

COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

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

Procedural Motion
to Exceed Page Limits or
Extend Time & Other Relief

ELENA RUTH SASSOWER,

Appellant.

v.

UNITED STATES OF AMERICA,

Appellee.

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

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

1. I am the above-named appellant *pro se* in these consolidated appeals of my conviction and sentence for “disruption of Congress”.

2. This affidavit is submitted in support of a motion for a procedural order, pursuant to this Court’s Rule 27(b), for the following:

(a) Permission to “exceed the page limits” for my appellant’s brief on these consolidated appeals so that the Clerk’s office will accept for filing my June 28, 2005 appellant’s brief, or, in the alternative, grant me an “extension[] of time” to resubmit an appellant’s brief within “page limits” prescribed by this Court 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) – with three months afforded me from the date thereof so that my revised appellant’s brief may be consistent therewith;

- (b) Permission to lodge with this Court original trial exhibits, whose exclusion by Judge Holeman is encompassed by the appeal;
- (c) Incorporation into the record herein of this Court's record of my April 6, 2004 petition for a writ of mandamus, prohibition, certiorari and/or certification of questions of law [#04-OA-17], as well as of my October 6, 2004 "Emergency Appeal" for my release from incarceration to preserve appellate issues [#04-CO-1239]; and
- (d) A court conference, pursuant to this Court's Rule 14, to address any or all of the foregoing – or such other matters as "may aid in resolving the appeal".

3. Pursuant to Rule 27(b)(4), I have sought the consent of the U.S. Attorney, by the chief of its appellate division, Assistant U.S. Attorney John R. Fisher. Mr. Fisher consented to an extension of three months for the filing of my appellant's brief from the date of the Court's order determining this motion. Indeed, he himself suggested this time request, rather than my requesting an extension up to and including Friday, September 23, 2005 – which is what I had originally asked him to consent to and to which he did give his consent. Mr. Fisher also consented to my request to lodge original exhibits with the Clerk upon my statement to him that I would attest, under penalty of perjury, that these are the original exhibits, listed on my Defendant's Trial Exhibit List included in my Appendix [A-1425]. Additionally, Mr. Fisher consented to incorporation of the record of my April 6, 2004 petition for mandamus/prohibition/certiorari, etc. and my October 6, 2004 "Emergency Appeal". With respect to a conference, Mr. Fisher did not believe same would be productive. He did, however, recognize that upon his review of my June 28, 2005 appellant's brief, with its accompanying volume presenting a Supplemental Fact Statement – both substantiated by my Appendix, whose contents he also consented-to – the U.S. Attorney's office will have a threshold determination to make. That determination is whether there are any grounds upon which to oppose the appeal and, if not, the U.S. Attorney's obligation to join in it and to take

such other steps as are appropriate with respect to the documented facts in the record and the black-letter law pertaining thereto. Such is appropriately explored through a conference.¹

THE REQUESTED EXPANSION OF PAGE LIMITS
IS REASONABLE & WARRANTED
- NOTWITHSTANDING NOT CONSENTED-TO BY THE U.S. ATTORNEY

4. This appeal is a consolidation of two appeals which, if individually presented, would have given me 100 pages for my appellant's brief. My June 28, 2005 appellant's brief is 20 pages beyond that. These 120 pages represent an appropriate length for a brief with the far-reaching and substantive issues which my appeal presents – issues as to which this Court has the opportunity, if not the obligation, to make law.

5. As to the first issue, to which my appellant's brief devotes 96 pages (pp. 5-101), it appears that in the eleven years since the Supreme Court's decision in *Liteky*, this Court has yet to find any case of pervasive actual bias rising to a level of "impossibility of fair judgment". Quite possibly, this Court has never been presented with this explicit appellate issue, until now. As the definition of "pervasive" is everywhere – I could not rest my appellant's brief on any one of Judge Holeman's "reversible errors" – of which the record furnishes ample supply. Rather, by definition, the burden which I was required to carry by my appellant's brief was to span the course of the proceedings before Judge Holeman -- pretrial, at trial, and posttrial – to demonstrate the pervasiveness of his actual bias, entitling me to his disqualification on that ground.

