

**Exhibit C to petitioner's September 17, 2007
motion to compel Solicitor General's response**

QUESTIONS PRESENTED

1. Is it a constitutional violation, *prima facie* disqualifying, and misconduct *per se* for a court to conceal and wilfully fail to adjudicate a motion for its disqualification, disclosure, and transfer – and does it have jurisdiction to proceed further in the matter?

2. Was the District of Columbia Court of Appeals disqualified for interest and for pervasive actual bias meeting the “impossibility of fair judgment” standard of *Liteky v. United States*, 510 U.S. 540 (1994), from adjudicating these consolidated appeals, entitling petitioner to transfer to the United States Court of Appeals for the District of Columbia, including pursuant to D.C. Code §10-503.18?

3. Does the District of Columbia Court of Appeals' Memorandum Opinion and Judgment further manifest that Court's interest and pervasive actual bias and is it so materially false and insupportable as to be, in and of itself, unconstitutional under the Due Process Clause?

4. Does this Court recognize supervisory and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable “reliable evidence” of judicial misconduct and corruption?

- (1) to make referrals to disciplinary and criminal authorities

(2) to adjudicate the appellate issues, subverted by the underlying judicial misconduct and corruption, where those issues are of constitutional magnitude and public importance, *to wit*,*

“i. As evidenced from the course of the proceedings before Judge Holeman, was [petitioner] entitled to his disqualification for 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? *

A. Were [petitioner’s] February 23 and March 22, 2004 pretrial motions to disqualify Judge Holeman sufficient, as a matter of law, to require his disqualification for pervasive actual bias, divesting him of jurisdiction to ‘proceed...further’, pursuant to D.C. Superior Court Civil Procedure Rule 63-I – and was there any basis in fact and law for Judge Holeman’s conduct and rulings challenged therein?

* The four appellate issues that petitioner presented to the D.C. Court of Appeals, which its Memorandum Opinion and Judgment materially falsified, are set forth *verbatim* on this page and the next. The only change is the substitution of the word “petitioner” for “appellant” – as petitioner here presents these four appellate issues for this Court’s adjudication.

“* Encompassed in this issue is whether Judge Holeman’s rulings, individually and collectively, were so egregiously ‘erroneous’ and prejudicial as to require reversal.”

- B. Were Judge Holeman's subsequent pretrial, trial, and post-trial rulings further confirmatory of his pervasive actual bias – and were they factually and legally supported?
- ii. Whether D.C. Code §10-503.18 entitled [petitioner] to removal/transfer of this 'disruption of Congress' case to the U.S. District Court for the District of Columbia where, additionally, the record establishes a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism' of the government?
- iii. Is the 'disruption of Congress' statute, D.C. Code §10-503.16(b)(4), unconstitutional, *as written and as applied*?
- iv. Whether, when Judge Holeman suspended execution of the 92-day jail sentence he imposed upon [petitioner], his terms of probation were appropriate and constitutional and whether, when [petitioner] exercised her right to decline those terms, pursuant to D.C. Code §16-760, it was legal and constitutional for him to double the 92-day jail sentence to six months?"

[p. 2] Rules 9 and 14; Code of Judicial Conduct for the District of Columbia Courts: Canons 3B, C, D, E, & F, American Bar Association Code of Judicial Conduct, Canons 3C & D; Code of Conduct for U.S. Judges, Canon 3B [A-1-12c].

STATEMENT OF THE CASE

“The law makes a promise – neutrality. If the promise gets broken, the law as we know it ceases to exist.” – Justice Anthony M. Kennedy²

This case demonstrates the truth of Justice Kennedy’s words, exposing a long nightmare of judicial lawlessness resulting from the deliberate and repeated breaking of the law’s promise of neutrality by judges self-interested in the outcome.

No facts are required for petitioner's first issue other than that the D.C. Court of Appeals allowed to stand a Memorandum Opinion and Judgment which conceals, without adjudication, her motion to its Chief Judge and the appellate panel for judicial disqualification, disclosure and transfer [A-282]. Nonetheless, the facts required for petitioner's further issues are also germane to her first. Over and again, they presage what the D.C. Court of Appeals ultimately did and reinforce the necessity that this Court articulate the simple legal

² This quote is from a speech Justice Kennedy gave at the American Bar Association symposium, “Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice”, held December 4-5, 1998 in Philadelphia, Pennsylvania. The quote is featured on the website of the Justice at Stake Campaign (www.justiceatstake.org) as to “Why Judicial Independence Matters”, followed by the assertion “there are mechanisms to hold judges accountable. Rulings can be appealed up to the Supreme Court.”

proposition – critical to ensuring judicial neutrality – that a court’s willful failure to confront judicial disqualification/disclosure issues is *prima facie* disqualifying, misconduct *per se*, and divests it of jurisdiction to proceed further. The Court has never [p. 3] spoken on the subject.

Ordinarily, a brief factual summary would suffice. Here, however, a lengthier summary is essential because the Memorandum Opinion and Judgment materially falsifies the “disruption of Congress” incident, materially falsifies petitioner’s four appellate issues to the D.C. Court of Appeals and the record with respect thereto, and materially omits all that Court’s extensive prior contact with the case. It is this prior contact, spanning 2-1/2 years and embracing all four of those appellate issues, that underlies petitioner’s unadjudicated and concealed motion for disqualification, disclosure and transfer – and establishes the D.C. Court of Appeals’ disqualification for interest and pervasive actual bias meeting the “impossibility of fair judgment” standard of *Liteky v. United States*, 510 U.S. 540 (1994).

