SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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UNITED STATES OF AMERICA

**Notice of Motion to Vacate Orders of Judge Brian F. Holeman for Violation of D.C. Superior Court Civil Procedure Rule 63-I pertaining to "Bias or Prejudice" & for Removal/Transfer of this Case to the U.S. District Court for the District of Columbia Pursuant to D.C. Code §10-503.18**

-against-

**No. M-04113-03**

ELENA RUTH SASSOWER

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PLEASE TAKE NOTICE that upon the annexed affidavit of defendant *pro se* ELENA RUTH SASSOWER, sworn to March 22, 2004, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, ELENA RUTH SASSOWER will move this Court at 500 Indiana Avenue, N.W., Washington, D.C. 20001 as soon as can be heard, for an order:

(1) Vacating all Orders of Judge Brian F. Holeman as violative of D.C. Superior Court Civil Procedure Rule 63-I pertaining to "Bias or prejudice of a judge", made applicable to criminal cases by D.C. Superior Court Criminal Procedure Rule 57(a);

(2) Removing/transferring this case to the United States District Court for the District of Columbia pursuant to D.C. Code §10-503.18;

(3) Such other and further relief as may be just and proper, including, if the foregoing relief is denied: (a) reargument and renewal of the Court's challenged Orders, and upon granting of same, recall and/or vacatur thereof: and (b) a stay of the trial herein to permit

defendant to bring a writ of mandamus/prohibition to the District of Columbia Court of Appeals and/or file a petition of removal to the United States District Court for the District of Columbia.

Dated: March 22, 2004
White Plains, New York

ELENA RUTH SASSOWER
Defendant *Pro Se*
16 Lake Street, Apt. 2C
White Plains, New York 10603
(914) 949-2169

TO: U.S. Attorney for the District of Columbia
Assistant U.S. Attorney Jessie K. Liu
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 514-7700

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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UNITED STATES OF AMERICA

**Affidavit in Support of Motion to Vacate Orders of Judge Brian F. Holeman for Violation of D.C. Superior Court Civil Procedure Rule 63-I pertaining to "Bias or Prejudice" & for Removal/Transfer of this Case to the U.S. District Court for the District of Columbia Pursuant to D.C. Code §10-503.18**

-against-

**No. M-04113-03**

ELENA RUTH SASSOWER

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STATE OF NEW YORK )
COUNTY OF WESTCHESTER ) ss.:

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

1. I am the above-named defendant, acting *pro se*, criminally charged with "disruption of Congress" and facing punishment of six months in jail and a $500 fine.

2. This affidavit is submitted in support of the relief set forth in the accompanying notice of motion.

3. The facts herein particularized further establish this Court's ACTUAL BIAS, reinforcing those which were the basis for my fact-specific, document-supported February 23, 2004 motion for its disqualification, pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts. Together, they satisfy the "pervasive bias" and "impossibility of fair judgment" standard articulated by the U.S. Supreme Court in *Liteky v. United States*, 510 U.S. 540, at 551, 555, 556, 565 (1994), entitling me to the Court's recusal, including pursuant to "Superior Court Civil Rule

63-I made applicable to this case by the counterpart Criminal Procedure Rule 57(a)."[1] That the proof of this Court's dishonesty and lawlessness is known to those charged with supervisory responsibilities at the Superior Court of the District of Columbia – who have chosen to take no corrective steps – only underscores the necessity that this case be removed or transferred to the United States District Court for the District of Columbia – relief available to me pursuant to D.C. Code §10-503.18.

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

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* * *

**Additional Facts Establishing the "Pervasive Bias" and "Impossibility of Fair Judgment" Standard for the Court's Disqualification -- Beyond Those Particularized by my February 23, 2004 Affidavit**

5. Shortly before 7:30 p.m., on Wednesday, February 25th, 20 pages were faxed to me by the Court. These consisted of

(a) A February 25, 2004 Order denying the first branch of my February 23rd motion for the Court's disqualification – based on a conclusory claim that I had

[1] Senior Judge Stephen Eilperin's September 3, 2003 Memorandum and Order (Exhibit "LL", p. 2).

"established no facts that the trial judge's impartiality might reasonably be questioned" (Exhibit "AA-1")[2];

(b) A February 25, 2004 Order denying the second branch of my February 23rd motion for a continuance of the March 1, 2004 trial date – based on a conclusory claim that I had "failed to establish that a continuance of the trial date is necessary to prevent manifest injustice" (Exhibit "AA-2");

(c) A February 25, 2004 Order denying my request for change of venue contained in the third branch of my February 23rd motion – based on the conclusory assertion that Judge Abrecht's September 4, 2003 Memorandum Explaining Denial of Motion for Change of Venue[3] established "the law of this case as to venue", followed by a conclusory claim that there had been "no demonstration of newly presented facts or a change in substantive law" (Exhibit "AA-3");

(d) A February 25, 2004 Order granting the prosecution's December 3, 2003 motion *in limine* – without any reason therefor (Exhibit "AA-4");

(e) A February 25, 2004 Order releasing to me the prosecution's "*Ex Parte In Camera* Submission Regarding Evidence Relevant to Bias Cross-Examination of Government Witnesses, filed with the Clerk of the Court on January 18, 2004" – based on the Court's review thereof and "the record of the proceedings of December 3, 2003" (Exhibit "AA-5").

6. My response to these February 25th Orders, which, excepting the last, were without basis in fact and law, was to contact appropriate supervisory authorities at the Superior Court of the District of Columbia. I did this first thing the following day, Thursday, February 26th, leaving phone messages for Chief Judge of the Superior Court Rufus King III and for Presiding Judge of its Criminal Division Noel Anketell Kramer at their Chambers and for Dan Cipullo, Director of the Criminal Division, at his office. I then followed this up with a February 26th memorandum, addressed and faxed to each

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[2] The double-lettered exhibits annexed hereto begin a new sequence. The "A"-"Z" single-lettered exhibit sequence began with my October 30th motion ["A"-"O"], continued with my December 3rd reply affidavit ["P"-"R" ] and my December 31st affidavit in opposition to the prosecution's motion *in limine* ["S"], and concluded with my February 23rd motion ["T"- "Z"].