¹ On Monday morning, June 27, 2005, I confirmed Mr. Fisher's positions by reading him the foregoing paragraph. He confirmed that such accurately reflected what he had previously stated to me. He did, however, ask that the last three sentences -- following the word "productive" – be omitted. In view of their importance, I told him I was reluctant to drop them, but would add this footnote—to which he agreed.

6. As to my second issue, interpretation of the venue provision of the “disruption of Congress” statute, D.C. Code §10-503.18 – to which my appellant’s brief devotes a modest 1-1/3 pages (pp. 102-103) – it does not appear that this Court has ever interpreted it. This specifically includes interpreting whether, in invoking such statute, a criminal defendant must make a showing of bias in the D.C. Superior Court to secure venue in the U.S. District Court for the District of Columbia. If a showing is required, the question, at bar, is the sufficiency of my showing of bias – as to which all 98 pages of my first Issue are properly considered.

7. As to the third issue, the unconstitutionality of the “disruption of Congress” statute, D.C. Code §10-503.16(b)(4), *as written and as applied*, my appellant’s brief devotes a modest 10 pages (pp. 104-114). This is clearly reasonable where, as shown, this Court’s prior decisions upholding the constitutionality of the statute – *to wit*, *Smith-Caronia v. United States*, 714 A.2d 764 (1998), and *Armfield v. United States*, 811 A.2d 792 (2002) – are inapplicable to the challenge here presented – and to the extent they are relevant expose the statute’s unconstitutionality, *as written and as applied*.

8. As to the fourth issue, the inappropriateness and unconstitutionality of Judge Holeman’s probation terms, my appellant’s brief devotes a scant 4 pages to this area of law (pp. 115-119) whose importance is frighteningly clear from the powerful law review article, “*Coercion, Pop-psychology and Judicial Moralizing: Some Proposals for Curbing Judicial Abuse of Probation Conditions*”, 57 Washington & Lee Law Review 75 (2000), by Professor Andrew Horwitz, who will be filing an *amicus curiae* brief on this appellate issue. Moreover, as this issue encompasses the legality of the six-month sentence of incarceration that Judge Holeman imposed

upon me after I declined probation – and his pretense that he had not imposed any sentence upon me prior thereto – it is quite evident that this Court needs to clarify the meaning of D.C. Code §16-760 – including by reinforcing its decision in *Schwasta v. United States*, 392 A.2d 1071, 1073 (1978).

**MY ALTERNATIVE REQUEST – CONSENTED TO BY THE U.S. ATTORNEY –
FOR A 90-DAY EXTENSION FOR FILING MY APPELLANT’S BRIEF
FROM THE DATE FROM THIS COURT’S DECISION
ON THE MOTION**

9. Should this Court not grant my request herein for an expansion of page limits so as to permit the Clerk’s office to accept the filing of my June 28, 2005 appellant’s brief, and with it, my separately bound Supplemental Fact Statement – whose submission is purely as a convenience to the Court, for the reasons identified at page 2 of my appellant’s brief – I request that this Court, which has never articulated 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) do so – and proscribe page limits for my brief that will enable me to meet my burden, affording me three months for such purpose. Such requirements of specificity – and page limits – should also take into consideration my further appellate issue as to my entitlement to venue in the federal court by reason of the record herein.

