Petitioner's affidavit, handwritten June 29 - July 6, 2004, annexed as Exhibit C to her reargument/reconsideration motion to the D.C. Court of Appeals for release from incarceration pending appeal

DISTRICT OF COLUMBIA
COURT OF APPEALS

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ELENA RUTH SASSOWER,

No. 04-CM-760

Appellant,

UNITED STATES OF AMERICA,

Appellee

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

1. I am the wrongfully convicted criminal defendant in a "disruption of Congress" case that exposes the corruption of federal judicial selection. Such involves directly Senate Judiciary Committee Chairman Orrin Hatch, Ranking Member Patrick Leahy, New York Home-State Senators Charles Schumer and Hillary Rodham Clinton, and Senator Saxby Chambliss, among others.

2. The material facts, including as to how my conviction was secured despite materially false and misleading prosecution documents, are set forth in my May 25, 2004 letter for inclusion in D.C. Court Services' Presentence Report. It is Exhibit "C" to my June 28, 2004 Affidavit Commenting upon and Correcting the May 28, 2004 Presentence Report and in Opposition to the U.S. Attorney's June 1, 2004 Memorandum in Aid of Sentencing. The pertinent substantiating documents to that letter are annexed to the Affidavit as Exhibits "D"-

"H". Of these, Exhibits "D"-"F" reflect the political reach of this case with respect to the corruption of federal judicial selection. They are:

> -- Exhibit "D": my two published Letters to the Editor in Roll Call (5/10/04) and the New York Law Journal (5/19/04).
>
> -- Exhibit "E": the draft of my intended opening statement at trial (4/14/04);
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> -- Exhibit "F": my June 16, 2003 memo to Ralph Nader, Public Citizen, and Common Cause.

3. This application, written from jail, is for a stay pending appeal, of the vindictive and retaliatory 6-month sentence imposed upon me by D.C. Superior Court Judge Brian Holeman – a judge whose pervasive, actual bias in "protecting" the government was so severe and prejudicial pretrial as to have compelled me to seek from this Court a writ of mandamus/prohibition for his disqualification, which I did on April 6, 2004, accompanied by an application to stay the April 12, 2004 scheduled trial.

4. This Court deferred adjudication to the appeal as to whether my two motions for Judge Holeman's disqualification, dated February 23, 2004 and March 22, 2004, were sufficient, as a matter of law, to have required him to "proceed no further" and, indeed, had met the "impossibility of fair judgment" standard articulated by the U.S. Supreme Court in Liteky.

5. The sufficiency of these fact-specific, documented motions in establishing my entitlement to Judge Holeman's disqualification pretrial will be the threshold issue on appeal – to be followed by a comparably fact-specific, documented showing of Judge Holeman's subsequent misconduct – all replicating and

exacerbating his pretrial pervasive bias and reinforcing my entitlement to the granting of those two motions, as well as to the myriad of oral motions I thereafter made for his disqualification.

6. There is no more serious charge against a judge than that he has jettisoned his duty to render fair and impartial justice for ulterior political and personal reasons. Especially is this so where the result of such misconduct is, as here, the incarceration of a completely innocent person.

The Sentence

7. The 6-month jail sentence imposed by Judge Holeman is not only unsupported by the record and unprecedented, but its improper political motivation is revealed by the conditions of probation Judge Holeman attached to the 92-day jail sentence he originally announced.

8. As to the record, both the D.C. Court Services' Presentence Report and the U.S. Attorney's Memorandum in Aid of Sentencing recognized that I was not remorseful, contrite, and did not acknowledge any "wrongdoing". Even still, the recommendation of the Presentence Report was not jail, but "community service" and/or "fine". The U.S. Attorney's recommendation was "five days of incarceration, all suspended, and six months of probation conditioned on completion of an anger-management course." In other words, a judge who is supposed to be fair and impartial and guided by the record, has imposed a 6-month jail sentence 36 times that deemed appropriate by my adversary.