It must be noted that with one limited exception [A-34], all the D.C. Court of Appeals’ orders during this 2-1/2-year span themselves conceal petitioner’s prior motions for its disqualification, disclosure, and transfer. Consequently, these orders, though included in the appendix herein, cannot and do not provide information about the disqualification/disclosure/transfer issues. This has left petitioner with no choice but to herself recite the facts pertaining to her prior motions and those orders. Though consuming virtually the entirety of her cert petition, such provides this Court with the firmest of foundations for granting the petition.

The Alleged “Disruption of Congress”

Petitioner Elena Ruth Sassower is director of the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit citizens’ organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful, which she co-founded in 1993. Until January 2006, she was its coordinator.

On May 22, 2003, petitioner was arrested on a single misdemeanor charge of “disruption of Congress”

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[p. 34] REASONS FOR GRANTING THE WRIT

This Court has direct jurisdiction over the D.C. Court of Appeals. Where, as here, a petition presents “reliable evidence” that D.C.’s highest court has flagrantly corrupted the judicial process to deprive a petitioner and the public of honest adjudication of far-reaching appellate issues, each of constitutional magnitude, to which they were constitutionally entitled, this Court’s supervisory obligations are mandatory, as likewise its role-model responsibilities.

It is a Constitutional Violation, *Prima Facie* Disqualifying, and Misconduct *Per Se* for a Court to Wilfully Fail to Adjudicate a Motion for its Disqualification and for Disclosure – and It Has No Jurisdiction to Proceed Further in the Matter

This Court has recognized that “[A] biased decisionmaker [is] constitutionally unacceptable”, *Withrow v. Larkin*, 421 U.S. 35, 47 (1975), and “motions for change of venue to escape a biased

tribunal raise constitutional issues both relevant and essential”, *Holt v. Virginia*, 381 U.S. 131, 136 (1965). Consequently, a motion to disqualify a court for bias and interest and to change venue necessarily raises constitutional issues which cannot be left unadjudicated without compounding the potential constitutional violation.

A court’s wilful failure to adjudicate such motion must be deemed *prima facie* disqualifying and misconduct *per se* as the inference reasonably drawn is that adjudication would compel conceding the facts and law entitling relief. That a court would conceal the motion’s very existence only reinforces this, II Wigmore on Evidence §278 at 133 (1979).

Absent adjudication of a pending disqualification/disclosure motion, a court must be deemed without jurisdiction to proceed further, *See* 48A Corpus Juris Secundum, §145; Judicial Disqualification: [p. 35] Recusal and Disqualification of Judges, §22.1, Richard E. Flamm, Little, Brown & Company (1996).

The D.C. Court of Appeals was Disqualified from these Appeals, Requiring Transfer, Including Pursuant to D.C. Code §10-503.18

The record establishes again and again during 2-1/2 years of proceedings in the D.C. Court of Appeals that its judges wilfully concealed and failed to adjudicate petitioner’s requests for their disqualification, for disclosure, and for change of venue. Such conduct suffices to have disqualified them from the appeals, apart from the factual and legal baselessness of their orders, meeting the “impossibility of fair judgment” standard of *Liteky*.

Tellingly, the Memorandum Opinion and

Judgment conceals [A-16] that petitioner's second appellate issue asked whether she would be entitled to removal/transfer to federal court under D.C. Code §10-503.18 based on a record showing "a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism by the government" [A-306] – and that her brief had identified the record to include the D.C. Court of Appeals proceedings herein [A-239 (fn. 13)].

The Memorandum Opinion & Judgment Further Manifests the D.C. Court of Appeals' Pervasive Actual Bias and Interest as it is Materially False and Knowingly So, Making it Additionally Unconstitutional

In denying rehearing and rehearing *en banc*, the D.C. Court of Appeals did not deny or dispute petitioner's particularized showing that its Memorandum Opinion and Judgment further manifested "its pervasive actual bias, born of interest" [A-297]. Such Opinion and Judgment, demonstrated to be materially false, unsupported – and flagrantly so – is additionally unconstitutional under the Due Process Clause. *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960). [p. 36]

This Court's Supervisory & Ethical Duties Mandate "Appropriate Action" When a Cert Petition Presents "Reliable Evidence" of Judicial Misconduct and Corruption

Codes of judicial conduct uniformly require that judges "take appropriate action" when they receive "reliable evidence" of judicial misconduct. Among these, the Code of Conduct for United States

Judges, to which this Court's Justices look for guidance, Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993). As the Court plays a vital role-model function, its adherence to such codes is critical, "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*", John M. Levy, Santa Clara Law Review: Vol. 22, pp. 95-116 (1982).

This petition presents "reliable", indeed readily-verifiable, evidence of corrupt, lawless conduct by D.C. judges – triggering the Court's "appropriate action" under the Codes. In addition to disciplinary and criminal referrals, such requires redress of the injury done to petitioner and the public by the Memorandum Opinion and Judgment's dishonest, insupportable adjudications of the four appellate issues petitioner presented – each of constitutional magnitude and public importance.

Illustrative is petitioner's challenge to the constitutionality of the disruption of Congress statute, *as written and as applied*. The Memorandum Opinion rejects the challenge by claims [A-17] whose knowing falsity are instantly apparent from her appellate brief [A-240, 307]. Based thereon, any fair and impartial tribunal would have been compelled to strike the statute as unconstitutional in both respects and to reaffirm that "a citizen's respectful request to testify at a congressional committee's public hearing is not – and must never be deemed to be – 'disruption of Congress'". Such must now be done by this Court, with rulings similarly reaffirming of basic constitutional principles as to the three other appellate issues of petitioner's brief [A-230, A-238, A-252]