[3] Judge Abrecht's Memorandum itself bears no date (Exhibit "MM").

of them later that day (Exhibit "BB"). Entitled "REQUEST FOR IMMEDIATE SUPERVISORY OVERSIGHT OVER JUDGE BRIAN F. HOLEMAN", it read as follows:

> "This follows up my phone calls to your chambers/offices, first thing this morning: 9 a.m. – 9:15 a.m., requesting your immediate supervisory oversight over Judge Brian Holeman. In violation of my legitimate discovery rights under Rule 16(a)(1)(C), Judge Holeman is attempting to railroad me to trial this Monday, March 1, 2004. This, to 'protect' influential members of the U.S. Senate, Senate Judiciary Committee, and U.S. Capitol Police, whose misconduct underlies the Government's initiation and prosecution of a legally and factually baseless charge against me for 'disruption of Congress'.
>
> I have ALREADY moved for Judge Holeman's disqualification for ACTUAL BIAS. This was the first branch of my February 23, 2004 motion, whose second branch was for postponement/continuance of the March 1, 2004 trial date, pursuant to Rule 16(d)(2), and whose third branch, for 'other and further relief as may be just and proper', specified same to include:
>
> > 'ensuring the appearance and actuality of fair and impartial justice by transferring this politically-explosive case to a court outside the District of Columbia, whose funding does not come directly from Congress, and, if possible, whose judges are not appointed by the President, with the advice and consent of the Senate or one of its committees.'
>
> In three separate orders faxed to me yesterday evening, Judge Holeman denied each of my motion's three branches. NONE of these three orders even identifies, let alone addresses, ANY of the substantiating facts detailed by my motion as entitling me to the relief sought – and the reason is obvious. Judge Holeman could not do so and maintain his bald pretenses that I had 'established no facts that [his] impartiality might reasonably be questioned'; 'failed to establish that a continuance of the trial date is necessary to prevent manifest injustice', made 'no demonstration of newly presented facts' to warrant transfer. Such conclusory claims are outright judicial lies.
>
> Similarly insupportable is Judge Holeman's further order, also faxed to me yesterday evening, granting the Government's December 3, 2003 motion *in limine* to preclude reference to 'political motivations, political beliefs, political causes, etc.'. Such granting is without identifying ANY

basis for relief demonstrated by my December 31, 2003 opposing affidavit to be factually and legally insupportable.

A fifth order was also faxed by Judge Holeman yesterday evening. This ordered the release of 'the entirety of the Government's *Ex Parte In Camera* Submission' – which it simultaneously accomplished by 'attach[ing]' such submission. In so doing, Judge Holeman conspicuously did not identify, let alone adjudicate, ANY of my objections with respect to such submission, particularized by my February 23, 2004 motion. This includes my objection as to its sufficiency[fn.1] – as to which I gave detailed argument as to why I believed it to be non-compliant with Judge Milliken's directive to the Government at the December 3, 2003 oral argument of my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions. As Judge Holeman may be presumed to have immediately recognized from my February 23, 2004 motion, the Government's *ex parte in camera* submission is flagrantly non-compliant with Judge Milliken's directive – entitling me to the requested continuance/postponement of the March 1, 2004 trial date on that basis alone.

The language of Rule 16(a)(1)(C), invoked by my August 12, 2003 First Discovery Demand, is explicit: 'documents and tangible objects... material to the preparation of the defendant's defense' (underlining added). Yet, as ¶30 of my February 23, 2004 motion detailed, Judge Milliken made NO adjudication of the 'materiality' of the 22 requests for 'documents and tangible objects' in my August 12, 2003 First Discovery Demand, while nonetheless directing the Government's production for *in camera* inspection. Pursuant to Rule 16(a)(1)(C), I am entitled to such adjudication of 'materiality', to production based thereon, and to rulings as to whether records claimed by the Government not to exist have been destroyed -- and this sufficiently in advance of trial so that I might properly prepare my defense. As stated by my February 23, 2004 motion (¶43) – and prior thereto in my February 10, 2004 letter to Judge Holeman (Exhibit "T-3", p. 2) to which he did not respond -- my right to subpoena witnesses whose testimony relates to these 'documents and tangible objects' rests on such adjudications, not yet rendered.

Please IMMEDIATELY review the file of this case – starting with my February 23, 2004 motion – in discharge of your supervisory and disciplinary responsibilities, including pursuant to Canon 3D(1) of the

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«fn.1 '*See, inter alia*, my January 30, 2004 and February 10, 2004 letters to Judge Holeman (Exhibits "T-2", "T-3"), ¶¶35-36, 42-45.'

Code of Judicial Conduct for the District of Columbia Courts. Such is essential to safeguarding the integrity and resources of the Superior Court from a judge who has so brazenly abandoned ALL adjudicative standards, beginning with honesty.

Thank you." (Exhibit "BB", all emphases in the original).

7. The Court was an indicated recipient of this February 26th memorandum – and I faxed it a copy under a transmitting coversheet (Exhibit "CC"). It was in face of this memorandum that shortly before 7:00 p.m. on February 26th, the Court faxed me yet a further Order. Dated February 26th, this Order purported to resolve all issues with respect to my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions. It did this by a bald assertion that the "law of the case" with respect to my October 30, 2003 motion had been established by Judge Milliken's December 3, 2003 from-the-bench rulings, that the prosecution's "sole outstanding discovery obligation" had been "satisfied" by its January 14, 2004 "*ex parte in camera* submission", and by baldly claiming that there had been "no demonstration of newly presented facts or a change in substantive law" by my February 23, 2004 motion (Exhibit "DD").

