**COURT OF APPEALS**
**FOR THE DISTRICT OF COLUMBIA**

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**No. 04-CM-760**
**No. 04-CO-1600**

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**Motion to Vacate the Three-Judge Panel's August 5, 2005 Order, for Reconsideration/Vacatur of the Court's October 5, 2005 Order, Disqualification/Disclosure, Transfer/Removal to the U.S. Court of Appeals for the District of Columbia Circuit & Other Relief**

**ELENA RUTH SASSOWER,**

***Appellant***

***v.***

**UNITED STATES OF AMERICA,**

***Appellee***

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COUNTY OF WESTCHESTER )
STATE OF NEW YORK ) ss:

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

1. I am the appellant *pro se* in the above-numbered consolidated appeals of my conviction and sentence for "disruption of Congress".

2. This affidavit is submitted in support of a motion:

(a) to vacate for fraud born of actual bias and disqualifying interest the *unsigned* August 5, 2005 order of a three-judge panel (Reid, Glickman, Nebeker) which denied my unopposed July 28, 2005 motion for reconsideration and other relief, *without* identifying my requests for its disqualification pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts and for disclosure pursuant to Canon 3F, including as to extrajudicial facts, and whose falsehoods included that "judicial rulings alone do not constitute bias requiring recusal" -- for which it cited *Liteky v. United States*, 510 U.S. 540 (1994) – and, upon such

vacatur, the granting of the four branches of relief sought by my June 28, 2005 procedural motion – *or, at minimum, its fourth branch request for a court conference pursuant to this Court's Rule 14 so that the issues presented by that motion's first three branches can be properly resolved*;

(c) for reconsideration and vacatur of the *unsigned* October 5, 2005 order which denied my unopposed August 4, 2005 petition for *en banc* initial hearing of the appeals, *without* identifying my requests for disqualification of this Court's judges pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts and for disclosure pursuant to Canon 3F, including as to extrajudicial facts;

(d) for removal/transfer of the appeals to the U.S. Court of Appeals for the District of Columbia Circuit by reason of the disqualification of this Court's judges, in the interest of justice, and pursuant to the venue provision of the "disruption of Congress" statute, D.C. Code §10-503.18;

(e) for such other and further relief as may be just and proper, including requesting an advisory opinion of the Advisory Committee on Judicial Conduct as to the mandatory obligations of this Court's judges to identify and adjudicate requests for their disqualification and for disclosure – if there is any doubt as to the disciplinary, if not criminal, consequences to the judges of wilfully concealing and ignoring such requests; and

(f) in the event all relief is denied, extending the time for filing my revised appellant's brief to Friday, December 23, 2005.

3. Absent this Court's addressing the serious and substantial issues demonstrated by the record that its judges have been wilfully and deliberately ignoring their mandatory obligations of disqualification and disclosure under Canons 3E and F of the Code of Judicial Conduct for the District of Columbia Courts[1], not to mention their mandatory disciplinary responsibilities under Canon 3D, while *sub silentio* repudiating controlling blackletter law, including as to judicial disqualification – which the August 5, 2005 order (Exhibit A-1), citing *Liteky v. United States*, 510 U.S. 540 (1994), now openly falsifies, I

[1] As to the binding significance of the Code of Judicial Conduct for the District of Columbia Courts "on judges of this court and the Superior Court", see, *inter alia*, *York v. United States*, 785 A2d 651, 655 (2001) (Terry, Reid, Mack). *See* also, *Scott v. United States*, 559 A.2d 745 (*en banc* 1989) (Rogers, Mack, Newman, Ferren, Terry, Steadman, Pryor, with Schwelb concurring).

will be filing disciplinary and criminal complaints against the judges of this Court for their flagrant corrupting of the judicial process. Indeed, as unequivocally established by the record spanning from my April 6, 2004 petition for a writ of mandamus, prohibition, certiorari, &/or certification of questions of law (Exhibits D and E) to my August 4, 2005 petition for *en banc* initial hearing of these appeals, there is no cognizable judicial process. Rather, this Court operates by *unsigned* edicts bearing no resemblance to the uncontroverted, indeed uncontested, and controlling facts, law, and legal argument before it – all of which it conceals or falsifies.[2]

## VACATING THE THREE-JUDGE AUGUST 5, 2005 ORDER AND GRANTING THE FOUR BRANCHES OF RELIEF OF THE JUNE 28, 2005 PROCEDURAL MOTION IT FRAUDULENTLY DENIED

4. The August 5, 2005 order (Exhibit A-1) denies my unopposed July 28, 2004 reconsideration motion without any reasons, other than its citation to a string of court rules and caselaw, prefaced by the word "*See*"[3]. The panel's knowledge that such citations are inapposite, where not outrightly false, may be seen from its failure to correlate any of them to any of the branches of relief of my reconsideration motion, none of which it identifies. Nor does the panel identify any of the facts, law, and legal argument I had presented in support of the reconsideration motion.

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[2] As to the evidentiary significance of such deceit and falsifications, compare *Bruce v. United States*, 617 A.2d 986, 997 (1992) (Steadman, Schwelb, Sullivan), quoting II JOHN HENRY WIGMORE, EVIDENCE 278 at 133 (Chadbourn ed. 1979), and *Mills v. United States*, 599 A.2d 774, 783-84 (1991), also quoting WIGMORE. Also, Corpus Juris Secundum, Vol. 31A, 166 (1996 ed., p. 339).

[3] According to The Blue Book: A Uniform System of Citation (Harvard Law Review Association, 18th ed., 2005), "*see*" before a legal citation means "the proposition is not directly stated by the cited authority but obviously flows from it; there is an inferential step between the authority cited and the proposition it supports." (at p. 46). Here, the meaning of "*see*" is that the cited legal authority inferentially supports the panel's denial of my reconsideration motion.

5. Among the relief not identified by the August 5, 2005 order: "Disqualification of/Disclosure by the Three-Judge Panel". Such appeared in the very title of my July 28, 2005 reconsideration motion (at p. 1) and was summarized in a branch of relief as:

> "...disqualification of the three-judge panel for actual bias and interest, pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts, vacatur of its July 14, 2005 order by reason thereof, and failing that, disclosure pursuant to Canon 3F of the Code of Judicial Conduct for the District of Columbia Courts." (at ¶2(d)).

