DC CJA Services' May 28, 2004 Presentence Report; (b) the US ~~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 the US ~~Attorney~~'s June 1, 2004 memorandum in opposition to. These are the documents which — even apart my affidavit — establish~~es~~ that the sentence, both imposed and as originally announced, ~~are~~ is WHOLLY BASELESS in the record. Copies are enclosed.

(17) As to my accompanying affidavit (Exhibit "C"), although written before seeing the U.S Attorney's opposition, it addresses virtually every argument the US Attorney raises. This, because it ~~was~~ highlights, with particularity, the "clear and convincing evidence" of Judge Coleman's pervasive actual bias — pretrial, at trial, and

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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 US Attorney to say otherwise by addressing the evidence therein detailed.

(18) Moreover, since the US Attorney purports (at fn 2) to "recognize[] the seriousness of any constitutional ~~challenge~~ 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-Carchia v. US, 714 A2d 764 (DC 1998), cited by the US 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 (~~Exhibit "B"~~, p 3), neither case involved a public congressional hearing or conduct that would be consistent therewith.

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(19) Suffice to say that the US Attorney's concealment (at p. 8) of the fact that my alleged "disruption of Congress" consisted of my respectful request to testify against a federal judicial nominee whose confirmation was the subject of the Senate Judiciary Committee hearing — substituting instead the characterizations "outburst" and "disruption" — is a concession that he cannot identify what I did and defend the constitutionality of a "disruption of Congress" charge based thereon.

(20) Of course, by using words like "outburst" and "disruption," from which inferences of violent, threatening and abusive behavior might be reasonably drawn, the US Attorney is also able to conceal that Judge Coleman's conditions for probation were irrelevant and unwarranted and that his initial 92-day jail sentence, no less than the 6 months was grossly disproportionate to my "crime" of respectfully requesting to testify.

(21) Inasmuch as my entitlement to reversal/vacatur of my conviction is <u>absolute</u> based on the "clear and convincing evidence" of Judge Coleman's pervasive actual bias, as set forth in my accompanying affidavit (Exhibit "C"), further response to the US Attorney's opposition is superfluous. However, for completeness, a few observations are in order.

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(22) Insofar as the US Attorney discerns (at p. 7) from the Mayer, Brown supplemental brief a challenge to the "sufficiency of the evidence" and then asserts (at p. 8) that "[I] cannot show that [I] am likely to prevail in the sufficiency claim", such is untrue. There is a videotape of the Senate Judiciary Committee hearing showing my respectful request to testify made after Presiding Chairman Senator Chambliss announced the "hearing" adjourned! The videotape, corroborating collateral DATA is incontrovertible evidence, not supplanted by the adverse jury verdict.

Moreover, as the US Attorney well knows, the jury verdict carries no weight because the trial was polluted by Judge Holeman's prejudicial conduct and indefensible evidentiary rulings "protecting" the Government. The most immediately reversable of these was Judge Holeman's refusal to permit me to testify from the witness stand as to what took place at the hearing and the three days prior thereto, to wit May 19-22, 2003. If the US 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.

Further, as to the US Attorney's claim (at fn 3) that there was evidence that "[I] planned to disrupt the hearing" and that "[I] was ~~warned~~ informed by the United States Capitol Police that if [I] caused such a disruption, [I] would be

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subject to arrest", Judge Holeman prevented me from testifying on either subject. This, with knowledge of the true facts, my intent and what I was told — such as memorialized by my contemporaneous May 21, 2003 fax to Capitol Police and my May 28, 2003 fax to Senate Judiciary Committee Chairman Hatch and Ranking member Leahy, annexed as Exhibits "I" and "K-1" to my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions.

(23) Obviously, the sentence falls with the conviction. Yet as to the 6-month jail sentence, my accompanying affidavit (Exhibit "C") details the "clear and convincing evidence" that it is vindictive and retaliatory and that the conditions for probation for the originally-announced 92-day jail sentence are, additionally, unconstitutional. Such belies the U.S. Attorney's assertion (at p. 10) that I am "unable to show that the proposed conditions of probation are so clearly unrelated to rehabilitation and prevention of recidivism that [I am] likely to prevail on the merits of [my] attack on the sentence." Indeed, my affidavit demonstrated that the conditions were:

> "[Judge Holeman's] ~~22~~, were irrelevant to the "disruption of Congress' charge, and had no basis in the record. Their inclusion was to degrade and harass me, including

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by intruding on my employment as coordinator of the Center for Judicial Accountability, Inc. (CJA) to the point of surveillance and to prevent me from discharging my professional duties by appropriate ~~First Amendment~~ petitioning of the Senators in matters pertaining to the corruption of federal judicial selection and discipline." (id. para 18)

(29) Finally, as to the US Attorney's footnote 1 that my oral request to Judge Holeman for a stay pending appeal, was "made in response to the trial ~~judge~~' court's asking whether [I] accepted the terms of probation [and] preceded the trial judge's final imposition of sentence", the transcript of the 28th shall 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 "impracticable", but yet a further deceit.