8. My response to this February 26th Order – as well as to a phone conversation had with Mr. Cipullo a few hours before receiving such February 26th Order -- was a February 27th memorandum, entitled, like the previous memorandum, "REQUEST FOR IMMEDIATE SUPERVISORY OVERSIGHT OVER JUDGE BRIAN F. HOLEMAN". Addressed and faxed to Chief Judge King, as well as to Judge Harold Cushenberry, who, according to Mr. Cipullo, was Acting Presiding Judge of the

Criminal Division in the absence of Presiding Judge Kramer, this February 27th memorandum stated as follows:

> "Dan Cipullo telephoned me late yesterday afternoon. He had received my memorandum requesting immediate supervisory oversight over Judge Holeman, but stated that notwithstanding he is Director of the Superior Court's Criminal Division, he has no oversight responsibilities over its judges, whose 'prerogative' to do whatever they choose in cases before them, no matter how lawless and factually unfounded, is, according to him, unfettered except for the appellate process. Consequently, he stated he would not review the court file of the criminal case against me so as to *independently* verify that Judge Holeman has 'brazenly abandoned all adjudicative standards, beginning with honesty'.
>
> Although Mr. Cipullo – a lawyer -- initially represented that the same applies to each of you, he subsequently agreed that it was for you to make your own representations as to your oversight responsibilities over Judge Holeman. This, after I told him that irrespective of the outcome of my criminal trial, I was intending to file a judicial misconduct complaint against Judge Holeman with the District of Columbia Commission on Judicial Disabilities and Tenure. The only question was whether such judicial misconduct complaint would also be against yourselves for failing to discharge your supervisory and disciplinary duties, including pursuant to the Code of Judicial Conduct for the District of Columbia Courts. This would include, in addition to Canon 3D(1), 'Disciplinary Responsibilities'[fn.2], cited by my yesterday's memorandum, Canon 3C(3), 'Administrative Responsibilities' [fn.3].
>
> Please be advised that early yesterday evening, Judge Holeman faxed me a sixth order. Such reinforces the necessity of your immediate supervisory intervention, as Judge Holeman's flagrant dishonesty continues unabated – even in face of my yesterday's memorandum for your supervisory oversight, a copy of which I sent him hours earlier.

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fn.2 "A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority."

fn.3 "A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities."

As with Judge Holeman's first three orders which, without identifying ANY of the facts presented by my February 23, 2004 motion, separately denied each of its three branches by bald pretenses described by my memorandum as 'outright judicial lies', so too this sixth order, arising from the same February 23, 2004 motion.

By this sixth order, Judge Holeman attempts to create a 'written adjudication' of my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions. He does this NOT by adjudicating my entitlement to a 'responsive, written adjudication' to that dispositive motion -- the express basis upon which the second branch of my February 23, 2004 motion sought postponement/continuance of the March 1, 2004 trial date – nor by confronting, or even identifying, my assertion of Judge Milliken's bias, let alone the extensive evidence I presented as to

> 'the mishmash of ambiguous, contradictory, insufficient, and factually unsupported rulings and statements that a demonstrably biased Judge Milliken made from the bench with respect to my October 30, 2003 discover/disclosure/sanctions motion' (¶27),

set forth at ¶¶28-34 under a section heading entitled:

> 'The Biased Adjudications of Senior Judge Milliken at the December 3, 2003 Oral Argument – Obvious to Any Fair and Impartial Tribunal'.

Rather, Judge Holeman simply asserts,

> 'At a hearing held on December 3, 2003, Judge Milliken ruled on this Motion, thereby establishing the law of this case with respect to all outstanding discovery obligations on the part of the Government. Judge Milliken determined that the sole discovery obligation of the Government was the *ex parte in camera* submission of documents relevant to bias cross-examination, which was satisfied by way of the Government's submission of responsive documents for this Court's review on January 14, 2004.
>
> Further, Judge Milliken ruled there would be no imposition of sanctions against the Government for failure to comply with discovery obligations.'

With this, Judge Holeman denies the motion[fn.4], falsely purporting there was 'no demonstration of newly presented facts'.

Be advised that Judge Holeman's above-quoted pivotal assertion that:

> 'Judge Milliken determined that the sole discovery obligation of the Government was the *ex parte in camera* submission of documents relevant to bias cross-examination, which was satisfied by way of the Government's submission of responsive documents for this Court's review on January 14, 2004'

is yet a further 'outright judicial lie'. Such is readily exposed by the transcript of the December 3, 2003 oral argument, annexed to my February 23, 2004 motion. This quite apart from ¶¶35-36, 42-25 of the motion, cited by my yesterday's memorandum in support of my statement:

> 'As Judge Holeman may be presumed to have immediately recognized from my February 23, 2004 motion, the Government's *ex parte in camera* submission is flagrantly non-compliant with Judge Milliken's directive – entitling me to the requested continuance/postponement of the March 1, 2004 trial date on that basis alone.' (at p. 2, underlining in the original).

Assuming you have not yet accessed the file, I will highlight some lengthy excerpts from the December 3, 2003 transcript – which Judge Holeman would have had to be 'blind as a bat' to miss:

[Transcript, p. 10, ln. 11 – p. 11, ln. 5, bold added]

Judge Milliken: 'So if, for example, she is a representative of an organization that's about cleaning up the judiciary, she wants to fight to prevent a second circuit appointment and she wants to be heard and there is a public hearing organized to that effect, and hearings regularly allow for people to speak and she wants to get up and say, well, I was there to speak and lo and behold, here I am pounced on. I was just starting to speak. I didn't even hear the speaker call for quiet. I didn't hear anything. I was just trying to discharge my citizenly

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[fn.4] 'Judge Holeman not only claims to have 'consider[ed]' the motion, but 'any opposition thereto'. To my knowledge, NO opposition was filed by the Government.'

opportunity to petition the Government for redress of grievances and so, **if there are communications whether from offices represented in Congress to police or, you know, target this woman, intercept her, arrest her, she gets to have that specific to these circumstances**. And you have to ask for that specific to these circumstances and you have to review it specific to these circumstances and you have to, under the Akers case, which I know you've read 100 times, resolve all bouts [sic] in favor of discovery. That was the Supreme Court's command...'