MY RESERVATION OF RIGHTS

10. As for my request to lodge my original trial exhibits with the Clerk’s office, it should be evident that the Court cannot assess the falsity and outright maliciousness of Judge Holeman’s key evidentiary and other rulings – as particularized by my appellant’s brief (pp. 35-41, 70-74, 77-79, 79-82, 83-84) -- unless it has such exhibits before it. Because of time constraints, I do not

elaborate further, but will do so upon request, should such be necessary. Suffice to say, I attest under oath that these are the original trial exhibits – and that they are listed in my Trial Exhibit List. For the convenience of the Court, a copy of that Trial Exhibit List, circling the specific exhibits I seek to lodge, is annexed [Exhibit “A”].

11. Likewise, due to time constraints, I do not elaborate as to my request to formally incorporate herein this Court’s records of my April 6, 2004 petition for a writ of mandamus/prohibition/certiorari, etc and my October 6, 2004 “Emergency Appeal” for release from incarceration – and especially as I consider such request to be entirely *pro forma*.

12. As for the requested Court conference, I am also constrained by time from particularizing further – but will do so, if deemed appropriate.

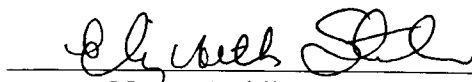

ELENA RUTH SASSOWER

Sworn to before me this
28th day of June 2005

s/ Appollo Cameron – Washington, D.C.
Commission Expires June 14, 2010

Notary Public

Sworn to before me this
5th day of July 2005



Notary Public

ELIZABETH STERKEN
Notary Public, State of New York
No. 4983687
Residing in Orange County
Commission Expires July 8, 2007

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Elena Ruth Sassower, Coordinator

United States v. Elena Ruth Sassower, "Disruption of Congress"

D.C. Superior Court: M-4113-03

Judge Brian F. Holeman

Defendant's Trial Exhibit List

- 1 Defendant's subpoena to Special Agent Lippay with August 12, 2003 First Discovery Demand
- 2 S. A. Lippay's Subject Profile (2 pages) with 1-page bulletin, plus page about 1996 arrest from Capitol Police jacket - REDACTED to remove "blue slip" AND paragraph about DLS
- 3 Defendant's May 19, 2003 fax to Schumer & Clinton (2 pages, plus fax receipts)
- 4 Defendant's May 19, 2003 fax to Hatch and Leahy (10 pages, plus fax receipts)
- 5 Clinton's office's May 20, 2003 coversheet fax to Capitol Police, enclosing 1 page only of May 19, 2003 fax to Schumer & Clinton
- 6 Asst U.S. Attorney's April 9, 2004 fax to defendant regarding "loss" of tape recorded messages
- 7 S.A. Lippay's May 21, 2003 fax to S.A. Orquiza
- 8 Defendant's 39-page fax to Detective Zimmerman, with fax time and date stamp (as turned over by gov't in response to August 12, 2003 discovery demand)
- 9 Defendant's May 22, 2003 memo to Chairman Hatch & Ranking Member Leahy
- 10 Center for Judicial Accountability's website homepage to May 22, 2003
- 11 Defendant's March 26, 2003 statement to American Bar Association & Association of the Bar of the City of New York (City Bar)
- 12 Defendant's April 23, 2003 letter to Senator Clinton of "citizen opposition"

EX "A"

1425

- 13 Defendant's April 23, 2003 letter to Senator Schumer of "citizen opposition"
- 14 Defendant's April 2, 2003 letter to Richard C. Wesley
- 15 Defendant's May 5, 2003 memo to Hatch & Leahy
- 16 Capitol Police's June 25, 1996 "disorderly conduct" arrest report
- 17 Defendant's subpoena of Detective William Zimmerman, with August 12, 2003 First Discovery Demand
- 18 Defendant's September 22, 1996 police misconduct complaint
- 19 Defendant's notes from the Senate Judiciary Committee's May 22, 2003 hearing
- 20 Capitol Police: May 22, 2003 arrest/prosecution report
- 21 Capitol Police: May 22, 2003 event report
- 22 Capitol Police: May 22, 2003 supplement report
- 23 Capitol Police: May 22, 2003 supplement report
- 24 Capitol Police: May 22, 2003 citation release determination report
- 25 Capitol Police: Prisoner's Property Inventory tags
- 26 Defendant's subpoena of Officer Roderick Jennings, with August 12, 2003 First Discovery Demand
- 27 Capitol Police May 22, 2003 Prisoner's Property Receipt – with line through Jennings' name & signature "Refused"
- 28 Senate Judiciary Committee's May 15, 2003 notice of May 22, 2003 hearing (on the website)
- 29 Justice Department's May 23, 2003 letter extending no "plea offer" and purporting to make discovery, signed by Asst. U.S. Attorney Leah Belaire
- 30 Min-u-script transcription of May 22, 2003 Senate Judiciary Committee "hearing"
- 31 May 23, 2003 Amended Gerstein