↳ Rule 8(a)(2)(A)(i)

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Edward Hargrove
#301340
Correctional Treatment
Facility

Sworn to before me
this 16th day of July 2004

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

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Sanctions Against and Disclosure by the U.S. Attorney

(25) The purpose of the District of Columbia Rules of Professional Conduct is to ensure the integrity of judicial proceedings. These include Rule 3.3(a)(1) proscribing a lawyer from knowingly making "a false statement of material fact or law to a tribunal" and Rules 8.4(c) and (d) denominating as professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, and misrepresentation" and to "engage in conduct seriously interfering with the administration of justice." Especially is this so of a public prosecutor who, additionally, is charged with "special responsibilities" under Rule 3.8.

(26) The U.S. Attorney's own transcendent obligation to justice is inscribed on the Justice Department's walls:

> "The United States wins its point whenever justice is done its citizens in the courts." fn #4

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fn. #4 This inscription, as quoted and remarked upon by a unanimous Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963), was cited by my December 3, 2003 affidavit in reply to the US Attorney's opposition to my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions (at p. 23).

(27) It was the U.S. Attorney's view of justice, set forth in its one 1st Memorandum in Aid of Sentencing, that the proper sentence was "five days of incarceration, all suspended..." (Atp. 1) this should have sufficed for the US Attorney to have endorsed a stay of the 6-month jail sentence that was 36 times its own recommended 5 suspended days.

(28) Such endorsement of a stay was additionally compelled by the U.S. Attorney's knowledge that there was no precedent for Judge Coleman's sentence in the sentences imposed in other "disruption of Congress" cases — Smith-Cardoza (Terry, Schwelb, Farrell), Armfield (Terry, Steadman, Nebeker), and Bardoff v. US, 628 A2d 86 (1993) (Steadman, Schwelb, Wagner) — each involving conduct unlike at bar, falling within the statute.

(29) Assistant U.S. Attorney John R. Fisher, who heads the U.S. Attorney's appeals section, and whose name appears at the opposition papers, was "on the brief" in each of these three cases and, presumably, in a host of other "protest," "demonstration" cases pertaining to non-violent speech and conduct at U.S. Capitol grounds that went up on appeal. Had he taken seriously his obligation to see justice done, he would have provided the Court with relevant contextual facts about these cases, such as are reflected by Mr. Goldstone's accompanying affidavit (Exhibit "C.

In pertinent part, Mr. Goldstone states:

"4. In the thousands of free speech cases that I have been counsel of record, I have never seen a sentence remotely approaching the sentence of six months in jail in addition to the $250 fine to the Victims Fund and a $500 [fine]. In only one case that I can recall did I witness a sentence of jail time for non-violent speech-related conduct, and that involved four activists who got sentenced to a few days in jail in the late 1980's after they disrupted the Supreme Court while it was in session, and during sentencing allocution, told the Judge that they would continue to disrupt the Supreme Court until it changed its position on abortion rights. To my knowledge, no one in the last 20 years who has been arrested for speaking in a public congressional hearing has served a minute of jail time."

(30) Mr. Fisher did not himself sign the opposition papers. Rather, it appears his signature was penned by John P. Mannarino, an ~~Assistant~~ US Attorney who, additionally, appears to have signed for U.S. Attorney Kenneth Wainstein. No explanation is provided as to why Mr. Mannarino's superiors have not affixed their own signatures so as to

signify their knowledge and consent to what is being represented in their names.

(31) Presuming that Mr. Mannarino drafted the opposition papers, there is no excuse for his concealment of the material facts presented by my motion in order to make false claims as to its sufficiency and avoid issues dispositive of my rights. He must be forcefully sanctioned — as likewise his superiors who knowingly permitted misconduct whose consequence has been to deny me the release to which I am entitled. fn. #5 Especially is this so as it has now become clear to me — from my very limited research time in the jail's law library — that his opposition papers also materially omit,

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fn #5 Since Mr. Mannarino and his superiors obviously have no concept of what it means to be incarcerated, an appropriate sanction would be to give them a taste of what they so cavalierly would have me endure for 6 months. As the opposition papers were drafted during the first week of my incarceration, I propose that they be sentenced to a comparable week in jail: (a) 5 hrs spent in the cold and dirty holding cells beneath D.C. Superior Court/Court of Appeals; (b) transport in chains to D.C. Jail with attendant 8-hour processing; (c) 4 days in D.C. Jail, including initial 1st day lockdown; (d) 13-hour transfer to the adjoining Correctional Treatment Facility followed by a 2-1/2 day lockdown.

distort, and misrepresent the law.