[Transcript, p. 15, ln. 16- p. 17, ln. 3, bold added]

Judge Milliken: 'So, you have to at least inquire. You know, did somebody say, look, I'm a Senator and that person is not coming to my hearing and tell the police, I don't care how you do it, get rid of her. All right? And, as an example, I mean, she's going to make a claim that she didn't do anything wrong, and that, in fact, the charge is manufactured and, in fact, the charge is so thin, let me see if I can find it. Have you got your Gerstein handy?...
When you read it, it's an amended Gerstein. After the Senator called for order, the defendant continued to shout. It wouldn't take long for a person, it certainly didn't take me but a second to think, ahh, there. Based on what was originally reported by the officers, they didn't have probable cause to arrest her. When they talked to a prosecutor, their representations were amended. Now they've built sufficient prosecution. So clearly I'm right that I was arrested for nefarious motives and reasons. And now I'm being pressed because prosecutors are supporting the police authorities and I really never did anything wrong in the first place. And if I have access to documents to show that they were out to get me before I even step on the Capitol grounds, that proves that they were going to get me removed, incarcerated at all costs because they want to suppress me and I live in a police state. This is fascism, this is not America and she gets to do all that, all right? That's her defense or it could be. I'm not saying it

is because she doesn't have to settle on one but it could be and one hard to think about. So you have to see, was there some, we are going to get her kind of communication. **And if it's true, she's entitled to have you deliver that to me.**'

[Transcript, p. 27, ln. 20- p. 28, ln. 18, bold added]

**Judge Milliken:** 'And he needs to go back and to review the records of how you may have been targeted, and I use that broadly. I'm not saying it happened, I don't know whether it happened. If it happened, if somehow you were singled out so that you were not going to get an open door reception at the seat of your Government, he's going to find that out and **he's going to deliver those papers to the Court.**'

Ms. Sassower: 'As that [39-page May 21, 2003 **fax to** Capitol Police Detective Zimmerman] makes plain and as my [October 31, 2003] moving affidavit presents, U.S. Capitol Police called me the day before the arrest at the instance of Senator Hillary Rodham Clinton and she set in motion the chain of events that led to my being threatened.'

**Judge Milliken:** 'Bingo. In the event when he inquires of that staff as I have ordered that he do, he finds that there were directions from Senatorial offices or through staff to law enforcement, **he's going to produce those to the Court.**'

...

**'He's going to look and provide the raw material to the Court'.**

Yet, the ONLY 'raw material' which the Government filed with the Court *ex parte* in purported compliance with Judge Milliken's January 14, 2004 deadline were Capitol Police records of my June 25, 1996 arrest for 'disorderly conduct' in the hallway outside the Senate Judiciary Committee, *to wit*, the Arrest/Prosecution Report; Supplement Report; my signed waiver of rights, and Citation Release Determination Report. Conspicuously, the Government did NOT correlate this production to ANY of the 22 requests for 'documents and tangible objects' in my August 12, 2003 First Discovery Demand. Indeed, NONE of my 22 requests sought any such production, except perhaps inferentially #22.

For Judge Holeman to thus purport that 'responsive documents' were filed by the Government and that Judge Milliken's directive was 'satisfied' is to flagrantly lie so as to 'protect' the Government and railroad me to trial on Monday, March 1, 2004, without the documents to which I am entitled – and the witnesses whose testimony will relate thereto[fn.5]. Such cannot be permitted by supervisory authorities, given the fact-specific, *readily-verifiable* notice herein and by my yesterday's memorandum of what is taking place.

Thank you." (Exhibit "EE", all emphases in the original).

9. As with the previous memorandum, the Court was an indicated recipient of this February 27th memorandum – which I faxed it under a transmitting coverletter sent at 1:05 p.m. (Exhibit "FF-1"). Such coverletter, additionally, gave the Court notice that:

"Assistant U.S. Attorney Mendelsohn has consented to postponement/continuance of the Monday, March 1, 2004 trial date, necessitated by the hospitalization of my father, George Sassower, since Wednesday evening and the angiogram/angioplasty and possibly other heart surgery being performed on him today.

I will write to the Court more fully later this afternoon on this subject."

10. At 3:45 p.m. that afternoon, Friday, February 27th, I faxed the Court a letter as to the particulars (Exhibit "FF-2"). Bearing a RE clause "POSTPONEMENT/CONTINUANCE OF MARCH 1, 2004 TRIAL DATE", I stated:

"I do not proceed by motion because irrespective of whether such is granted by the Court, it is not my intention to leave the New York area while my father is in such critical condition as to require hospitalization. Besides, it is already quite apparent that the Court has NO RESPECT for such motions as I have painstakingly made.

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fn.5 'Judge Holeman is presumed to have further recognized that the extraordinary *ex parte* 3-1/3 page statement generated by the Government to accompany its paltry, non-responsive *in camera* submission only further reinforces my entitlement to the documents sought by my August 12, 2003 First Discovery Demand and to related witnesses.'

> Should the Court feel it appropriate to issue a warrant for my arrest based on my non-appearance caused by my father's hospitalization and potentially-risky invasive procedures, such will simply be further evidence of its actual bias, beyond what I have already demonstrated by my February 23, 2004 motion and my two memoranda for supervisory oversight." (Exhibit "FF-2", upper case in the original).

11. 3-1/2 hours later, at approximately 6:30 p.m., Friday, February 27th, the Court faxed an Order, granting my "request for a continuance of the trial date, there being no opposition by the Government and good cause having been shown" – and unilaterally setting a new trial date of Monday, April 5th (Exhibit "GG").

12. First thing Monday morning, March 1st, Mark Goldstone, Esq., my attorney advisor, advised the Court, as well as Assistant U.S. Attorney Jessie Liu, who had replaced Mr. Mendelsohn on this case, of what he had informed me immediately upon my notifying him of the April 5th new trial date: that he had long-standing plans to be out of town from Friday, April 2nd to Sunday, April 11th and would, therefore, have to seek a continuance

13. Following his conversation with Ms. Liu, Mr. Goldstone told me that she had stated to him that the April 5th date was also not convenient for the prosecution, at least one of whose witnesses was also scheduled to be out-of-town at that time. He informed me that she was, therefore, agreeable to filing a joint motion for continuance. Although she would agree to a Monday, April 12th date, which initially had seemed convenient for Mr. Goldstone, she would not agree to such later dates as Monday, May 3rd and Monday, May 11th, upon Mr. Goldstone's advice to her that April 12th would not be feasible.