This was then elaborated under a nearly identical section heading reinforced by bold and capitalized typeface (p. 12). As to the two paragraphs under that section heading, ¶¶24-25, they stated the basis for the requested disqualification/disclosure: (1) the panel's demonstrated actual bias by its July 14, 2005 order (Reid, Glickman, Pryor) (Exhibit A-2) – the subject of my July 28, 2005 reconsideration motion -- and (2) my showing, by an extensive footnote 2, that two panel members, Judges Reid and Glickman, had previously demonstrated their actual bias by five prior orders in which they had participated. These orders, dated April 8, 2004, July 7, 2004, September 16, 2004, September 23, 2004, and October 14, 2004 (Exhibits C-1, C-2, C-4, C-5, C-6/7), were shown to have concealed ALL the facts, law and legal argument I had presented in denying me relief to which I was entitled *as a matter of law* without reasons or by reasons that were demonstrably false – a pattern repeated in the panel's July 14, 2005 order (Exhibit A-2). ¶24 therefore stated that "absent reasoned adjudications of the four actual branches of my June 2[8] procedural motion, the panel is duty-bound to disqualify itself for actual bias and self interest" (underlining in the original). ¶25 identified that the panel would otherwise be required to discharge its "mandatory obligation" of disclosure, which it specified to include:

> "as to Judge Reid, the disclosure *expressly* requested by the fourth branch of my motion for reconsideration of the Court's July 7, 2004 order under #04-

CM-760 -- which, with her participation, denied me release from incarceration, without reasons. Such disclosure, particularized at pages 37-39 of that handwritten August 2004 reconsideration motion, was not made by Judge Reid – or even revealed – when she thereafter participated in the Court's September 16, 2004 order denying the motion – and keeping me incarcerated[fn]. It would also include, as to Judge Glickman, the disclosure *expressly* requested at pages 8-9 of my motion for a stay that accompanied my April 6, 2004 mandamus/prohibition/certiorari petition under #04-OA-17 – disclosure which he and his fellow panel members failed to make – or even reveal -- by their April 8, 2004 order denying me all relief and forcing me to proceed to trial before the pervasively biased Judge Holeman, against whom I had made two legally sufficient disqualification motions." (emphases in the original).

6. The most cursory examination of this requested disclosure reveals that it would have required Judges Reid and Glickman to concede their disqualification for demonstrated actual bias, as likewise the disqualification of Judge Nebeker[4]. This, because the unalterable fact is that my April 6, 2004 mandamus/certiorari petition (Exhibits D, E) and my six-branch July/August 2004 reconsideration motion (Exhibits F, G, H, I)[5] were

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"[fn] The September 16, 2004 order also did not make – or reveal – the disclosure *expressly* requested by ¶¶31-37 of my August 12, 2004 background affidavit, including as to this Court's July 29, 2004 order (per Terry, Steadman, King), or the disclosure *expressly* requested by ¶¶35-36 of my August 24, 2004 motion for a procedural order."

[4] Judges Reid and Glickman allowed Senior Judge Nebeker to come on as a panel member substituting for Senior Judge Pryor, who had been on the July 14, 2005 panel (Exhibit A-2). This, with knowledge that he was as disqualified as they, if not more so. Indeed, Judge Nebeker had not only served with Judge Glickman on the panel which had rendered the April 8, 2004 order under #04-OA-17 (Exhibit C-1), denying my April 6, 2004 mandamus/prohibition petition and forcing me to proceed to trial before the statutorily-disqualified and demonstrably biased Judge Holeman – but he participated with Judge Reid in the July 7, 2004 order (Exhibit C-2) which, without reasons, had denied me release pending appeal. He, thereafter, participated with Judge Glickman in the October 16, 2004 order under #04-CO-1239 (Exhibit C-6/7) which, by concealing and falsifying what was before the Court – including the legal standard for release pending appeal – again denied me release.

[5] My reconsideration motion to secure my release from incarceration was dated, notarized, and mailed to the Court from jail on July 16, 2004 (Exhibit F). However, the Clerk's office twice rejected it before ultimately accepting it for filing on August 24, 2004.

each dispositive of my rights – which these judges brazenly disregarded in orders that additionally concealed their obligations to make the disclosure required by these submissions. Among the controlling, black-letter law which these judges had to, and did, wilfully ignore to deny me the disqualification of D.C. Superior Court Judge Holeman to which my April 6, 2004 petition entitled me: *Scott v. United States*, 599 A.2d 745 (*en banc*, 1989); *Anderson v. United States*, 754 A.2d 489 (2000); D.C. Superior Court Civil Procedure Rule 63-I, applicable to criminal proceedings by D.C. Superior Court Criminal Procedure Rule 57(a); *Berger v. United States*, 255 U.S. 22 (1921); *Fischer v. Estate of Flax*, 816 A.2d 1 (2003); *Liteky v. United States*, 510 U.S. 540 (1993). To this was added, on my July/August 2004 reconsideration motion, D.C. Code §23-1325(c), whose criterion for release pending appeal their October 14, 2004 order falsified (Exhibits C-6/7).

7. The malicious and repeated misconduct of Judges Reid, Glickman, and Nebeker – forcing me to trial before the statutorily-disqualified Judge Holeman before whom all subsequent proceedings would be null and void by reason thereof and thereafter denying me release from six months incarceration pending this appeal – continues by their August 5, 2005 order, with its falsification of *Liteky*.

8. Because the correct interpretation of *Liteky* – which I first placed before the Court by my April 6, 2004 mandamus/certiorari petition (Exhibits D, E) -- has always been dispositive of my rights, none of this Court's aforesaid succession of orders have ever cited *Liteky* or purported that judicial rulings could not be grounds for disqualification. The

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This is recounted – with a request for disclosure by the Court -- by my August 16, 2004 background affidavit and Rule 9 application (Exhibit G) and by my August 24, 2004 motion for a procedural order and clarification, etc. (Exhibit H). For the convenience of the Court, all my submissions in support of this extraordinary reconsideration motion – all handwritten from jail – have been retyped and are annexed hereto as Exhibits F, G, H, and I.

August 5, 2005 order (Exhibit A-1) is the first to do so – in purported justification of the panel's denial of my July 28, 2005 reconsideration motion.

9. The panel's citation to *Liteky*[6] beside a parenthesized description "(judicial rulings alone do not constitute bias requiring recusal)" is a knowing deceit, immediately evident by comparison to *Liteky*'s precise words, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion" (at 555), which the panel does not quote, albeit they are quoted in three separate decisions of this Court, including *Allen v. District of Columbia Board of Elections & Ethics*, 663 A.2d 489 (1995), in which Judge Reid participated[7]. The meaning of "almost never" is that there are rare cases where judicial rulings suffice to establish bias, which is what *Liteky* says about judicial rulings and opinions that are so unwarranted and excessive as to reflect "pervasive bias" and "impossibility of fair judgment". Indeed, this was not only specifically discussed by my April 6, 2004 petition, but was the third ground upon which my right to mandamus review *expressly* rested (Exhibit D, pp. 2, 16-18).

10. It must be emphasized that among the disclosure requested of Judge Reid by pp. 37-39 of my handwritten August 2004 reconsideration motion (Exhibit F, ¶¶63-68) – reiterated at ¶25 of my July 28, 2005 reconsideration motion – was whether her fairness and impartiality were impacted by the fact that my April 6, 2004 petition, whose first ground for mandamus review rested on *Anderson v. United States* in which she had participated (Exhibit D, pp. 2, 9-12), exposed

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[6] The August 5, 2005 order (Exhibit A-1) misspells *Liteky* as *Litkey*.