9. Judge Holeman gave no reason for the 6-month jail sentence – except for what he termed my "pride" after I stated I would be unable to write a letter of apology and contrition to the Senators and to Judge Wesley, the federal judicial nominee against whom I had requested to testify based on his documented corruption

as a New York Court of Appeals judge. Such letter was one of the conditions Judge Holeman had imposed for suspending his originally announced 92-day sentence – a condition he knew, based on the record, I would be unable to satisfy. Indeed, from the long list of conditions he attached to probation and especially his direction that I submit signed daily time records to him, accurate to 1/10 hour increments, attesting to my self-employment as coordinator of the Center for Judicial Accountability, Inc. (CJA) – with an express warning that block entries would not be acceptable – it may fairly be interpreted that he was laying the grounds to subsequently arrest me for violation of probation.

In any event, for my honesty with respect to the letter, Judge Holeman upped the 92-day sentence to 6 months, ordering it to commence immediately.

10. Notwithstanding the record showed no basis for my immediate incarceration, such that its propriety and the lawfulness of my conviction could not first be tested by the appellate process, Judge Holeman denied my request for a stay pending appeal. In so doing, he made no claim that he believed that either my conviction or his sentence could stand on appeal. As he knew from his profound due process violations of my rights – such as reflected by my May 25, 2004 letter for inclusion in the Presentence Report – they cannot.

11. Moreover, there is no precedent for Judge Holeman's draconian 6-month jail sentence and $500 fine – each the maximum allowable under the "disruption of Congress" statute. Indeed, the record showed that there had never been a "disruption of Congress" case against a citizen for respectfully requesting to be permitted to testify at a public congressional hearing, let alone, as here, where the hearing was already adjourned. Rather, as I highlighted to Judge Holeman immediately before sentencing, there appeared to be a practice of not arresting citizens at committee hearings, even for conduct

that was disruptive and provocative. I cited 3 incidents – 2 within the previous 9 weeks. These were:

> (a) the most familiar: the May 7, 2004 Senate Armed Services Committee hearing at which 8 protestors unfurled a banner "FIRE RUMSFELD" and shouted out for him to be fired;
>
> (b) An April 27, 2004 Senate Foreign Relations Committee hearing at which Andres Thomas Conteras interrupted the questioning of John Negroponte to be U.S. ambassador to Iraq to interject his own comment;
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> (c) A September 13, 2001 Senate Foreign Relations Committee hearing at which Andres Thomas Conteras, holding a small sign, interrupted the questioning of John Negroponte to be U.S. ambassador to the U.N. telling him that the People of Honduras considered him a "state terrorist."

12. Upon information and belief, in each of these instances, the presiding chairman had declined to authorize an arrest – for which reason none was made. The record before Judge Holeman reflected that it was unclear whether, as identified in the underlying prosecution documents, Senator Saxby Chambliss, presiding chairman at the Senate Judiciary Committee's May 22, 2003 "hearing" on Judge Wesley's confirmation, was, in fact, the complainant. Judge Holeman thwarted pretrial discovery on that, as on every other, issue and improperly quashed my subpoena for Senator Chambliss' testimony at trial. Senator Chambliss did not himself come forward to testify to support the prosecution against me and, upon my conviction, did not come forward – as he was expressly requested to do by my May 28, 2004 and

June 24, 2004 memoranda[1] – with any statement, including as to what jail time he deemed appropriate for such "concocted 'crime'" of which I had been convicted.

13. The record also showed that none of the Senators – Hatch, Leahy, Schumer, and Clinton – would respond to this question as to how much jail time they deemed appropriate. They, like Senator Chambliss, would not take the opportunity I provided them by my May 28, 2004 and June 24, 2004 memoranda to deny or dispute the relevant facts set forth by my two published Letters to the Editor in Roll Call and the New York Law Journal "corroborative of my innocence." This includes as to the significance of the "paper trail" of my correspondence with them, posted on the homepage of CJA's website, www.judgewatch.org. Like Senator Chambliss, they, too, had not come forward to testify against me at trial, and Judge Holeman had quashed my subpoenas for their testimony.