(32) The premise of Mr. Mannarino's opposition papers—announced by its first page—is that DC Code 23-1325(c) is "the governing statute" and that I have "not carried [my] burden" thereunder. The inference they want is that I have not met my burden before this Court by my motion papers.

(33) Mr. Mannarino is presumed to know—because he conceals it from his abridged quotation from DC Code 23-1325(c)—that the initial burden before this Court is that of Judge Holeman, who was required to make findings. This is not reflected under his section heading "Applicable Legal Principles and Standards of Review" (at p. 4). Instead, he substitutes the elliptical statement, "this Court 'will ~~greatly~~ defer greatly to the trial court's factual findings' and determines de novo whether a substantial legal question has been raised," citing Payne v. U.S., 792 A2d 237, 240 (2001) (Ruiz, Reid, Nebeker). What Mr. Mannarino then needed to plainly state is that Judge Holeman made no factual findings and to identify the legal consequences, based on the vast experience and resources of the US Attorney's office.

(34) From the express language of DC Code ~~Section~~ 23-1325(d) giving this Court "de novo

consideration of whether there is "clear and convincing evidence" that the appeal raises "a substantial question of law or fact likely to result in a reversal or order for a new trial", this Court is empowered to make its own independent assessment. fn #6 As for the first criterion for release — a finding based on "clear and convincing evidence" that I am "not likely to flee or pose a danger to any other person or the property of others" (DC Code 23-1325(c)), Mr. Mannarino may be prescribed to know that there is no need to waste time with a remand pursuant to DC Code 23-1324(6), as this Court can well see for itself from Mr. Mannarino's failure to make any argument to the contrary that there is no evidence that I am either a flight risk or danger. fn #7

(35) Most as Mr. Mannarino concedes that Judge Holeman made no findings in denying me release pending appeal, so he concedes that Judge Holeman gave no reasons for his originally-announced 92-day suspended/credited sentence with probation terms and,

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fn #6: See Exhibit "C", paras 25-29 ("Likelihood of Success on the Merits") Also, exhibits "D", "E" "F", and "G" as to the unconstitutionality of the "disrupting Congress statute, as written & as applied.

fn #7: See Exhibit "C", paras. 32-34 ("A Stay Would Not Substantially Harm Other Interested Parties'

likewise, none for his 6-month jail sentence (excepting my "pride"). The importance of reasons in explaining a sentence is clear from Johnson v. US, 628 A 2d 1009 (1993) (Rogers, Terry, Sullivan) — a case which Mr. Mannarino cites without disclosing its pertinent holding, namely, that where circumstances give rise to a "presumption of vindictiveness" in a judge's sentence, the reasons for the sentence "must affirmatively appear", Johnson at 1013, quoting North Carolina v. Pearce, 395 US 711, 737 (1969).

(36) This case unequivocally presents not just a "presumption of vindictiveness", but its actuality — and Mr. Mannarino's knowledge of this may be seen by his omission from his opposition papers of all the facts set forth by my motion from which Judge Holeman's vindictiveness is obvious.* This is then compounded by his omission of the fact that, but for Judge Holeman's vindictive bias, the reasons "affirmatively appear" in the record to explain the stark disparity between Judge Holeman's sentence, both original and subsequently imposed, and the pertinent documents before him: DC Court Services May 28th Presentence Report, the U.S. Attorney's June 1st Memorandum in Aid of Sentencing — each of whose recommendations took into account that I was not remorseful, contrite, and acknowledged no wrongdoing — as well as my June 28th Affidavit responding to those two documents

* In addition to those set forth in para 9, supra, Mr. Mannarino omitted that the 6-month jail sentence and $5000 fine are each the maximum under DC Code 10.503.16(b)(4), as well as the fact (albeit not identified by the motion) that the $250.00 [to the] compensation fund for the victims of violent crimes is the maximum thereunder.

(37) The record is replete with overwhelming proof of Judge Holeman's pervasive actual bias "protecting" the Government. This includes covering up for the US Attorney whose misconduct imposed the proceedings. The US Attorney is now repaying the favor before this Court by covering up for Judge Holeman's misconduct.