[7] The other two decisions of this Court containing this quote from *Liteky* are *In re Banks*, 805 A.2d 990, 1003 (2002) (Farrell, Schwelb, Wagner), and *Cameron v. Washington Metro Area Transit Auth.*, 649 A2d 291, 295 (1994) (Terry, Ferren, Reilly).

"67. ...that the Anderson 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."

I then explained:

"68. Liteky was at the heart of my right to Judge Holeman's disqualification on 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."

11. The August 5, 2005 order amplifies Judge Reid's previous answer. Neither she nor Judges Glickman and Nebeker are even willing to identify, let alone confront, the reasonable question of their fairness and impartiality in a case requiring them to acknowledge the correct interpretation of *Liteky* and give relief thereunder. Rather, they will rest on a bald declaration which, because they know it to be false, they do not even substantiate by quoting *Liteky*.

12. The panel's falsification of *Liteky* is misleading in yet another respect. It implies that I presented judicial rulings "alone". To the contrary, both as to the panel and Judge Holeman, I particularized the extrajudicial factors that were impinging upon judicial fairness and impartiality. Indeed, the disqualification/disclosure requested by my April 6, 2004 motion accompanying my mandamus/certiorari petition (Exhibit E, ¶¶20-25) – reiterated by my July 28, 2005 reconsideration motion (¶25) – was NOT predicated on any rulings this Court had made herein, as none had then been rendered. Rather, it rested on extrajudicial relationships and pressures on this Court's judges, which I specified. This was then encompassed by my July/August 2004 reconsideration motion (Exhibit F, ¶¶65, 67-8, 71), with its further recitation of personal and professional relationships and factors

impinging on judicial impartiality – including *Anderson*'s wrong statement of law with respect to judicial disqualification.

13. Inasmuch as the August 5, 2005 order (Exhibit A-1) does not specify the aspect of my July 28, 2005 reconsideration motion to which its falsification of *Liteky* relates, it just as easily pertains to my request for the panel's disqualification based on its rulings as my entitlement to Judge Holeman's disqualification based on his rulings, encompassed by the first branch of my June 28, 2005 procedural motion. In either event, it constitutes grounds to vacate the August 5, 2005 order for fraud.

14. As to the first branch of my June 28, 2005 procedural motion -- for permission to file my June 28, 2005 appellant's brief -- both that motion (¶¶5, 9) and my July 28, 2005 reconsideration motion (¶¶8, 17-18) explained that the length of my brief was attributable to the burden I bear under *Liteky* if I am to establish that Judge Holeman's rulings manifest the "impossibility of fair judgment" standard of pervasive actual bias. The panel's citation to, and misrepresentation of, *Liteky* implies that I have no burden requiring additional pages because rulings are not disqualifying. If this is the unstated basis for the panel's disposition with respect to my appellant's brief, it is grounds to vacate the August 5, 2005 order for fraud.

15. Tellingly, the August 5, 2005 order conceals the alternative relief requested by the first branch of my June 28, 2005 procedural motion: that if the Court did not grant me permission to file my brief that it set page limits for my revised brief

> "based on a ruling as to the particularity required to establish pervasive actual bias meeting the 'impossibility of fair judgment' standard articulated by the U.S. Supreme Court in *Liteky v. United States*, 510 U.S. 540 (1994)".

This concealment is notwithstanding such alternative relief gave the panel the perfect opportunity to elucidate its bald claim, citing *Liteky*, that judicial rulings cannot themselves be disqualifying. The panel gives no reason for not granting this alternative relief – except, inferentially, by its false assertion that judicial rulings alone are not disqualifying and by its inapposite citation to "*District of Columbia v. WICAL Ltd. P'ship*, 630 A.2d 174 (D.C. 1993) (the court does not issue advisory opinions)" – which can only relate to this alternative first branch.

16. Here, too, the August 5, 2005 order does not quote from the legal authority to which it cites. Had it done so, it would have been obvious that my alternative first branch was not for an "advisory opinion". This, because *WICAL* (Terry, Schwelb, Farrell) makes evident that an "advisory opinion" relates to guidance to a lower court as to "questions" which "may become ripe for resolution at some future date, but...are not ready for decision at this stage of the case". As stated, "This court has no authority to issue advisory opinions regarding questions which may or may not arise", *WICAL*, at 182

17. As clear from the alternative first branch of my procedural motion, I did NOT present a question that "may or may not arise" and become relevant at "some future date". Rather, the specificity required to establish pervasive actual bias meeting *Liteky*'s "impossibility of fair judgment" standard was a question for this Court that became ripe for adjudication with the panel's denial of my request for permission to exceed page limits for my appellant's brief where I had contended-- without dispute from the U.S. Attorney or the panel -- that such additional pages were necessary to my meeting my appellate burden under *Liteky*.

18. That the August 5, 2005 order makes it appear as if my request to file my brief was not part of my reconsideration motion, but, rather, some "renewed motion to exceed page limits or for extension of time" is a further deceit. As to its direction that I file "a brief which conforms to the rules of this court", for which it gives me 90 days, the order gives no reasons why the generic 50-page limit prescribed by Rule 32(a)(6) is appropriate to the facts and circumstances of this appeal, none of which it identifies. Nor does it even identify my contention – uncontested by the U.S. Attorney -- that this generic page limit is insufficient for my first appellate issue of Judge Holeman's pervasive actual bias meeting *Liteky*'s "impossibility of fair judgment" standard -- let alone when combined with my second appellate issue: interpretation of the venue provision of the "disruption of Congress" statute, D.C. Code §10-503.18; my third appellate issue: the unconstitutionality of the "disruption of Congress" statute, D.C. Code §10-503.16(b)(4), *as written and as applied*; and my fourth appellate issue: the unconstitutionality and unlawfulness of Judge Holeman's probation conditions and his superseding six-month jail sentence.

19. Tellingly, the August 5, 2005 order makes no finding and does not even claim that my first appellate issue can be compressed into a 50-page brief – and especially in combination with my three other appellate issues where, additionally, the panel's July 14, 2005 order (Exhibit A-2) rejected my 161-page supplemental fact statement.

20. Compounding this, the August 5, 2005 order deprives me of a court conference at which the question of the specificity required for demonstrating the "impossibility of fair judgment" standard of *Liteky* – and the pages necessary for such purpose – could be intelligently resolved, including through appropriate stipulations with the U.S. Attorney. These and other benefits of a court conference were particularized by

my July 28, 2005 reconsideration motion (¶¶12-16), which highlighted that the panel's July 14, 2005 order had neither identified nor adjudicated this fourth branch of my June 28, 2005 procedural motion.

21. The August 5, 2005 order, likewise, does not identify this fourth branch, except inferentially by its citation to "D.C. App. R. 14(a) (settlement conferences are only appropriate in non-criminal appeals)." Such is false. I did not request a "settlement conference". I requested "[a] court conference, pursuant to this Court's Rule 14", whose title is "Appeal Conferences" and whose subsection (a), entitled "Purpose of Conference", reads:

> "The court, sua sponte or upon motion of a party, may direct the attorneys to participate in one or more conferences to address any matter that may aid in resolving the appeal. This may include simplifying the issues, discussing the status of record preparation, possible consolidation of briefing in multi-party proceedings, and, in a non-criminal appeal, discussing settlement. A judge or other person will be designated by the court to preside over the conference."