14. That the Senators never requested an apology, let alone attested to any injury for which an apology was warranted – and the record furnishes no basis for giving an apology – underscores the inappropriateness of the very ground upon which Judge Holeman imposed the maximum 6-month jail sentence – my refusal to write a letter of apology. Indeed, had the Senators and Judge Wesley been "victims" of a crime for which an apology was in order, the Presentence Report would have included a "Victim Impact Statement." Instead, the Presentence Report identified that a "Victim Impact Statement" is "not applicable."

15. Neither the Presentence Report nor the U.S. Attorney's Memorandum in Aid of Sentencing proposed that I write letters of apology. This condition

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[1] Handed up to Judge Holeman at the June 28, 2004 sentencing and annexed as exhibits to my June 28, 2004 Affidavit. (Exhibits "K-1", "L-1")

for suspending the original 92-day sentence was entirely Judge Holeman's own.

The Originally Announced Sentence

16. Judge Holeman's originally announced 92-day sentence was itself 18 times the U.S. Attorney's recommended 5 days and his 2-year probation period for suspending 90 of those days was 4 times the U.S. Attorney's 6-month recommendation.

17. The U.S. Attorney's Memorandum in Aid of Sentencing specified no conditions to probation except for completion of a course in anger management. Notwithstanding the baselessness of this condition was exposed by my June 28, 2004 Affidavit in Opposition, it was adopted by Judge Holeman.

18. As for Judge Holeman's long list of other conditions for suspending the 90-day jail sentence, all were his own, were irrelevant to the "disruption of Congress" charge, and had no basis in the record. Their inclusion was to degrade and harass me, including by intruding on my employment as coordinator of the Center for Judicial Accountability, Inc. (CJA) to the point of surveillance and to prevent me from discharging my professional duties by appropriate First Amendment petitioning of the Senators in matters pertaining to the corruption of federal judicial selection and discipline.

19. Although the "disruption of Congress" charge was not based on any harassing, stalking, violent, threatening or intimidating conduct – and the record was devoid of any such conduct on my part – Judge Holeman included among the conditions of the 2-year probation:

> (a) that I have no verbal, electronic, or written contact with the 9 senators and Senate staffers whose trial testimony I had sought by subpoena, as well as the 4 police officers who

testified against me – with some relaxation of the prohibition as to Home-State Senators Schumer and Clinton (but none as to the other senators who, as members of the Senate Judiciary Committee and its leadership, I would have reason to contact in connection with my work as CJA's coordinator;

(b) that I stay away not only from the Senate Judiciary Committee and the 2-3 block radius that was the prescribed condition for my release on my own recognizance at my May 23, 2003 arraignment, but from the entire Capitol complex of all Capitol buildings and grounds, indicated on a map to be provided and encompassing the Library of Congress, Supreme Court, Capitol Power Plant, etc.

(c) that I stay away from Judge Wesley

(d) that I pay $250 to the Victims of Violent Crimes Compensation Fund.

20. Although the record showed that I had a secure job as coordinator of CJA – which I had co-founded – and had answered Judge Holeman's inquiry at the sentencing as to how many hours I worked in that position by stating "24/7", citing the prodigious, quality workproduct that was before him – he ordered that I work 40 hours a week minimum, that I get other work if I did not keep that job, and required that I submit to him daily signed time records to 1/10 hour, as to which he expressly warned that block entries would be unacceptable.

21. Although the record showed that my "24-7" work as CJA's coordinator constituted (full-time) "community service" – and I so stated in my June 28, 2004 Affidavit and at sentencing – Judge Holeman ordered that I perform a substantial 300 hours of

community service – 200 in New York, and 100 in Washington, D.C. – expressly stating that additional hours of work at CJA beyond the 40 hours minimum would not satisfy the "community service" requirement. As I recall, Judge Holeman identified no provision to cover my traveling, food, and lodging expenses for the 100 hours of community service in D.C.

22. Although there was nothing in the record that would constitute a basis for requiring me to submit to medical, mental health, and drug screening and comply with testing and screening, this was ordered by Judge Holeman, as likewise that I notify the probation officer if I left the jurisdiction for more than two weeks.

23. As to Judge Holeman's requirement that I write a letter of apology, I do not know that this was the last of his conditions. It was simply the one to which I stated I would be unable to comply, thereby aborting any further recitation from him of additional conditions for probation.