(38) Mr. Mannarino and his higher-ranking would-be senators must be required to identify their familiarity with the record at the time the US Attorney's opposition papers were filed. In particular, they must be required to identify their familiarity with my April 6th petition for a writ of mandamus and prohibition for Judge Holeman's disqualification. Such is identified by my motion (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.

(39) 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 US Attorney — sending a copy of its April 8th order (Exhibit "B") to Assistant US Attorney Fisher — Mr. Fisher should not be expected to address the facts and law asserted as to the sufficiency of my

February 23rd and March 22nd motions for Judge Holeran's disqualification underlying the petition.

(46) Consistent with my view in my June 28th Affidavit (at pp. 2, 24) and reiterated at sentencing that it is unethical for the US Attorney to argue any sentence "where it has made no representation that I have had due process" and where the Assistant US Attorneys handling the case before Judge Holeran personally know that "I was denied due process, I was railroaded to trial, I was wrongfully convicted (at p. 8, lns. 13-18). It is likewise my view that it would be unethical for the US Attorney to oppose a stay pending appeal and my release unless he is willing to affirmatively state that I have had due process.

Judge Webster's Disqualification for Demonstrated Actual Bias

(41) Judge Webster is presumed to be knowledgeable and familiar w/ my April 6th mandamus petition to disqualify Judge Holeman — and the record on which it rested, summarized by my February 23rd and March 22nd motions for Judge Holeman's disqualification, his name appears on the unsigned April 8th order of the 3-judge panel (Farrell, Pickman, Webster) (Exhibit "B") denying the mandamus relief to which my petition entitled me as a matter of law.

(42) Such matter of law entitlement is this court's own caselaw: its decision in Anderson v. US, 754 A2d 920 (2000) (Wagner, Reid, Mack) and its prior en banc decision in Scott v. US, 559 A2d 745 (1989) (Rogers, Mack, Newman, Ferren, Terry, Steadman, Schwelb, Pryor). In the words of Anderson, resting on Scott

> "... this court has recognized that where a trial judge should recuse, but declines to do so, a writ of mandamus is the appropriate remedy."

(43) Without more, such clear and unequivocal language in Anderson and its antecedents in Scott sufficed to establish my entitlement to "the appropriate remedy" of mandamus review of Judge Holeman's wrongful denial of recusal. This was so-stated at Point I of my "Reasons Why the Writ Should Issue" (at pp. 9-12), which then went on to demonstrate

that my case was a fortiori to both Anderson and Scott.

(44) Because Point I was dispositive of my right to mandamus review, the 3-judge panel ignored it entirely, instead, in a single boilerplate sentence that concealed that the mandamus at issue was for judicial disqualification, the panel falsely claimed:

> "The petitioner has failed to show a clear and indisputable right to issuance of the writ of mandamus. See Bandy v. Connedy, 644 A2d 850, 857 (D.C. 1996)."

(45) Unlike Anderson and Scott, Bandy (Steadman, Ruiz, Belson) has nothing to do w/ judicial disqualification. Rather, Bandy enunciates the traditional use of mandamus to restrain "judicial 'usurpation of power'" where the right to relief is "clear and indisputable." This was particularized by Point 2 of my "Reasons Why the Writ Should Issue" (pp. 12-16), citing Bandy, it showed that I had a "clear and indisputable" right arising from Judge Bateman's violation of this jurisdiction's mandatory disqualification provision (DC 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 — with the result that he had "no lawful right or power to proceed as Judge in the trial", Berger v. US, 255 US 22, 36 (1921).

(46) As this Point 2 was not only dispositive of my right to mandamus review, but my right to Judge Holeman's disqualification, the 3-judge panel concealed all its facts, law, and legal argument. The panel did the same with regard to my Point 3 which, also citing Bandy, showed Not because my February 23rd and March 22nd motions demonstrated Judge Holeman's pervasive actual bias reaching the "impossibility of fair judgment" standard of Liteky, my petition presented the "extraordinary" and "exceptional" circumstances entitling me to mandamus in that recognized ground as well (pp. 16-18).

(47) The 3-judge panel followed the same approach of concealing all facts, law, and legal argument with regard to my Point 4 for certiorari and/or certification of questions of law (pp. 19-20). Indeed, it did not even identify the question of law at issue:

> "Whether D.C. Code 10-503.18 entitles petitioner to removal/transfer of the underlying criminal case to the US District Court for the District of Columbia, where, additionally, the record in the D.C. Superior Court establishes a long-standing pattern of egregious violations of her fundamental due process rights and 'protectionism' of the government." (petition, at p. 2).