22. My June 28, 2005 procedural motion expressly requested (¶¶2d, 3, 12) "[a] court conference" to address "any matter that may aid in resolving the appeal" – and, specifically, my motion's three other branches. This was then reiterated and reinforced by my July 28, 2005 reconsideration (¶¶12-16). Consequently, to the extent the August 5, 2005 order is deemed a denial of the previously-undenied fourth branch of my June 28, 2005 procedural motion, I did not request a "settlement conference" applicable to non-criminal appeals – and such is further grounds for vacating the panel's August 5, 2005 order for fraud.

23. As to the two other branches of my June 28, 2005 procedural motion to which I was so clearly entitled that the U.S. Attorney consented to them, the panel's August 5, 2005 order is no less fraudulent.

24. The panel's inference by its citation to D.C. App. R. 10(a) and *Gomez v. Gomez*, 341 A.2d 423 (1975) (Reilly, Kelly Harris), is that I am seeking to put before the Court "material which was not part of the record below" and/or not properly before it for consideration. This is false as to both the second and third branches of my June 28, 2005 procedural motion – the only branches to which these citations have any possible relevance.

25. As to my consented-to second branch, my reconsideration motion (at ¶10) highlighted that I was not seeking to introduce anything outside the record because the original trial exhibits which Judge Holeman excluded are "part of the lower court record". The August 5, 2005 order neither asserts nor provides law to the contrary. Its further citation to *Bell v. United States*, 806 A.2d 228 (2002) (Terry, Reid, Washington), that I bear the "burden" of persuading the Court with respect to my appellate issues only reinforces my entitlement since I cannot meet my "burden" of establishing "the falsity and outright maliciousness of Judge Holeman's key evidentiary and other rulings", when the panel is preventing me from lodging with the Clerk's office the original exhibits which Judge Holeman ruled on by excluding them.

26. As to my consented-to third branch, my reconsideration motion reflected (at ¶11) that its requested relief is functionally equivalent to my asking the Court to take "judicial notice" of its own records and incorporating them by reference. This Court's

decision in *Renard v. District of Columbia*, 673 A.2d 1274, 1276 (1996) (Wagner, Terry, Steadman) establishes my entitlement:

> "The contents of a court's records are readily ascertainable facts, particularly appropriate for judicial notice. *See Mannan v. Board of Medicine, 558 A.2d 329, 338 (D.C. 1989)* (citing 21 C. WRIGHT & K. GRAHAM, FEDERAL PRACTICE and PROCEDURE §5106, at 595 (1977)). Thus, generally, a court [**7] may take judicial notice of its own records. *S.S. v. D.M., 597 A.2d 870, 880 (D.C. 1991)* (citations omitted); 2 JOHN W. STRONG, McCORMICK ON EVIDENCE §330, at 396 (4th ed. 1992); *see also Mack v. Zalco Realty, Inc., 630 A.2d 1136, 1138 n.5 (D.C. 1993)* (citing *In re Marshall, 549 A.2d 311, 313 (D.C. 1988)*)."

27. That the August 5, 2004 order does not identify my consented-to request to incorporate this Court's records of my April 6, 2004 mandamus/certiorari petition [#04-OA-17] and of my October 6, 2004 "Emergency Appeal" for my release from incarceration to preserve appellate issues [#04-CO-1239], let alone adjudicate this request with pertinent law, only underscores that there is no basis for its rejection. In light of the showing in footnote 2 of my July 28, 2005 reconsideration motion (pp. 6-8) that the records under these docket numbers establish that "no fair and impartial tribunal could have rendered" the April 8, 2004 and October 16, 2004 orders in which Judges Glickman and Nebeker both participated (Exhibits C-1 and C-6/7), the panel's rejection of this request is plainly self-interested.

28. From the foregoing may be seen that the August 5, 2005 order (Exhibit A-1) is NOT a "reasoned adjudication" of any of the four branches of my June 28, 2005 procedural motion, whose requested relief it conceals, just as it conceals the further relief that my July 28, 2005 reconsideration motion had requested: referral of the motion to the *en banc* Court for its adjudication in conjunction with my request for initial hearing of the appeals *en banc*, as well as for disqualification/disclosure by the three-judge panel (title,

¶¶2(c) and (d), 20-5). This, in the face of my assertion "It is axiomatic that reasons function as a check against arbitrary and improperly-motivated conduct" – which my reconsideration motion stated at the outset (¶3).

## RECONSIDERATION OF THE OCTOBER 5, 2005 ORDER WITH DISQUALIFICATION OF THIS COURT'S JUDGES AND DISCLOSURE BY THOSE JUDGES NOT DISQUALIFYING THEMSELVES

29. This Court's *unsigned* October 5, 2005 order (Exhibit B) denies my August 4, 2005 petition for initial hearing *en banc* based on "it appearing that no judge in regular active service has requested that a vote be taken on the petition for initial hearing en banc". Such judges are identified as "Washington, Chief Judge; Terry, Schwelb, Farrell, Wagner, Ruiz, Reid, Glickman, and Kramer, Associate Judges". No mention is made of the disqualification/disclosure relief requested in the petition's title and discussed at ¶¶9 and 8. Such rested on the facts set forth by footnote 2 of my July 28, 2005 reconsideration motion, with disclosure based thereon and on ¶25 thereof.

30. Consequently, on reconsideration, I request that the Court's judges identify whether their not "request[ing] that a vote be taken" is a reflection of their having disqualified themselves pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts, as requested by ¶9 of my en banc petition. Such disqualified judges should include Noel Anketell Kramer. Her nonfeasance as presiding judge of the D.C. Superior Court's Criminal Division, as well as that of Chief Judge Rufus King, III and others, when I turned to them for supervisory oversight over Judge Holeman in February and March 2004 [A-454-456; A-426-430; A-435-441] -- violating their mandatory disciplinary responsibilities under Canon 3D of the Code of Judicial Conduct of the District of Columbia Courts -- was recounted in my April 6, 2004 motion

accompanying my mandamus/certiorari petition and formed a basis of my requests therein for disclosure by this Court's judges, whose own mandatory disciplinary responsibilities pursuant to Canon 3D my April 6, 2004 petition expressly invoked (Exhibit E, ¶¶20-25).