STANDARDS FOR GRANTING THE STAY

24. This application fully meets the standard for granting a stay of the sentence pending appeal: (a) likelihood of success on the merits of the underlying appeal; (b) irreparable injury if the stay is not granted; (c) a stay would not substantially harm other interested parties; (d) a stay would serve the public interest.

A: Likelihood of Success on the Merits

25. The threshold issue to be raised on appeal is Judge Holeman's pervasive actual bias, meeting the "impossibility of fair judgment" standard of Liteky for which I was entitled to his disqualification pretrial. The likelihood of success on appeal is absolute – as may be seen from the most cursory inspection of my February 23, 2004 and March 22, 2004 motions for Judge Holeman's

disqualification and the substantiating record on which they are based – full copies of which were transmitted to this Court on April 6, 2004 when I filed my petition for a writ of mandamus/prohibition. Judge Holeman's factually false and legally insupportable disposition of the March 22, 2004 motion is discussed at the outset of the petition. Thereafter, on or about April 7 or 8, 2004, Judge Holeman adjudicated that branch of the March 22, 2004 motion relating to his disqualification which he had not done previously. In so doing, he demonstrated that he had NO DEFENSE to what was therein particularized as to his disqualifying conduct meeting the "impossibility of fair judgment" pervasive bias standard of Liteky. Indeed, his order denying disqualification not only did not cite Liteky, but sub silentio defied and repudiated it by asserting that only extrajudicial conduct could be disqualifying – a proposition Liteky expressly disavowed.

26. The pivotal document underlying my February 23, 2004 and March 22, 2004 motions for Judge Holeman's disqualification is my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions. Its examination makes obvious that any fair and impartial tribunal would have thrown out this case on the papers. This, not only because the uncontradicted record on the motion was that the underlying prosecution documents were knowingly false and misleading, but because the record established that prosecutorial misconduct infused and tainted the proceeding from its inception – and rose to a level of fraud on the court in the U.S. Attorney's opposition to my October 30, 2003 motion, as, likewise, in its December 3, 2003 motion in limine.

27. Judge Holeman's insupportable eve-of-trial and at-trial rulings directly flowed from his cover-up, dishonest dispositions of my October 30, 2003 motion and the U.S. Attorney's December 3, 2003 motion in limine, "protecting" the government. This includes:

(a) his granting of Senate Legal Counsel's fraudulent March 26, 2004 motion to quash my subpoenas for the testimony of the Senators – including Senator Saxby Chambliss, purported to be the complainant by the underlying prosecution documents;

(b) barring me from introducing into evidence the underlying prosecution documents;

(c) barring me from introducing into evidence or even mentioning that the true arresting officer, concealed by the underlying prosecution documents, had been the subject of a September 22, 1996 police misconduct complaint which I filed against her and other officers, arising from their June 25, 1996 arrest of me in the hallway outside the Senate Judiciary Committee on a trumped-up disorderly conduct charge;

(d) barring me from introducing into evidence or even mentioning the basis for CJA's opposition to Judge Wesley's confirmation to the Second Circuit Court of Appeals;

(e) barring me from even mentioning the "blue slip" prerogative of New York Home State Senators Schumer and Clinton, by which they could have encumbered, if not blocked, Judge Wesley's confirmation.

28. These and other reversible errors are summarized by my May 25, 2004 letter for inclusion in the Presentence Report – none more immediately reversible than Judge Holeman's refusal to allow me to testify from the witness stand as to the events of May 19-22, 2003 pertaining to my arrest, including as to what took place at the Senate Judiciary Committee's May 23, 2003 "hearing" to confirm Judge Wesley's nomination – the pretext for my arrest.

29. In addition to the overarching issue of Judge Holeman's disqualifying actual bias – pre-trial, at trial, and in connection with the sentencing – I will be raising other meritorious issues decisive of my right to reversal as a matter of law. Among these:

(a) My entitlement to change of venue, including removal to the U.S. District Court for the District of Columbia pursuant to the venue provision of the "disruption of Congress" statute. The strength of this issue may be seen from Judge Holeman's dishonest disposition with respect thereto, as particularized by my March 22, 2004 disqualification motion – and encompassed by my April 6, 2004 petition to this Court for review of the venue issue by certiorari and/or certification of questions of law.