14. On March 9th, and without prejudice to my contention that the Court was disqualified for actual bias, Mr. Goldstone served a motion to change the trial date to Monday, May 3rd. After reciting the relevant facts and circumstances – including that Ms. Liu had not identified any prejudice to the Government by the granting of the continuance to May 3rd – a mere few weeks beyond the April 12th date to which she did earlier agree, he stated:

> "There is a further good and sufficient reason for putting the trial over to May 3rd, namely, to allow adequate time for motion practice with respect to the nine subpoenas served on defendant's behalf upon Senators Hatch, Leahy, Chambliss, Clinton, and Schumer – and, upon various members of Senator Clinton and Schumer's staff. The Office of Senate Legal Counsel, which on March 4th, advised that it was authorized to accept service of such subpoenas – and which did accept service on March 5th – has stated that it will be filing a Motion to Quash the subpoenas on constitutional separation of powers grounds. It is unknown when such motion will be made – but plainly there must be adequate time for the *pro se* defendant to research the complicated constitutional law with respect to privilege immunity and the Speech and Debate Clause and, based thereon, to interpose opposing papers addressed to the specific facts of this case. Presumably, the Government will need time to respond thereto. As for the Court, which presumably has never addressed such a motion, it will likewise require time for its own studied analysis of the law – and for a decision tailored to the unique, perhaps unprecedented, facts of this case.
>
> Needless to say, once the Court adjudicates defendants' entitlement to her subpoenaed witnesses, their availability will have to be confirmed. The Senate is in recess from April 12th through April 16th – and, upon information and belief, the subpoenaed Senators will not be in Washington. Such is yet another good and sufficient reason for scheduling this criminal trial to May 3rd when the Senate is in session, and the witnesses will be available." (Mr. Goldstone's motion, at p. 2)

15. Ms. Liu's opposition to the motion did not allege ANY prejudice by the granting of the continuance to May 3rd, nor deny that such date would enable sufficient time to resolve my right to the subpoenaed Senate witnesses. Nonetheless, the Court

did NOT adjudicate the motion. Rather, shortly after 7:00 p.m. on Wednesday, March 17th, it faxed me an Order directing a "status hearing prior to trial" for Monday, March 22nd at 2:00 p.m. (Exhibit "HH").

16. This March 17th Order concealed pertinent facts, which I set forth in a March 18th letter to the Court, requesting clarification, including as to the issues to be addressed at the "pretrial hearing" (Exhibit "II"). My March 18th letter read as follows:

"Dear Judge Holeman:

I hereby request clarification of the Court's March 17th Order, faxed shortly after 7:00 p.m. yesterday evening.

The Order, which directs a 'status hearing' for Monday, March 22nd at 2:00 p.m., is preceded by a single prefatory sentence stating:

> 'On March 16, 2004, all counsel and *pro se* parties were notified, by telephone, of the intention of this Court to set a status hearing prior to trial.'

The relevant facts, *not* identified by the Order and for which clarification is hereby requested, are as follows:

Late in the afternoon on Tuesday, March 16th, the Court's law clerk, Sara Pagani, telephoned Mark Goldstone, Esq., my attorney advisor, apprising him of the Court's intention to hold a 'pretrial hearing' at 2:00 p.m. on March 22nd, and inquiring whether he would be available. Upon his answer in the affirmative, Ms. Pagani asked Mr. Goldstone whether he would be willing to represent or stand-in for me. His response was that although he would be willing to do so, the decision was mine to make and that Ms. Pagani should telephone me directly.

That is precisely what happened. Ms. Pagani called me and stated that she had just spoken to Mr. Goldstone and that he was willing to represent me at a 'pretrial hearing' which the Court was scheduling for 2:00 p.m. March 22nd – if such were agreeable to me. Upon my ascertaining from Ms. Pagani the meaning of a 'pretrial hearing' – *to wit*, that it was a 'term of art' for a pretrial conference -- my response was immediate. Not only would I not confer upon Mr. Goldstone the right to appear on my behalf, but there was no reason for me to do so since I could conveniently appear on my own behalf *via* telephone hook-up.

I believe it was in this initial conversation that I requested to be permitted to appear by phone because when Ms. Pagani called me back ten minutes later (as I had asked because I had been tied up on another call), she told me, *without interrupting this second conversation to confer with you*, that you would not agree to my appearing by phone. I strenuously objected to having to be burdened with making an exhausting, time-consuming, and expensive 500-mile, $200 round-trip from White Plains, New York to Washington, D.C. for what could so easily be accomplished by utilizing the speakerphone capability with which the courtroom is outfitted. In that regard, I urged Ms. Pagani to bring to your attention that Senior Judge Mary Ellen Abrecht had permitted me to appear by phone for the August 20, 2003 court conference held before her. The transcript of that conference -- and the audiotape from which it was made[fn.1] – establish that the speakerphone arrangement was a successful one.

I stated to Ms. Pagani that if you were compelling me to physically appear for the March 22nd 'pretrial hearing', notwithstanding you were willing to dispense with my appearance if I agreed to have Mr. Goldstone represent me, such would be further evidence of your ACTUAL BIAS – already meticulously documented by my February 23rd motion for your disqualification and by my February 26th and February 27th memoranda to Chief Judge King, *et al.* for supervisory oversight of your conduct.

Ms. Pagani indicated that you would be issuing an Order with respect to your intended-March 22nd 'pretrial hearing'. I expressly requested that such identify whether you were compelling my physical appearance and denying my reasonable request to appear by phone. I told Ms. Pagani that upon receiving same, I would be renewing my requests to Chief Judge King, *et al.* for supervisory oversight.

Additionally, I told Ms. Pagani that although a 'pretrial hearing' is clearly appropriate, such is premature in light of Mr. Goldstone's March 9th motion presently pending before the Court to change the trial date to Monday, May 3rd. In that connection, I stated that the prosecution had not alleged any prejudice by the granting of Mr. Goldstone's continuance motion, nor confronted the outstanding issue of my right to my subpoenaed Senate witnesses, resolution of which awaits motion practice by Senate Legal Counsel, not yet commenced. Ms. Pagani's response – which makes no sense -- was that you wanted to hold a 'pretrial hearing' before ruling on Mr. Goldstone's motion for continuance.