31. As to those judges not disqualifying themselves, their obligation is to make disclosure, as it bears upon their not "requesting that a vote be taken" – which is equivalent to a vote against *en banc* hearing. As to this Court's judges who participated with Judges Reid, Glickman, and Nebeker in the *unsigned* orders highlighted by footnote 2 and ¶25 of my July 28, 2004 reconsideration motion, including its footnote 4:

> a. Judge Farrell participated with Judges Glickman and Nebeker in the *unsigned* April 8, 2004 order under **#04-OA-17** (Exhibit C-1) which, without identifying ANY of the facts, law, or legal argument presented by my April 6, 2004 mandamus/certiorari petition and accompanying motion for a stay (Exhibits D and E), denied both and concealed my express request for disclosure by this Court's judges.
>
> As highlighted by my footnote 2, this April 8, 2004 order (Exhibit C-1) was the subject of a line-by-line analysis presented by my July/August 2004 reconsideration motion (Exhibit F, ¶¶41-62) – whose accuracy was uncontested by the U.S. Attorney and by the Court's September 16, 2004 order (Exhibit C-4);
>
> b. Judge Steadman participated with Judges Reid and Nebeker in this Court's *unsigned* July 7, 2004 order (Exhibit C-2) which prematurely and without reasons denied the June 28, 2004 motion made by my legal advisor for my release from incarceration pending appeal.
>
> As identified by my footnote 2, this July 7, 2004 order (Exhibit C-2) was the subject of my July/August 2004 reconsideration motion (Exhibit F). ¶¶5-11 of the motion presented an analysis of the July 7, 2004 order – the accuracy of which was uncontroverted by the U.S. Attorney and by the Court's September 16, 2004 order (Exhibit C-4) which denied the motion without identifying ANY of the facts, law, and legal argument I had presented.[8]
>
> c. Judges Terry, Steadman, and King participated in this Court's *unsigned* July 29, 2004 order (Exhibit C-3), which not only delayed for 10 days the granting of the purely ministerial July 19, 2004 joint motion of my legal advisor and myself for his withdrawal so that I could proceed *pro se* – thereby

[8] *See* also related disclosure requested by my August 24, 2004 motion for a procedural order and clarification (Exhibit H, ¶36).

holding up my received July 16, 2004 reconsideration motion for release from incarceration – but, *sua sponte*, added a due process-less directive that I was to "interact with this court only through properly filed pleadings that conform with the rules of this court", specifically barring telephone requests from me or from persons on my behalf.

My footnote 4 identified that I expressly requested disclosure with respect to this July 29, 2004 order (Exhibit C-3) – which this Court's September 16, 2004 order (Exhibit C-4) neither made nor identified.

d. Judge Terry and Senior Judge Newman participated with Judge Reid in this Court's *unsigned* September 16, 2004 order (Exhibit C-4) which, concealing that my July/August 2004 reconsideration motion was for my release from incarceration (Exhibit F), denied the motion, without ANY findings or even a bald claim that I had not met requisite legal standards for release – and without identifying or making ANY of the disclosure I had requested[9] and, likewise, concealing that I had even raised disqualification/disclosure issues.

My footnote 2 analyzed this September 16, 2004 order (Exhibit C-4). Its accuracy was uncontested by the U.S. Attorney, as likewise by the panel's August 5, 2005 order (Exhibit A-1), which also did not identify or make the requested disqualification/disclosure – notwithstanding expressly reiterated by ¶25 of my July 28, 2005 reconsideration motion.

e. Judges Terry and Farrell participated with Judge Reid in this Court's *unsigned* September 23, 2004 order (Exhibit C-5), which, notwithstanding the U.S. Attorney had expressly not opposed my counsel's September 23, 2004 "emergency motion" for my "release to preclude mootness", denied it, without prejudice to my "refiling in the Superior Court" – meaning before Judge Holeman, whose statutory disqualification and pervasive actual bias I had particularized and documented by my unopposed April 6, 2004 mandamus/certiorari petition (Exhibit D) and further particularized by my July/August 2004 reconsideration motion, uncontroverted by the U.S. Attorney (Exhibits F, I-2).

My footnote 2's recitation with respect to this September 23, 2004 order (Exhibit C-5) was uncontested by the U.S. Attorney and by the panel's August 5, 2005 order (Exhibit A-1).

f. Judge Washington joined with Judges Glickman and Nebeker in this Court's *unsigned* October 14, 2004 order/amended order under **#04-CO-1239** (Exhibit C-6/7), which denied me release from incarceration, notwithstanding the U.S. Attorney had expressly not opposed such release, sought by my counsel's perfected October 6, 2004 "Emergency Appeal". In so doing, it falsified the applicable legal standard for release under D.C. Code §23-1325(c), which I had

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[9] *See* my July/August 2004 reconsideration motion (¶¶63-70); my August 12, 2004 background affidavit and Rule 9 application (¶¶2, 31-37); August 24, 2004 motion for procedural order and clarification (¶¶3(d), 35-36).

met and, *sua sponte*, dismissed the perfected appeal as "duplicative" of the unperfected appeal herein under 04-CM-760. It identified NONE of the facts, law or legal argument presented by the perfected appeal – not even that the sole appellate issue was for my release to prevent mootness of my ultimate appellate issues relating to the six-month jail sentence.

My footnote 2 presented an analysis of this October 14, 2004 order (Exhibit C-6/7) -- the accuracy of which was uncontested by the U.S. Attorney and by the panel's August 5, 2005 order (Exhibit A-1).

32. This continuum of *unsigned* orders are readily-verifiable as judicial frauds by comparison to the factual record and the black-letter controlling law they wilfully omitted or falsified. Absent some extenuating explanation from the participating judges -- as, for instance, that their names were affixed without their knowledge[10] or that they were duped by their fellow panelists -- such judges are disqualified for pervasive actual bias.

33. The fact that *Liteky* stands for the proposition that judicial rulings CAN serve as a basis for disqualification when they manifest pervasive bias meeting an "impossibility of fair judgment" standard gives this Court's judges participating in this succession of fraudulent orders an interest in NOT acknowledging what *Liteky* holds. The panel's August 5, 2005 order (Exhibit A-1) actualizes such interest by its knowing falsification with respect thereto.

34. It would appear that this Court has been less than forthright in articulating when bias constitutes grounds for disqualification and in citing *Liteky*. As my April 6, 2004 mandamus/certiorari petition specifically pointed out (Exhibit D, p. 17, fn. 7) – and as is still true today, a year and a half later – an electronic Lexis search reveals seven decisions of this Court citing *Liteky*, two of which contravene it in stating, or making it

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[10] That this Court does render signed orders may be seen from its May 18, 2005 order (Exhibit C-8) granting my counsel's consented-to motion to withdraw, allowing me to proceed *pro se*, and extending my time for filing my appellant's brief and joint appendix to June 28, 2005 – all consented-to by the U.S. Attorney. Such essentially ministerial order was not only signed, but signed by then Chief Judge Wagner.

appear, that bias, to be disqualifying, must stem from an extrajudicial source. These are, respectively, *Gibson v. United* States, 792 A.2d 1059 (2002) (Terry, Farrell, Glickman), and *Faulkenstein v. District of Columbia*, 727 A.2d 302 (1999) (Farrell, Terry, Abrecht). Moreover, as clear from *Anderson v. United States*, 754 A.2d 920 (2000) (Wagner, Reid, Mack), this Court does not necessarily cite *Liteky* in decisions pertaining to judicial disqualification and where it purports that an extrajudicial source is required for establishing bias and that judicial rulings are insufficient to warrant disqualification. Indeed, notwithstanding this Court's decision in *Fischer v. Estate of Fax*, 816 A2d 1, 12 (2003) (Farrell, Terry, Belson), which recognized *Liteky* as the "governing standard[]" for Rule 63-I bias recusal motions AND followed it by examining the record of that case so as to establish that

> "(1) the great bulk of Judge Graae's conduct on which Fischer relies [to recuse him for bias under Rule 63-I] consisted of rulings in the case for which sound reasons were given or were ready at hand, and (2) occasional remarks by the judge evincing displeasure with Fischer or his attorney do not come close to demonstrating partiality in the forbidden sense, See *Liteky*, 510 U.S. at 551-552",

the annotations to Rule 63-I neither cite *Fischer v. Estate of Flax* nor *Liteky* and affirmatively misrepresent that judicial bias, to be disqualifying, must be extrajudicial -- misleading both lawyers and *pro se* litigants on so vital a subject.