- 32 Defendant's subpoena of Sergeant Kathleen Bignotti
- 33 Defendant's May 28, 2003 memo to Chairman Hatch and Ranking Member Leahy
- 34 Defendant's subpoena of Josh Albert, Legislative Correspondent to NY Homestate Senator Hillary Rodham Clinton
- 35 Defendant's subpoena of Leecia Eve, Counsel to NY Homestate Senator Hillary Rodham Clinton
- 36 Defendant's 39-page May 21, 2003 letter to Capitol Police Detective Zimmerman,
- 37 Defendant's April 23, 2003 package for NY Homestate Senator Clinton
- 38 Defendant's May 2, 2003 letter to Josh Albert
- 39 Defendant's March 14, 2003 letter to Senate Judiciary Committee-Swen Prior, Nominations Clerk
- 40 Boxes and folders delivered by Defendant to Senate Judiciary Committee on May 5, 2003, returned to Defendant by prosecution at the December 3, 2003 court conference before Senior Judge Milliken, over Defendant's objection
- 41 Josh Albert May 2, 2003 E-Mail (1:21 pm) to Leecia Eve: "Leecia, she's stopping by at 1pm on Monday to meet us. She handdelivered a package to NYC office on 4/23, no way it could have reached us yet even if forwarded from there. She's faxing a cover letter."
- 42 Chain of May 13, 2003 E-Mail: Eric Lovecchio to Albert (11:02 am): "Got in"; Albert to Lovecchio (11:17 am) "send everything down here..."; Albert to Eve (11:27 am) "this is apparently the package that Sassower was so concerned be forwarded to DC"
- 43 Josh Albert's May 16, 2003 E-Mail (5:11 pm) to Leecia Eve regarding request for conference call meeting for Monday, May 19th; review of documents delivered to Rachel Arfa (5 boxes delivered to Hatch's office); "wants HRC to request she be permitted to testify or since we haven't received her packet from NYC, to delay the hearing"
- 44 Josh Albert's May 22, 2003 E-Mail (8:38 am) to Tamera Lazzatto & Leecia Eve forwarding May 21st letters to Clinton, Schumer & Senate Judiciary Committee and requesting they be brought "to Senator Clinton's personal attention"
- 45 Josh Albert's May 22, 2003 E-Mail (8:38 am) to Tamera Lazzatto & Leecia Eve on "Not