(b) The unconstitutionality of the "disruption of Congress" statute, as written and as applied. The strength of this challenge may be seen from my "Memo in Progress to be Submitted in Support of a Motion to Stay Sentence Pending Appeal and on the Appeal" – which I had intended to hand-up to Judge Holeman at the June 28th sentencing. A copy is annexed (Exhibit "A").

The memo largely rests on a quote from the U.S. Supreme Court in Grayned that in restricting First Amendment rights

> "the crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."

Such quote came to my attention through Judge Holeman himself when he presented me and the

U.S. Attorney with his already-signed "Elements of the Offense", where the quote was cited with an attribution to this Court's decision in Armfield.

From such quote, it should have been obvious to Judge Holeman that, as a matter of law, "a citizen's respectful request to testify at a public congressional hearing is not – and must never be deemed to be – 'disruption of Congress'" – and certainly not in the case at bar. I so-argued throughout my trial and, I believe, as part of my dismissal motions which Judge Holeman denied.

Also annexed (Exhibits "B" and "C") in substantiation of the unconstitutionality of the statute as applied – are affidavits from persons involved in the disruptive and provocative incidents at Senate Committee hearings, to which I referred at the sentencing to show that such persons were not arrested for conduct that clearly fell within the statute, whereas I was arrested for conduct that did not.

B: Irreparable Injury If The Stay Is Not Granted

30. Whereas the payment of the $500 fine can be reimbursed upon the Court's vacatur/reversal of the conviction, there can be no recompense for the time spent in jail. Every moment in jail is an unpleasant, punishing experience – representing an extreme of deprivation. Six months is a substantial sentence – a sizable chunk of my life that can never be restored.

31. The 6 month jail sentence also irreparably injures those who love and depend on me. My father is 80, lives alone, and is in fragile and failing health. I live around the corner from him and am his immediate,

primary caregiver, daily responsible for taking him to medical appointments, food shopping, shuttling to the library and wherever else he needs to go. This 6-month jail sentence has very real life-threatening consequences for him, as it does – albeit to a lesser extent – for my mother, nearing her 72nd birthday.

C: A Stay Would Not Substantially Harm Other Interested Parties

32. My release pending appeal poses no harm to other interested parties. This may be seen from the fact that D.C. Court Services' Presentence Report did not recommend jail, the U.S. Attorney's Memorandum in Aid of Sentencing recommended a 5-day suspended sentence, and even Judge Holeman's initial sentence was to suspend 90 days of the 92-day jail sentence – with the remaining two days credited for time served.

33. Obviously, too, if I posed harm to interested parties, I would not have been released on my own recognizance at the May 23, 2003 arraignment, nor have been permitted to remain free following the April 20, 2004 conviction.

34. The record shows that I am a conscientious, civic-minded, law-abiding person, that my conduct meets the highest professional and ethical standards, and that there is not the slightest basis for keeping me locked up for 6 months pending reversal of my wrongful arrest, conviction, and sentencing – the inevitable result of the appeal.

D: A Stay Would Serve The Public Interest

35. The public interest is served by justice – for which an appellate process has been fashioned. It offends the public interest to incarcerate a person who has not only presented readily-verifiable evidence that her conviction was engineered by a pervasively biased,

politically motivated judge, but readily-verifiable evidence that she is actually innocent.

36. The D.C. Court Services' Presentence Report is highly favorable to me. It identifies my life's work as dedicated to advancing the public interest in judicial accountability – which I do by working to ensure that the processes of judicial selection and discipline are effective and meaningful. Such further warrants a stay pending appeal so that I might return to that imperatively-needed public interest work without which justice is, as here, totally absent.

s/ Elena Ruth Sassower
drafted from June 29, 2004 - July 6, 2004

Sworn to before me
this 16th day of July 2004

__________s/__________________
Notary public