(48) The extent of what the 3-judge panel had to say was:

> "Petitions for a writ of certiorari seek to invoke an appellate court's discretionary

review and are not issued by this court since its jurisdiction is established by statute. DC Code 11-721 (2001). Nor is a writ of certiorari justified since the issues in question involve D.C. law and cannot be answered by the highest court of another state. D.C. Code 11-723 (2001)."

(4) In fact, my petition did not ask that "the highest court of another state" answer the question as to the interpretation of D.C. Code 10-503.8 and the rights of a criminal defendant thereunder. Rather, — and consistent with my request for certiorari and my observation that Lead Judge Holeman not been so pervasively biased he might have taken steps to secure a ruling by this court on the "question of law which has not been but should be decided by this court" (DC Court of Appeals Rule 6) — I was seeking to have this court, as the highest appellate court in the District of Columbia — certify the question to itself.

fn #8: Severe limitations on library access have prevented me from verifying whether, as the 3-judge panel claimed, a petition for a writ of certiorari is not available through this court. Suffice to say that the cited DC Code 11-721 entitled, "Orders and judgments of the Superior Court", does not exhaust this court's jurisdiction, D.C. Code 23-1325(c) pertaining to release following conviction twice refers to "a petition for a writ of certiorari", and this court's Rule 21(e) expressly pertains to "other extraordinary writs" apart from mandamus and prohibition — and such would reasonably include certiorari.

(50) In the same April 8th order as disposed of my 20-page April 6th petition without identifying any of the facts, law, and legal argument I had presented, so the 3-judge panel disposed of my accompanying 9-page motion without identifying any of its facts, law, and legal argument.

(51) Describing it as my "motion for stay and disqualification", the April 8th order was materially incomplete and misleading as to my repeated relief. Concealed was that the motion was for a stay of the scheduled trial pending adjudication of the mandamus petition for judicial disqualification – and not, as might otherwise be thought, of a mandamus petition unrelated to judicial disqualification, or perhaps even pending appeal. Also concealed was that I sought disclosure by this court's judges in addition to disqualification.

(52) Since the 3-judge panel had already denied the mandamus petition, the stay relief should have been denied as moot. Instead, the panel pulled out conclusory boilerplate to falsely claim:

> "Petitioner has failed to meet the standard necessary to justify a stay, see Barry v. Washington Post Co., 529 A.2d 319 (D.C. 1987), nor shown an adequate basis for her alternative request that we disregard that standard."

(53) Like Bandy, which has nothing to do with judicial disqualification, Barry has nothing to do

with standards for a stay pending adjudication of a mandamus petition, let alone a mandamus petition for judicial disqualification. It enunciates standards for a stay pending appeal. This was set forth by my motion (pp. 2-7), which formulated standards that would more appropriately govern a motion to stay proceedings before a judge whose disqualification is the subject of a pending mandamus petition — as to which this Court appears to have no case law. Even still, my motion demonstrated my entitlement to a stay pursuant to Barry.

(54) The 3-judge panel then devoted its two longest sentences to the disqualification of the Court's judges:

> "... the requested disqualification of all members of this court is not only impractical, it has, as discussed in ... the Superior Court's August 2003 memorandum explaining its denial of petitioner's motion for change of venue, no basis in fact. The petitioner has failed to identify any support for her blanket assertion that the courts and judges of this jurisdiction cannot be impartial in cases such as hers, [sic] which involve the United States Congress."

These false and conclusory claims are exposed as such by pages 7-9 of my motion.

(55) Firstly, my motion did not ask for the disqualification of "all" the Court's judges. Rather, it asked for the disqualification of those judges who "cannot be fair and impartial or otherwise make appropriate disclosure" (at p. 9).

if, practically speaking, not read "all" the Court's judges because they all fall within such category, a remedy was readily at-hand by removing/transferring the case to the U.S. District Court for the District of Columbia pursuant to D.C. Code 10-503.18.

(56) Secondly, the "August 2003" memorandum fn#9 plainly does not present any facts pertaining to the seven subsequent months culminating in my April 6, 2004 mandamus petition. Indeed, as to the August 2003 itself, the Memorandum conceals all facts pertaining to the vindictive, oppressive judicial conduct that triggered my change of venue motion. That my petition expressly identified the memorandum as "dishonest, self-serving" (at p. 7), with corroborating specifics provided by my underlying March 22nd motion, (at pp. 22-26), only underscores the inappropriateness of its being cited by the panel.