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fn.1 'Such audiotapes are readily available for the Court's listening.'

Obvious from Mr. Goldstone's motion is that it would be far more sensible for a 'pretrial hearing' to be held after my right to subpoena Senators Hatch, Leahy, Chambliss, Clinton, Schumer, and staff members of Senators Clinton and Schumer has been addressed by motion practice and a decision based thereon. As therein stated:

> '... The Office of Senate Legal Counsel, which on March 4th, advised that it was authorized to accept service of such subpoenas – and which did accept service on March 5th – has stated that it will be filing a Motion to Quash the subpoenas on constitutional separation of powers grounds. It is unknown when such motion will be made – but plainly there must be adequate time for the *pro se* defendant to research the complicated constitutional law with respect to privilege immunity and the Speech and Debate Clause and, based thereon, to interpose opposing papers addressed to the specific facts of this case. Presumably, the Government will need time to respond thereto. As for the Court, which presumably has never addressed such a motion, it will likewise require time for its own studied analysis of the law – and for a decision tailored to the unique, perhaps unprecedented, facts of this case.
>
> Needless to say, once the Court adjudicates defendants' entitlement to her subpoenaed witnesses, their availability will have to be confirmed...' (Mr. Goldstone's motion, at p. 2)

So that I may be guided accordingly, please clarify the issues to be addressed at the March 22nd 'pretrial hearing' – and whether, by your March 17th Order, you are compelling me to physically appear and denying my request to appear by telephone, notwithstanding your willingness to dispense with my appearance altogether if I relinquish my valuable *pro se* rights to Mr. Goldstone.

Thank you." (Exhibit "II").

17. A copy of this letter was also faxed to Chief Judge Rufus King and to Criminal Division Presiding Judge Kramer and Criminal Division Acting Presiding Judge Cushenberry. My transmitting memo to them, entitled "REQUEST FOR

(Exhibit "JJ"), stated as follows:

> "I have received no response from you to my identically-entitled two memoranda, dated February 26th and February 27th – copies of which are enclosed for your convenience[fn.1].
>
> Please advise as to the status of your supervisory investigation of Judge Holeman's demonstrably dishonest and violative conduct – and whether I might meet with you or appropriate members of your staff on Monday, March 22nd, in the event Judge Holeman requires my physical appearance at the 'pretrial hearing' he has scheduled for 2:00 p.m. on that date.
>
> As you are indicated recipients of my today's letter to Judge Holeman regarding that 'pretrial hearing', a copy is herewith enclosed.
>
> Thank you."

18. A copy of this March 18th memo was also sent to the Court, as well as to Criminal Division Director Dan Cipullo – both indicated recipients (Exhibit "JJ").

19. It is now past midnight on March 22nd. I received NO response from the Court as to the issues to be addressed at the "pretrial hearing", nor confirmation of the fact that it has denied my request to appear *via* phone. Under such circumstances – and in order to safeguard my rights -- I have no choice but to leave my home at 6:30 a.m. this morning to travel by car to Manhattan so as to catch an 8:10 a.m. train from Penn Station to Washington, D.C. for the 2:00 p.m. "hearing".

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fn.1 'The enclosed memoranda supersede the original, correcting typographic errors and making slight non-substantive changes.'

**The Court's Orders Must Be Vacated as Violative of Superior Court Civil Procedure Rule 63-I**

20. In denying my February 23, 2004 motion for its disqualification on the bald claim that I had "established no facts that the trial judge's impartiality might reasonably be questioned" (Exhibit "AA-1") – in face of a litany of such facts documentarily established by my motion -- the Court was parroting the language of Canon 3E(1) of the Code of Conduct for the District of Columbia Courts, requiring that a judge disqualify himself "in a proceeding in which the judge's impartiality might reasonably be questioned". Ignored by the Court was the more relevant language of subsection (a) of Canon 3E(1), proscribing a judge's "personal bias or prejudice concerning a party" – which better conformed to my February 23rd affidavit. The first and largest section of that affidavit was "The Demonstrated Actual Bias of Judge Brian Holeman, Entitling me to his Disqualification" (at pp. 2-9), whose evidentiary showing was buttressed by four subsequent sections, two of whose titles also contained the words "Actual Bias" or "Biased".

21. The District of Columbia has an explicit rule for adjudication of "bias or prejudice of a judge". It is Civil Procedure Rule 63-I, applicable to criminal cases by Criminal Procedure Rule 57(a); *Anderson v. United States*, 754 A.2d 920, 922 (D.C. App. 2000). The Court is presumed familiar with these rule provisions – and would have been reminded of them from review of the record herein, *to wit*, Senior Judge Stephen Eilperin's September 3, 2003 Memorandum and Order (Exhibit "LL"), denying that branch of my August 17, 2003 motion as sought his disqualification. Such decision could hardly be missed, as it is referred to at the very outset of my

October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions as reinforcing my "entitlement to change of venue" (at ¶3).

22. From that September 3, 2003 Memorandum and Order (Exhibit "LL", p. 2), the Court would have seen that Judge Eilperin regarded Rule 63-I as governing adjudication of my August 17, 2003 motion for his disqualification. This should have prompted the Court to recognize that adjudication of my February 23rd motion for its disqualification was also governed by that Rule.

23. Superior Court Civil Procedure Rule 63-I states:

> "(a) Whenever a party to any proceeding makes and files a sufficient affidavit that the judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned, in accordance with Rule 40-I(b), to hear such proceeding.
>
> (b) The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists and shall be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for the failure to file by such time." (underlining added)

24. District of Columbia caselaw – reflected in the annotations to Rule 63-I – is that because Rule 63-I "tracks the language of 28 U.S.C. §144", guidance as to its interpretation is found in cases interpreting 28 U.S.C. §144; *In re Bell*, 373 A.2d 232, 233 (D.C. App. 1977).

25. Interpretive caselaw confers upon the judge who is the subject of a party's affidavit evaluation of that party's compliance with the procedural requirements, which, if satisfied, expressly bar him from proceeding further.