35. To the extent this Court's judges have a *modus operandi* of rendering rulings for which no "sound reasons [are] given or [are] ready at hand" and which can be demonstrated to be knowingly false, factually and legally – beyond its succession of orders herein – they have an interest in concealing that rulings can suffice to establish disqualifying bias and the circumstances under which this is so.

36. *Liteky* is not the only interest this Court's judges have in this appeal. Inasmuch as they, like Judge Holeman, failed to make – or even identify -- requested disclosure, this Court's judges have an added self-interest on this appeal where Judge Holeman's misconduct with respect to disclosure is encompassed by my first appellate issue of my entitlement to his disqualification [Br. 10-11]. The Court will be constrained from ruling – as any fair and impartial tribunal otherwise would – that failure to make requested disclosure is *prima facie* disqualifying, as it implicitly concedes that disclosure cannot be made without exposing the disqualification.[11] For it to do so would require it to find itself guilty of the very same misconduct.

37. Beyond my transcendent first appellate issue of my entitlement to Judge Holeman's disqualification and for disclosure by him – as to which, by reason of the parallels to this Court, its judges would, in essence, be deciding "their own case", their self-interest in the appeal extends to ALL four of my appellate issues. ALL four issues were previously before the Court by my April 6, 2004 mandamus/certiorari petition (Exhibit D) and my July/August 2004 reconsideration motion (Exhibit F) – denied by orders which concealed and falsified ALL the facts, law, and legal argument I presented since they were dispositive of my rights. Consequently, this Court has an interest in impeding exposition and disposition of these issues on appeal. For it to rule in my favor on my appellate issues – let alone by the resounding, law-making rulings to which I am entitled – would establish the maliciousness of its previous orders. Indeed, with respect to

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[11] *Cf., Scott v. United States, supra.* at 753, quoting *Liljeberg v. Health Services Acquisition Corporation*, 486 U.S. 847 (1988):

> "A full disclosure at that time would have completely removed any basis for questioning the Judge's impartiality…".

my threshold appellate issue of my entitlement to Judge Holeman's disqualification pretrial, the Court cannot rule that my February 23, 2004 and March 22, 2004 motions for Judge Holeman's disqualification [A-265-342; A-375-463] were *sufficient as a matter of law* and that, pursuant to Rule 63-I, all Judge Holeman's subsequent acts were null and void – without exposing my right to the mandamus/prohibition relief denied me by this Court's April 8, 2004 order (Exhibit C-1) – and my right to immediate release from incarceration, which this Court not only repeatedly denied me (Exhibit C-2, C-4, C-5, C-6/7), but by its September 16, 2004 order denied by its fraudulent and bald pretense that my mandamus petition was "insufficient and unpersuasive" (Exhibit C-4, underlining added).

38. There is a further issue encompassed by each of my four appellate issues, as to which this Court has an interest born of its already demonstrated actual bias: the U.S. Attorney's litigation misconduct. This was first brought to the Court's attention by my April 6, 2004 mandamus/certiorari petition, whose requested relief included "appropriate action" against the U.S. Attorney, pursuant to its disciplinary responsibilities under Canon 3(D) of the Code of Judicial Conduct for the District of Columbia Courts (Exhibit D, p. 1). The Court did not await or request the U.S. Attorney's response to the petition before denying it by its April 8, 2004 order – thereby sparing the U.S. Attorney of having to confront the obvious sufficiency of my March 22, 2004 motion [A-375-463], both with respect to Judge Holeman's mandatory disqualification pursuant to Rule 63-I and my entitlement to venue in the federal court pursuant to D.C. Code §10-503.18 – as to which the U.S. Attorney's opposition before Judge Holeman consisted of three sentences, falsely purporting that I had presented no facts, accompanied by silence with respect to the law

[A-464-5] (Exhibit D, pp. 3-4, 19). Although Assistant U.S. Attorney John Fisher had had no contact with the Court with respect to the petition – at least to my knowledge – the Court sent its April 8, 2004 order to him (Exhibit C-1).

39. Three months later, on the very day the Court received the U.S. Attorney's July 6, 2004 unsworn and palpably deceitful opposition to my legal advisor's June 28, 2004 motion for my release from incarceration – an opposition bearing Mr. Fisher's name, though not signed by him -- it deprived me of the opportunity to reply thereto. This, by its July 7, 2004 order, denying the motion without reasons (Exhibit C-2). As a consequence, my showing as to the fraudulence of this opposition was embodied in my sworn July/August 2004 reconsideration motion (Exhibit F, ¶¶9-10, 19-20, 22-24, 25-40) – whose second branch requested:

> "to sanction the U.S. Attorney for his materially deceitful opposition papers 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)" (Exhibit F, ¶2(b))

Indeed, altogether omitted from the U.S. Attorney's July 6, 2004 opposition to my release was any mention of my April 6, 2004 mandamus/certiorari petition and my underlying February 23, 2004 and March 22, 2004 motions for Judge Holeman's disqualification – motions chronicling Judge Holeman's abetting of the U.S. Attorney's brazen violation of its discovery obligations and other litigation misconduct in the Superior Court.