(57) Moreover, the "August 2003" memorandum conceals that this case has "explosive repercussions [which] could rightfully torpedo the political careers of some of the most powerful members of the Senate." fn#10 It thus

fn#9: The memorandum being referred to is presumably D.C. Superior Court Judge Abrecht's undated memorandum—as to which a date of docket September 4, 2003 is noted by the casefile entries and so-reflected by Exhibits "A" and "C" to my petition, being two separate orders of Judge Holeman.

fn#10: See my August 17, 2003 motion for reargument, disclosure, disqualification and transfer (at p. 5).

conceals precisely what the last words of the April 8th order conceal, namely, that it is a misleading euphemism to describe this case as "involv[ing] the United States Congress." More accurately, it impacts politically and personally on some of the Senate's most influential members — including those on whom the Court is directly dependent for funding.

(58) As for the pretense that I "failed to identify any support" for what is characterized as my "blanket assertion that the court and its judges of this jurisdiction cannot be impartial", implying, in the process, that my motion did not even assert that D.C. Superior Court judges had not been fair and impartial, is to completely obliterate the contents of my petition particularizing — with an underlying record documentarily establishing — a pattern of actual bias by D.C. Superior Court judges reaching a level of lawlessness and criminality with Judge Coleman, in which D.C. Superior Court's highest supervisory judges were complicitous.

(59) It is consistent with the 3-judge panel's cover-up — concealing that the mandamus at issue involved judicial disqualification, let alone for pervasive actual bias, concealing that the certiorari/certification involved removal/transfer of this case, let alone on a "record in D.C. Superior Court establish[ing] a long-standing pattern of egregious on-going violations of fundamental due process rights and "protectionism" of the government" concealing that there was "any" presentation of facts as to judicial partiality, not to mention corruption — that the April 8th order concealed,

without adjudication, the specific "other and further relief" requested by my petition (at p. 1):

> "'appropriate action' against [Judge Holeman] and the US Attorney for the District of Columbia pursuant to Canon 3(D)(1) and (2), 'Disciplinary Responsibilities', of the Code of Judicial Conduct for the District of Columbia Courts, applicable to this Court's judges."

(60) As pointed out by my motion (at p. 8), the Court's "Disciplinary Responsibilities" are mandatory and the "appropriate action" compelled by the record was securing "an official investigation of the perversion of the judicial process that had taken place".

(61) The 3-judge panel, thus alerted to its mandatory "Disciplinary Responsibilities", over and beyond its adjudicative ones, jettisoned both by its demonstrably and pervasively dishonest April 8th order.

(62) 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 Holeman's violation of Rule 63-I — the subject of my mandamus petition.

Disclosure by Judges Steadman, Reid, and Nebeker

(63) The participation of Judges Steadman and Reid in the unsigned July 7th order (Exhibit "A") raises reasonable question as to their fairness and impartiality, warranting disclosure pursuant to Canon 3F of the Code of Judicial Conduct for the District of Columbia Courts.

(64) First and foremost, Judges Steadman and Reid should disclose whether their participation in the July 7th order was informed by their personal review of my April 6th petition and accompanying motion. If so, Judge Nebeker's misconduct and that of Judges Farrell and Glickman with respect to the April 8th order (Exhibit "B") would have been immediately obvious to them — and especially as Judge Steadman participated in this Court's en banc decision in Scott and Judge Reid participated in the 3-judge decision in Anderson.

(65) Judges Steadman and Reid should disclose whether their professional and personal relationships with Rose judges — or any other matter in this Court, the D.C Superior Court, or the New York Court of Appeals (past or present) — have impacted on the impartiality of their judgment.

(66) They should also disclose whether they themselves examined my underlying February 23rd and March 22nd motions for Judge Holeman's disqualification — from which they could readily discern that I was entitled to immediate release from jail, as Judge Holeman was without authority to proceed further in face of

such timely and sufficient motion. The sentence, as likewise the conviction on which it rests, is null and void.

(67) Judge Reid should additionally disclose whether his fairness and impartiality have been influenced by the fact that my petition exposes (at p. 11) that the Andrish decision denied the judicial disqualification relief sought by the criminal defendant therein on an incorrect statement of law that "judicial rulings" are "legally insufficient to establish bias requiring recusal" — a proposition expressly rejected 6 years earlier by the Supreme Court in Liteky.

(68) Liteky was at the heart of my right to Judge Holeman's disqualification in my petition for mandamus. Likewise, it will be at the heart of my appeal, requiring the Court to identify — and by its decision to demonstrate — that judicial conduct and rulings suffice to disqualify when they demonstrate pervasive actual bias reaching an "impossibility of fair judgment" standard.

(69) As to Judge Neseker, there is no reasonable question as to his fairness and impartiality. His actual bias has been demonstrated by the April 8th order (Exhibit "B") which, together with the July 7th Order (Exhibit "A") would suffice for a motion for his disqualification based on Liteky.