26. Since I am a *pro se* litigant, the procedural requirement that "counsel of record" sign a "certificate of good faith" has no relevance. As to the timeliness requirement, my February 23rd affidavit was plainly timely. In any event, the Court made NO finding with respect to either of these procedural requirements. As to the sufficiency of the affidavit's allegations of bias and prejudice, the Court also made NO finding. Indeed, the Court's bald assertion that I had "established no facts that the trial judge's impartiality might reasonably be questioned" not only fails to use the operative words "bias or prejudice", but employs an improper standard. Evaluation of an affidavit's sufficiency is not a matter of "established... facts":

> "On such a motion it is the duty of the judge to pass only on the legal sufficiency of the facts alleged to ascertain whether they support a charge of bias or prejudice. *E.g., United States v. Townsend,* 478 F.2d 1072, 1073 (3d Cir. 1973); *Simmons v. United States*, 302 F.2d 71, 75 (3d Cir. 1962). Neither the truth of the allegations nor the good faith of the pleader may be questioned, regardless of the judge's personal knowledge to the contrary. *E.g. Berger v. United States*, 255 U.S. 22, 65 L. Ed. 481, 41 S.Ct. 230 (1921); *United States v. Townsend, supra; Hodgson v. Liquor Salesmen's Union*, 444 F.2d 1344, 1348 (2d Cir. 1971)... Despite our sympathy with district judges confronted with what they know to be groundless charges of personal bias we must apply §144 as it was enacted by Congress." *Mims v. Shapp*, 541 F.2d 415, 417 (3d Cir. 1976)[4].

27. Reasonably inferable from the Court's failure to make requisite findings of sufficiency with respect to my February 23rd affidavit's allegations as to its actual bias, is that it knew the affidavit was sufficient. Certainly, the Court would have recognized its sufficiency from reading *Liteky v. United States*, 510 U.S. 540 (1994) –

[4] *Mims v. Shapp* is cited in *Liberty Lobby, Inc. v. Dow Jones, Inc.*, 838 F.2d 1287, 1302 (U.S. App. D.C. 1988), itself cited by Judge Eilperin's September 3, 2003 Memorandum and Order (Exhibit "LL", at p. 2).

cited in Judge Abrecht's Memorandum Explaining Denial of Motion for Change of Venue (Exhibit "MM", at p. 2). Her Memorandum both paraphrased and quoted *Liteky* as follows:

> "the Supreme Court stated that a judge should recuse for bias if the judge has a deep-seated favorable or unfavorable opinion 'that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess,... or because it is excessive in degree.' Id at 550".[5]

28. My February 23rd affidavit chronicled that the Court's actual bias was completely "*wrongful*", "*inappropriate*", and "undeserved". That showing has now been supplemented by this affidavit relating to the Court's succession of dishonest, insupportable Orders that it has since rendered (Exhibits "AA-1", "AA-2", "AA-3", "AA-4", "DD", "HH"). Together, these two affidavits particularize an actual bias so "pervasive" as to "make fair judgment impossible" – the standard enunciated in *Liteky* with respect to judicial rulings (at 551, 556, 565)[6]. Indeed, it is not necessary to look beyond what the Court has done with respect to my dispositive October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for

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[5] Judge Abrecht's quoted excerpt from *Liteky* fails to italicize the words "*wrongful*" and "*inappropriate*" – which is how they appear in the Supreme Court's decision.

[6] Contrary to District of Columbia caselaw and annotations, which routinely purport that "It is well settled that a motion for recusal under 28 U.S.C. §144 and §455 must be based upon prejudice from an extrajudicial source", such as *Liberty Lobby, Inc. v. Dow Jones, Inc.*, 838 F.2d 1287, 1302 (U.S. App. D.C. 1988) – cited for such proposition in Judge Eilperin's September 3, 2003 Memorandum (Exhibit "LL", p. 2) -- the Supreme Court has said the opposite in *Liteky*. This is most succinctly summed up in Justice Kennedy's 4-judge concurring opinion:

> "...the Court is correct to conclude that an allegation concerning some extrajudicial matter is neither a necessary nor a sufficient condition for disqualification under any of the recusal statutes." (at 561)

sanctions – depriving me even of the relief to which even the biased Judge Milliken recognized I was entitled (Exhibit "DD") -- to see how resoundingly the Court has repudiated ANY judgment in its patent "protectionism" of the prosecution.

29. Such Court Orders, all rendered subsequent to my February 23rd affidavit, must be vacated -- as the Court was without authority to "proceed" in rendering them pursuant to Superior Court Civil Procedure Rule 63-I.

**D.C. Code §10-503.18 Entitles me to Removal/Transfer of this Case to the United States District Court for the District of Columbia – and the Record Herein Establishes the Necessity of Such Relief**

30. The Court's February 25, 2004 Order denying my request for change of venue (Exhibit "AA-3") is another insupportable deceit. Its reliance on Judge Abrecht's September 4, 2003 Memorandum Explaining Denial of Motion for Change of Venue as establishing the "law of this case as to venue" disregards the express notice at ¶3 of my October 30, 2003 motion that Judge Abrecht's decision, like that of Judge Eilperin, reinforces my "entitlement to change of venue" – and the necessity to ensure

> "the appearance and actuality of fair and impartial justice by transferring this politically-explosive case to a court outside the District of Columbia, whose funding does not come directly from Congress, and, if possible, whose judges are not appointed by the President, with the advice and consent of the Senate or one of its committees".

31. Certainly, if the Court reviewed the record that was before Judges Eilperin and Abrecht when they rendered their decisions – (a) my August 6, 2003 motion to adjourn the August 20, 2003 conference for ascertainment of counsel; (b) my August 17, 2003 motion for reargument, disclosure by, and disqualification of, Judge Eilperin, and for transfer of the case outside the District of Columbia; (c) the audiotape/transcript of the August 20, 2003 conference (Exhibit "KK"); (d) my

correspondence with Judge Abrecht's chambers, both before and after the August 20, 2003 conference (Exhibits "NN", "OO") – it knows that each of these Senior Judges ran "roughshod" over my sacrosanct counsel rights, which I had invoked – and then sought to conceal what they had done by their dishonest, self-serving decisions in which they wrongfully refused to recuse themselves (Exhibits "LL", "MM")[7].