- being arrested"-- forwarding Defendant's May 21st letter to Capitol Police Detective Zimmerman, with Defendant's July 3, 2001 letter to Schumer
- 46 Defendant's attachments to above May 22, 2003 E-Mail (8:38 am) on "Not being arrested"
- 47 Josh Albert's May 22, 2003 E-Mail (8:41 am) to Tamera Lazzatto & Leecia Eve "Today's Senate hearing on Judge Wesley's confirmation", forwarding Defendant's May 22, 2003 memo to Senate Judiciary Committee, along with Ex. A thereto: Defendant's March 14, 2003 letter inquiring about "written standards"
- 48 Clinton/Schumer October 2003 letters to Edna Mary Schreiber
- 49
- 50 Defendant's May 22, 2003 transportation costs: NY to D.C./bank withdrawal
- 51 Defendant's payment to Miller Reporting Co. for pertinent pages from transcript of Senate Judiciary Committee's May 22, 2003 hearing on Judge Wesley's confirmation
- 52 Miller Reporting Co.'s May 29, 2003 fax transmitting 4 transcript pages: 1, 64-66
- 53 Defendant's May 30, 2003 letter to Miller Reporting Co.
- 54 Defendant's annotations of Min-u-script transcription of Senate Judiciary Committee's May 22, 2003 hearing, 1-4, 26-29, 30-34, 35-38, 39-42, 43-46, 64-66
- 55 Original May 23, 2003 Information, signed by an Asst. U.S. Attorney whose signature is unintelligible; with no signature by Office Jennings
- 56 Attempted May 23, 2003 Superseding Information, signed by Asst. U.S. Attorney Liu
- 57 Defendant's July 7, 2003 memo to ACLU pertaining to "Documents Underlying the Prosecution"
- 58 Defendant's redacted July 7, 2003 memo, consisting of analysis of video and transcript of the Senate Judiciary Committee's May 22, 2003 hearing
- 59 Defendant's little tan diary: entries from March 7, 2003-April 22, 2003
- 60 Defendant's big red diary: entries from April 23, 2003-
- 61 Defendant's loose pages: entries for May 19-21, 2003

- 62 Defendant's April 23, 2003 inventory-transmittal for Chairman Hatch & Ranking Member Leahy
- 63 Senator Schumer's February 23, 2003 press release on "agreement" for Judge Wesley's appointment
- 64 Defendant's March 19, 2003 E-Mail to Senator Schumer
- 65 Defendant's May 22, 2003 stop-over at Senate Press Gallery
- 66 May 22, 2003 article, "NY judge, Bush's federal court pick, breezes through Senate questioning" (AP)
- 67 May 22, 2003 article, "NY judge faces few questions in confirmation hearing" (Gannett)
- 68 Senate confirmation proceedings: June 11, 2003
- 69 June 11, 2003 article, "Senate Unanimously Approves Judge Wesley for Federal Appeals Bench"
- 70 June 7, 2003 article, "Politics 'Odd Couple' Press On"
- 71 Senator Schumer's press release on Senate confirmation vote, June 11, 2003
- 72 Ralph Nader Congress Project 1975 book, The Judiciary Committees
- 73 Common Cause 1986 report, Assembly-Line Approval
- 74 Twentieth Century Fund 1988 book, Judicial Roulette
- 75 CJA's May 1, 1992 "Law Day" critique to Senate Judiciary Committee, compendium of exhibits, and three correspondence compendia
- 76 CJA's June 28 1996 letter to Chairman Hatch
- 77 CJA's August 19, 1998 letter to Senate Judiciary Committee
- 78 CJA's July 11, 2001 letter to Senate Judiciary Committee
- 79 Original Box & casefile brought down by Defendant on June 25, 1996 for Senate Judiciary Committee's hearing on the confirmation of NY Supreme Court Justice Lawrence Kahn to the

District Court for the Northern District of New York (with Capitol Police inventory tag)

- 80 File of "disorderly conduct" criminal case, brought down by Defendant on May 22, 2003, as per Defendant's May 21st letter to Capitol Police Detective Zimmerman (at p. 2), containing September 22, 1996 police misconduct complaint
- 81 Capitol Police March 18, 1997 General Order for Citation Release
- 82 Defendant's annotation in Prisoner's Property Book, June 25, 1996
- 83 Defendant's annotation in Prisoner's Property Book, May 23, 2003
- 84 NYS Comptroller's 1989 Report & Press Release on the NYS Commission on Judicial Conduct, "Not Accountable to the Public"
- 85 Petition signatures of 1,500 New Yorkers for appointment of a commission to investigate & hold hearings on judicial corruption and the political manipulation of judgeships in NYS