(70) Should Judge Neseker not disqualify himself on this motion where all the facts, law, and legal argument presented by my mandamus

petition have a second bite in establishing my entitlement to a stay pending appeal and immediate release. He should address the specifics of his misconduct as hereinabove particularized.

Removal/Transfer to The U.S. Court of Appeals for the District of Columbia

(71) The dozen or so judges of this Court constitute a small collegial group having close professional and personal relationships with each other. Likewise, and as highlighted by pages 7-9 of my April 6th motion, there are close professional and personal relationships between this Court's judges and those of the Superior Court — and all the more so for being housed in the same building. Both Courts get their funding directly from Congress — with appropriations voted on by the very Senators whose corruption of federal judicial selection is exposed by this case.

(72) It is simply not possible to view the brazenness of Judge Coleman's misconduct — and the pattern of misconduct by senior Superior Court judges that preceded it — as anything other than a "collusive plan to 'protect' powerful U.S. Senators and Capitol Police by railroading me to trial on this bogus "disruption of Congress' charge without the documents and witnesses to which [I was] entitled." fn #1 Especially is this so when one takes into account the willful and deliberate failure of D.C. Superior Court's highest judges to discharge their mandatory disciplinary and administrative responsibilities when I turned to them for supervisory oversight, as well as this Court's own performance in my April 6th petition and accompanying motion.

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fn #11: See my April 6th motion, paragraph 22.

(13) My April 6th petition was a breathtaking tour de force — imposing a duty upon this Court to give application and substance to its own decisional law pertaining to judicial integrity and impartiality, fn #12 as well as to its own Code of Judicial Conduct for the District of Columbia Courts, also applicable to its own judges. Among these: its en banc decision in Scott, reiterated in Anderson, that mandamus is "the appropriate remedy" to review a trial judge's wrongful denial of recusal; its decision in Fischer v. Estate of Flax, 815 A2d 1 (2003) (Terry, Farrell, Belson), recognizing Code as the "governing standard" for bias motions under Rule 63-I; and its Canon 3E and F pertaining to judicial disqualification and disclosure and 3D pertaining to disciplinary responsibilities. That it also presented the Court with the opportunity, if not the duty, to interpret DC Code 10-503.18 pertaining to venue of "disruption of Congress" cases and a criminal defendant's rights thereunder only made the petition that much more spectacular.

(14) As to the interpretation of DC Code 10-503.18, my petition (at pp. 3-4, 19) showed that Judge Holeman, as likewise the US Attorney, engaged in deceitful pretenses so as to avoid addressing its language. That language should not be

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fn #12: "Our own Court has been one of the most vigilant in holding trial judges to a rigid standard of impartial appearance", Foster v. Reilly, 618 A2d 191, 195 (1992), dissenting opinion of Senior Judge Reilly — quoted at fn #2 of my April 6th motion

the basis for removing/transferring this case to the US Court of Appeals for the District of Columbia so that, at least on appeal, this case can have the benefit of adjudication by a fair and impartial tribunal — such as has not been demonstrated by this Court.

For such other and further relief as may be just and proper, particularly if a stay pending Appeal and Immediate Release from Incarceration are Denied

(35) The facts and law herein above recited manifest first and foremost, the granting of a stay pending appeal and my immediate release from incarceration. Should the Court dispute those facts and law, it should be by a reasoned decision addressed thereto and signed by the judges. Only thus can it demonstrate that "the case was fully considered and resolved in accordance with the facts and law" fn #13 by those charged with the duty to do just that!

(36) Reasons specifying facts and based in law, should also be the "governing standard" if the following alternative relief is denied:

fn #13 See my August 17, 2003 motion for reargument, disclosure, disqualification, and transfer, at page 4, quoting Davidsky v. Davidsky, 152 A.D.2d 895, 896 (NY Appellate Division, Third Dept 1989), cited in Wadel v. C.O. Realty Corp., 286 A.D.2d 130, 131 (NY Appellate Division, First Dept. 2001):

"[T]he inclusion of the court's reasoning is necessary from a societal standpoint in order to assure the public that judicial decision-making is reasoned rather than arbitrary."

Reinstating the originally-announced 92-Day Jail Sentence

(77) Judge Holeman's originally-announced jail sentence was 92 days, with credit for time served and "suspen[sion of] execution of all remaining time". (Transcript, p. 16, lns 1-3).