32. As for the Order's assertion that there had been "no demonstration of newly presented facts or a change in substantive law" to warrant change of venue (Exhibit "AA-3"), such is refuted by my February 23rd affidavit's painstaking factual demonstration as to the biased and prejudicial conduct of Senior Judge Milliken, covered-up and compounded by the Court. As therein stated and demonstrated:

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[7] The dishonesty of Judge Abrecht's Memorandum (Exhibit "MM") begins in its very first paragraph – with its false inference that the Judge's oral denial of my motion for change of venue at the August 20, 2003 conference respected my due process rights, *to wit*,

> "Assistant U.S. Attorney Mendelsohn appeared in person and opposed the Motion with oral argument to which the defendant responded." (at p. 1, underlining added).

In fact, as the transcript of the August 20, 2003 conference reflects (Exhibit "KK"), I responded by vigorously protesting that Judge Abrecht was trampling on my counsel rights, was unfairly relieving the prosecution of its burden to set forth in opposition in written form, and was depriving me of meaningful reply to the prosecution's oral opposition. [p. 20, ln. 4- p. 29, ln. 7; p. 39, ln. 22-p. 40, ln. 6; p. 45, lns. 4-10].

Such dishonesty carries through to the very end of the Memorandum (at p. 4), where – in a footnote – Judge Abrecht claims

> "there is no merit to defendant's surprise argument that this Court should recuse itself from ruling on her motion for change of venue (in this 2003 case) because her husband Gary L. Abrecht apparently dismissed her complaint against U.S. Capitol Police in 1996, while he served as Chief of Police, a position from which he retired in May 2000."

As the transcript shows, Judge Abrecht was unwilling to allow me to provide her a copy of the complaint and assist her in understanding the connection between the actions of her husband with respect to my 1996 police misconduct complaint and the present case. [p. 15, ln. 14- p. 20, ln. 6; p. 21, lns. 20-25; p. 25, lns. 10-13; p. 29, ln. 19-p. 30, ln. 11.

"The record in this case, as in the 1997 case against me on a trumped-up 'disorderly conduct' charge (D-177-97), suggest a pattern by this Court of rushing criminal cases to trial, without concern for defendants' discovery rights -- at least where the arrests involve U.S. Capitol Police and the U.S. Senate Judiciary Committee."

33. In any event, the Court, in its reliance on Judge Abrecht's six-month old Memorandum Explaining Denial of Motion for Change of Venue, did not have to examine the record that was before Judge Abrecht to know the inapplicability of the proposition announced on her Memorandum's first page:

"Controlling case law in the District of Columbia is that change of venue is not available because the Superior Court of the District of Columbia sits as a single unitary judicial district. *United States v. Edwards*, 430 A.2d 1321, 1345 (D.C. 1981), cert. denied, 455 U.S. 1022 (1982 ), *Catlett v. United States*, 545 A.2d 1202 (D.C. 1988)."

Nor did the Court have to even read Judge Abrecht's two cited cases[8]. Rather, the Court only had to read the section of the District of Columbia Code pertaining to prosecutions for offenses committed on "Capitol Grounds" under D.C. Code §10-503.16. That section is D.C. Code §10-503.18, which states in pertinent part:

"(c)... Prosecution for any violation of 10-503.16(a) or for conduct which constitutes a felony under the general laws of the United States or the laws of the District of Columbia shall be in the United States District Court for the District of Columbia. All other prosecutions for violations

[8] These two cases were cited to Judge Abrecht by Mr. Mendelsohn at the August 20, 2003 conference – to which I immediately responded: "That may be readily distinguishable, so I would have to have an opportunity – to review that." [p. 24, lns. 17-21]; "What were the circumstances of, in those cases? Maybe they are readily distinguishable." [p. 25, lns. 8-9]. I also posed the question to Judge Abrecht, "...are you familiar with those legal authorities to which he cited?" [p. 28, lns. 19-20] – to which she responded, "Ms. Sassower, I am prepared to rule on that motion at this time." [p. 28, lns. 21-22].

Despite my protests, "...it is reasonable to expect that on such a serious issue Mr. – there is no prejudice to the Court, none whatsoever, to require Mr. Mendelsohn to interpose papers in response, including a memorandum of law. That's his burden. I have met my burden. I have put in formal papers" [p. 29, lns. 2-7], Judge Abrecht would not require Mr. Mendelsohn to put in written opposition, to which I would have an opportunity to respond.

of this part **may** be in the Superior Court of the District of Columbia.... (bold added for emphasis)

34. In other words, while the prosecution against me for "disruption of Congress" pursuant to D.C. Code §10.503.16(b)(4), "**may be** in the Superior Court for the District of Columbia", it is actually properly venued in the United States District Court for the District of Columbia. As such, *United States v. Edwards* and *Catlett v. United States*, which did not involve prosecutions pursuant to D.C. Code §10.503.16, are irrelevant – as likewise that the District of Columbia has only a single unitary judicial district.

35. Based on the language of D.C. Code §10.503.18, it would appear that I am legally entitled to have the U.S. Attorney prosecute this charge against me in the U.S. District Court for the District of Columbia, with no special showing by me required for that venue.

36. That being said, the record herein is overwhelming and dispositive in establishing an ongoing pattern of judicial lawlessness warranting the removal of this case to a another venue. Where – as here -- supervisory authorities of the Superior Court have "stood idly by" in face of the notice given by my February 26th, February 27th, and March 17th memoranda (Exhibits "BB", "EE", "JJ")– such Court, as a whole, forfeits any claim to being a "fair and impartial tribunal".

WHEREFORE, it is respectfully prayed that the relief sought in the accompanying notice of motion be granted.

ELENA RUTH SASSOWER

Sworn to before me this
22nd day of March 2004

Notary Public

BETH AVERY
Notary Public - State of New York
NO. 02AVA5056824
Qualified in Westchester County
My Commission Expires 3/11/06