40. Based on the comprehensive showing in my July/August 2004 reconsideration motion, Mr. Fisher – as chief of the U.S. Attorney's appellate division -- was duty-bound

to take immediate and affirmative steps to secure my release from incarceration. Indeed, my motion asserted (Exhibit F, ¶¶38-39) that if the U.S. Attorney opposed my release, it should be by a sworn statement, under penalties of perjury, with Mr. Fisher addressing the sufficiency of my February 23, 2004 and March 22, 2004 motions for Judge Holeman's disqualification [A-265-342; A-375-463]. This, in addition to challenging the U.S. Attorney (Exhibit F, ¶¶17, 18) to deny that my annexed Exhibit C affidavit entitled me to release because it particularized "the 'clear and convincing evidence' of Judge Holeman's pervasive actual bias – pretrial, at trial, and post-trial – requiring reversal as a matter of law" – and to confront my annexed Exhibit D draft memorandum of law as to the unconstitutionality of the "disruption of Congress" statute, *as written and as applied.*[12]

41. Instead, and *without* even mentioning my February 23, 2004 and March 22, 2004 motions, and *without* denying or disputing the accuracy and dispositive nature of my Exhibit C affidavit and my Exhibit D draft memorandum of law – and *without* even claiming that I had had due process before Judge Holeman or contesting my assertion (Exhibit F, ¶22) that Judge Holeman's refusal to allow me to testify at trial as to the events at issue and my intent was, in and of itself, sufficient for reversal – the U.S. Attorney opposed my July/August 2004 reconsideration motion by obfuscation and deceit in unsworn papers again bearing Mr. Fisher's name, but not his signature. I particularized this by my sworn September 13, 2004 reply affidavit (Exhibit I-2, ¶¶2-55), seeking further

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[12] My appellant's brief (at p. 2) highlights the significance of both these exhibits. I began writing the affidavit within the first hour of my waking up on June 29, 2004, the first morning of my incarceration in D.C. Jail, and finished it eight days later – a period described at fn. 5 of my July/August 2004 reconsideration motion (Exhibit F, p. 14). In and of itself, the affidavit presented, in miniature, all four of my appellate issues and included (at ¶29) the draft memorandum of law and the two immediately following exhibits establishing the invidiousness of the "disruption of Congress" charge against me.

sanctions and disclosure, as well as "disciplinary and criminal referrals against the culpable U.S. Attorney and his Assistants pursuant to Canon 3(D) of the Code of Judicial Conduct for the District of Columbia Courts" (¶3, CONCLUSION) – entitlement to which, as well as to my immediate release, I resoundingly demonstrated.

42. All this was completely concealed by the Court's September 16, 2004 order (Exhibit C-4) – as likewise the extrajudicial facts motivating the Court and Mr. Fisher, known to them, but not to me.[13] Among these, the personal and professional relationships between the Court and the U.S. Attorney's office -- Mr. Fisher, in particular. Judge Terry, a panelist on the September 16, 2004 order (Exhibit C-4), as he was on the July 29, 2004 and September 23, 2004 orders (Exhibit C-3, C-5), may be presumed to have particularly close ties. He was chief of the U.S. Attorney's appellate division from 1969 until 1982[14] -- a period during which Mr. Fisher was not only an assistant U.S. Attorney in the office (1976-83), but became deputy chief of the appellate division (1980-83)[15]. Judge Nebeker, a panelist on the April 8, 2004, July 7, 2004, October 14, 2004, and August 5, 2005 orders (Exhibits C-1, C-2, C-6/7, A-1), may also be presumed to have had a special relationship

[13] "...parties ordinarily have no duty...to ferret out whether there may exist some fact – known to the judge, but unknown to the parties – that might warrant [disqualification]. On the contrary, the judge is ordinarily obliged to disclose to parties those facts that would be relevant to the parties and their counsel in considering whether to file a judicial disqualification motion." Judicial Disqualification: Recusal and Disqualification of Judges, Richard E. Flamm, (1996 ed)., §19.10.1; "Judges who are aware of possible grounds for their disqualification must disclose them because members of the judiciary are charged with a duty to know what their own interests are and to avoid intermingling those interests with litigation that is pending before them." §19.10.1.

[14] The American Bench, 2004/5 edition.

[15] Such information as to Mr. Fisher appears in his publicly-available answers to the questionnaire of the Senate Committee on Homeland Security and Governmental Affairs, which he completed on June 17, 2005 in connection with his Senate confirmation to be an associate judge of this Court.

with Mr. Fisher, as he was also the U.S. Attorney's appellate division chief -- from 1962 to1969. These two judges, having each made a career move to this Court after serving as chief of the U.S. Attorney's appellate division, may have been instrumental in fostering Mr. Fisher's interest in joining them on the bench. Not unlikely, they were aware that during the very period in which this case was before the Court, Mr. Fisher was applying to the D.C. Judicial Nomination Commission for appointment to the Court. Apart from anything Mr. Fisher told them during their social and professional interactions, the Commission presumably contacted them or other judges of the Court in connection with Mr. Fisher's candidacy.

43. During this period of his application to the bench, Mr. Fisher should have been extremely scrupulous about ensuring that his office's workproduct met the highest standards. Yet, he apparently had no such concerns with respect to this case and was plainly confident that this Court would also have no concerns. Certainly, it is hard to believe that Mr. Fisher would have persisted in the pervasive fraud and deceit chronicled by my September 13, 2004 reply affidavit (Exhibit I-2, ¶¶2-55) unless he had assurances from the Court that it would allow him to get away with it – and perhaps benefit from it. Especially is this so as question #24 of the Judicial Nomination Commission's questionnaire which Mr. Fisher had by then completed asked whether he had "ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court..." and requested "the particulars" (Exhibit J-1)[16].

[16] Mr. Fisher's answer to that question – and his answers to the balance of the Commission's questionnaire – are publicly inaccessible.

44. On September 30, 2004, less than two weeks after this Court's September 16, 2004 order covered up the overwhelming record of Mr. Fisher's "breach of ethics" and "unprofessional conduct" by the U.S. Attorney's twice outrightly fraudulent opposition to my release from incarceration (Exhibit F, ¶¶9-10, 19-20, 22-24, 25-40; Exhibit I-2, ¶¶2-55), the Commission recommended Mr. Fisher to President Bush for consideration to fill the vacancy created by Judge Steadman's assuming senior status (Exhibit J-2). Simultaneously, the Commission recommended Judge Kramer. Both recommendations directly flowed from the Court's refusal to address incontrovertible, documentary facts -- including by way of discharging its mandatory disciplinary responsibilities under Canon 3D of the Code of Judicial Conduct for the District of Columbia Courts.

45. Whether Mr. Fisher and Judge Kramer – each subsequently appointed by President Bush and confirmed by the Senate to sit on this Court (Exhibits J-3, J-4) [17] – have

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[17] That Mr. Fisher, whose publicly-available portion of his Senate Committee questionnaire identified that he had "served on the Legal Ethics Committee of the D.C. Bar" from 1997-2003, (Exhibit J-5, #11), deemed his supposed adherence to, and enforcement of, high ethical standards a "selling point" in connection to his Senate confirmation to this Court is reflected by his answer to question #18 (Exhibit J-5). Asked to describe his "most significant legal activities", he stated:

> "Apart from in-court litigation and my supervisory duties, I have spent an enormous amount of time advising trial attorneys, advising the United States Attorney on matters of law and policy, providing advice on issues of professional conduct, and helping to train attorneys and law enforcement officers. My goals always have been to set high standards for performance, to provide the best possible representation for the United States of America, to give sound advice, and to emphasize the need for high standards of ethical conduct."