(78) The statutory provision governing suspension of execution of sentence is D.C. Code 16-760. This is the same statute as is cited by the U.S. Attorney's opposition papers (at p. 3) for the proposition that "A person may not be put on probation without [her] consent" — a citation intended to imply Judge Holeman's adherence to the law and respect for my rights in inquiring whether I consented to his probation terms. What clear from the statute — and altogether concealed by the opposition papers — is that the terms of probation are the conditions for suspending execution of sentence. Thus, when I declined to consent to the probation terms, I forfeited the suspension of execution of sentence, not the sentence.

(79) Plainly implicit in the announcement of sentence is the recognition that a defendant cannot give informed consent unless he is advised of the consequence in withholding it. Nor would the right to withhold consent be meaningful if a judge could punish such exercise by thereafter scrapping the announced sentence and imposing a maximum sentence in its stead.

(80) Due to my confinement, my opportunity and means for researching case law interpreting DC Code 16-760 has been extremely limited. Even still, the case of

Schwasta v. US, 392 A2d 1071 (1978) (Newman, Kern, Harris) provides the obvious interpretation of the statute, to wit: that it "permits the trial court to grant probation only after it has imposed a sentence and suspended its execution" at 1073.

(81) By contrast, the U.S. Attorney, with its limitless access to case(law) supplementing its own day-to-day experiences, has been unable to furnish any legal authority or precedent relating to execution of sentence and probation to sustain what Judge Holeman did — dealing to the 6-month maximum, without prior notice or opportunity to be heard, an already-announced 92-day jail sentence — for no reason other than my exercize of my lawful right to withhold consent.

(82) That the US Attorney is not ashamed to cite (pp. 5, 11) Alabama v. Smith, 490 US 794, 801 (1989) — a case having nothing to do with suspending execution of sentence and probation — to advance a legal argument that is not only palpably frivolous, but whose factual falsity is exposed by the US Attorney's own sentencing recommendation of "five days of incarceration all suspended" underscores the deceit that pervades his opposition papers to conceal Judge Holeman's lawless, vindictive, and unconstitutional conduct.

(83) 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.

Deferring Perfection of my Appeal
90 Days from my Release from Incarceration

(84) The serious and substantial issues to be raised and developed in this appeal—as outlined at paragraphs 25-29 of my Exhibit "C" affidavit ("Likelihood of Success on the Merits")—would be a major undertaking for a skilled attorney, who has the benefit of space, quiet, research and library resources, a computer, printer, copier, sundries such as paper clips and post-its—not to mention a full litigation file, including trial exhibits and documents marked for identification.

(85) For an incarcerated, criminal appellant, who has none of these things, excepting access for three hours a week to a limited law library collection, where there is no competent, or even helpful, librarian, and no working copier, the prospect of developing, researching, and writing an appellate brief and assembling an appendix is overwhelming.

(86) Being in jail is hard enough without being required to perfect a makeshift appeal under such impossible circumstances which, in order to accomplish, would necessitate that I withdraw from the jail's educational programming for which, upon completion, I get 18 days cut from my jail sentence.

(87) As I will have already completed my jail sentence by the time my meritorious appeal is perfected, argued, and decided by the Court, there is absolutely no reason not to defer the perfecting of the appeal to after my release from jail so that I can do a proper job of presenting the facts and law to vindicate not only my

trampled rights, but those of the public whose interest I have dedicatedly championed.

(88) There is no prejudice in deferring the execution of the appeal to 90 days following my release from incarceration — and such would accordingly serve the interest of justice, which is the very purpose of the appellate process.

Elena Rae Nassar
Elena Rae Nassar
#301340
Correctional
Treatment Facility

Sworn to before me
this 2nd day of August 2004

Table of Exhibits

Exhibit "A"	7/7/04 order (per Steadman, Reid, Nebeker)
Exhibit "B"	4/8/04 order (per Farrell, Glickman Nebeker) ERS v. Judge Holeman
Exhibit "C"	ERS affidavit — drafted from 6/29/04 - 7/6/04
Exhibit "D"	ERS draft memo of law re the unconstitutionality of the "disruption of Congress" statute DC Code 10-503.16(6)(4)
Exhibit "E-1"	Affidavit of Andres Thomas Conteris, 7/19/04
"E-2"	Draft Affidavit of Andres Thomas Conteris, 7/3/04
"E-3"	ERS letter to Capitol Police, 6/28/04
"E-4"	ERS letter to Capitol Police, 6/28/04
Exhibit "F-1"	Affidavit of Joel Murphy, 7/19/04
"F-2"	ERS letter to Capitol Police, 6/9/04
"F-3"	"Protesters will call for Rumsfeld's Ouster", Roll Call, 5/10/04
Exhibit "G"	Affidavit of Mark Goldstone, Esq., 7/19/04