Such answer was materially incomplete as the question asked for specificity, *to wit*, "Describe the nature of your participation in each instance". Mr. Fisher provided no instances. Moreover, his reference to "advising trial attorneys" raises questions as to his knowledge of, and role in, the U.S. Attorney's misconduct in this case when it was in Superior Court. Had this Court required disclosure by the U.S. Attorney and made

each been rewarded for their facilitating role in obliterating the rule of law in this "disruption of Congress" case is unclear. What is clear – because I have stated it from the outset of this case [Supp. Fact Statement, pp. 1-10], including in my disqualification/disclosure requests and in my Exhibit C affidavit supporting my July/August 2004 reconsideration motion (Exhibit F) – is that this case, brought on materially false and misleading prosecution documents [A-84-93; A-101; A-1565; A-1574; A-1604-11] and authorized by an assistant U.S. Attorney who had not only been "Investigative Counsel" to the Senate Judiciary Committee, but whose misfeasance in that capacity I had chronicled in 1998 [A-45 (fn. 4); A-77-83, A-190, A-203; A-208-11], is bogus, malicious, and criminally implicates influential senators (as well as the President) in the corruption of federal judicial selection. This is not speculative, but rests on incontrovertible evidence: a "paper trail" of my correspondence to the Senators and President [A-1431; A-1436; A-1474; A-1478; A-1493; A-1522; A-1535; A-102; A-1539; A-142] and a Senate videotape and transcript of the May 22, 2003 Senate Judiciary Committee judicial confirmation hearing [A-1549, A-1565; A-1574]. As such, the case subjects this Court and Superior Court, which are directly funded by Congress and whose judges are appointed by the President with the advice and consent of the Senate, to pressures.

46. This specific contention – rather than the deceitful paraphrase of if appearing in this Court's April 8, 2004 order (Exhibit C-1), so-highlighted by my July/August 2004 reconsideration motion (Exhibit D, ¶¶54-59) -- has never been denied or disputed by this

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disciplinary and criminal referrals against him and his assistants, as my July/August 2004 reconsideration motion (Exhibit F, ¶2(b)) and September 13, 2004 reply affidavit expressly requested (Exhibit I-2, ¶3), such questions would have been answered.

Court. It is, moreover, the ONLY explanation for the Court's flagrant and pervasive obliteration of the judicial process established by the record, as likewise that of Superior Court.

## REMOVAL/TRANSFER TO THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

47. The fifth branch of my six-branch July/August 2004 reconsideration motion (Exhibit F, ¶¶71-74) encapsulated the good and sufficient grounds for removal/transfer of these consolidated appeal to the U.S. Court of Appeals for the District of Columbia. I cannot improve upon that presentation, written during the agony of incarceration, except to state the obvious: that the Court's subsequent actions, as chronicled by my further submissions on that motion as to which I sought disclosure (Exhibits G, H) and by the Court's September 16, 2004 order thereon (Exhibit C-4) and its orders thereafter (Exhibits C-5, C-6/7, A-2, A-1, B), reinforce the necessity of transfer/removal. These establish, *prima facie*, the Court's wilful and deliberate obliteration of any cognizable judicial process and jettisoning of mandatory ethical rules – Canons 3D, E, and F of the Code of Judicial Conduct for the District of Columbia Courts-- designed to ensure the integrity of judicial proceedings.

## SUCH OTHER AND FURTHER RELIEF AS AN ADVISORY OPINION FROM THE ADVISORY COMMITTEE ON JUDICIAL CONDUCT

48. The judges whose names are printed on the *unsigned* orders in this case are presumed to have actually participated in the adjudications therein – and should be knowledgeable of the disciplinary, indeed criminal, consequences of these orders. Any judge harboring doubt should obtain an advisory opinion from the Advisory Committee on Judicial Conduct – three of whose five members are judges of this Court: Judge Glickman,

now senior Judge Steadman, and Judge Ruiz, who chairs the Advisory Committee and whose name appeared on no order in this case until that of October 5, 2005 (Exhibit B).

## EXTENDING MY TIME TO FILE MY REVISED APPELLANT'S BRIEF TO DECEMBER 23, 2005

49. As I first stated to this Court by my April 6, 2004 mandamus/certiorari petition (Exhibit D, p. 19), quoting *Holt v. Virginia*, 381 U.S. 131, 136 (1965):

> "...since 'A fair trial in a fair tribunal is a basic requirement of due process,' *In re Murchison*, 349 U.S. 133, 136, it necessarily follows that motions for change of venue to escape a biased tribunal raise constitutional issues both relevant and essential."

50. This formal motion for change of venue to the federal court based on the Court's demonstrated actual bias and interest embraces whether any fair and impartial tribunal would have rejected my June 28, 2005 appellant's brief, as this Court has. In the event this Court denies disqualification/change of venue and adheres to the falsification of *Liteky* in its August 5, 2005 order (Exhibit A-1) -- which must be by a reasoned decision, making requested disclosure -- I request an extension to Friday, December 23, 2005 to file a revised brief.

ELENA RUTH SASSOWER

Sworn to before me this
14th day of October 2005

LAURA MARJI
Notary Public, State of New York
No. 01MA6049278
Qualified in Westchester County
Term Expires Oct. 10, 2006

Notary Public

## TABLE OF EXHIBITS

Exhibit F: Elena Sassower's August 12, 2004 motion for reargument, reconsideration, renewal and other relief

Ex. C: Elena Sassower's affidavit, written June 29-July 6, 2004

Ex. D: draft memo of law on the unconstitutionality of the "disruption of Congress" statute, D.C. Code §10-503.16(b)(4)

Ex. E: uncharged "disruption of Congress" incidents: 9/12/01, 4/27/04

Ex. F: uncharged "disruption of Congress" incident: 5/7/04

Ex. G: affidavit of Mark Goldstone, Esq., July 19, 2004

Exhibit G: Elena Sassower's August 12, 2004 background affidavit to her resubmitted July 16, 2004 motion for reargument and other relief – and in further support thereof and release under this Court's Rule 9

Exhibit H: Elena Sassower's August 24, 2004 motion for procedural order pursuant to Rule 27(b)(1), for clarification of this Court's July 29, 2004 order, and other relief

Exhibit I-1: Elena Sassower's consented-to September 13, 2004 motion for procedural order pursuant to Rule 27(b)(1)(B)

Exhibit I-2: Elena Sassower's September 13, 2004 reply affidavit for sanctions against the U.S. Attorney, disclosure by him & disciplinary & criminal referrals

Exhibit J-1: Page 7 of the District of Columbia Judicial Nomination Commission Questionnaire (#24)

Exhibit J-2: September 30, 2004 Press Release of the District of Columbia Judicial Nomination Commission, recommending to President George Bush the candidacies of John R. Fisher and Noel Anketell Kramer to the D.C. Court of Appeals

Exhibit J-3: Information on John Fisher's nomination to the D.C. Court of Appeals from the website of the Senate Committee on Homeland Security and Governmental Affairs

Exhibit J-4: Information on Noel Anketell Kramer's nomination to the D.C. Court of Appeals from the website of the Senate Committee on Homeland Security and Governmental Affairs

Exhibit J-5: Pages 4, 13, and 21 of John Fisher's completed Questionnaire for Nominees to the District of Columbia Courts – Committee on Homeland Security and Governmental Affairs – United States Senate