No. _____

In the

SUPREME COURT OF THE UNITED STATES

October Term 2007

ELENA RUTH SASSOWER,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE D.C. COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

ELENA RUTH SASSOWER
Petitioner, *Pro Se*
16 Lake Street, Apt. 2C
White Plains, New York 10603
914-421-1200

DRAFT: August 7, 2007

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 D.C. 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 U.S. Court of Appeals for the District of Columbia, including pursuant to D.C. Code §10-503.18?

3. Does the D.C. 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 dimension and public importance?*i. As evidenced from the course of

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* The four appellate issues that petitioner presented to the D.C. Court of Appeals, which its Memorandum

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?

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?

Opinion and Judgment materially falsified, are set forth *verbatim* on the following two pages, except for the substitution of the word "petitioner" for "appellant". Petitioner also 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.

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?

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Petitioner Elena Ruth Sassower respectfully petitions for a Writ of Certiorari to review the D.C. Court of Appeals' Memorandum Opinion and Judgment herein.

OPINIONS BELOW

The D.C. Court of Appeals' Memorandum Opinion and Judgment is reported, but not published, at 915 A.2d 964, 2006 LEXIS 709 [A-xxx]. Its subsequent Order denying rehearing and rehearing *en banc* is unreported and unpublished [A-xxx]. Its relevant prior Orders are unreported and unpublished [A-xxx]. The Orders of D.C. Superior Court Judge Brian Holeman denying disqualification and transfer are unreported and unpublished [A-xxx].

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §1257(b). The Memorandum Opinion and Judgment was issued on December 20, 2006. The Order denying rehearing and rehearing *en banc* was issued on March 20, 2007. Chief Justice John D. Roberts, Jr. granted petitioner's motion to extend her time to seek certiorari up to and including August 17, 2007.

CONSTITUTIONAL, STATUTORY, COURT RULE, AND ETHICAL PROVISIONS INVOLVED

U.S. Constitution, First, Fifth, Fourteen Amendments; D.C. Code §10-503.16(b)(4); D.C. Code §10-503.18; D.C. Code §16-710; D.C. Code §23-110; D.C. Code §23-1325; D.C. Rule 35a; D.C. Superior Court Civil Procedure Rule 63-I; D.C. Superior Court Criminal Procedure Rule 57(a); Code of Judicial Conduct for the District of Columbia Courts: Canons 3D, E, & F, Code of Judicial Conduct for U.S. Judges, Canon 3D, E, & F. [A-]

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. Kennedy[1]

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 for judicial disqualification, disclosure and transfer [A-xxx]. Nonetheless, the facts required for petitioner's further issues are also germane to her first. They presage what the D.C. Court of Appeals ultimately did and reinforce the necessity that this Court articulate the simple legal 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 spoken on the subject.

Ordinarily, a brief factual summary would suffice. Here, however, a lengthier summary is necessary because the Memorandum Opinion and Judgment materially falsifies the "disruption of Congress" incident, materially

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[1] 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."

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 each of petitioner's four appellate issues, that underlies her 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, 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 [A-xxx-xxx], cannot and do not provide this Court with information germane to the disqualification/disclosure/transfer issues. This has left petitioner with no choice but to herself recite the facts pertaining to her prior motions for disqualification, disclosure, and transfer. Though consuming virtually the entirety of her cert petition, it provides the 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" under D.C. Code §10-503.16(b)(4) [A-xxx] based on what she was alleged to have said at that day's Senate

Judiciary Committee hearing to confirm the nomination of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals. When arrested, she was holding a page on which was written: "Mr. Chairman, there's citizen opposition to Judge Wesley, based on his documented corruption as a New York Court of Appeals Judge. May I testify?" [A-xxx]

The next day, at petitioner's arraignment in D.C. Superior Court, a copy of that page was provided to her by the U.S. Attorney. This, as part of his May 23, 2003 letter pursuing prosecution, which identified it as "copy of def's handwritten statement from which she was reading during the disruption (1 page)". This contradicted the underlying police reports, copies of which the letter attached. These claimed petitioner had said: "Judge Wesley, look into the corruption of the New York Appeals Court" and had "wanted to 'testify'" [A-xxx]. The police reports did not state at what point in the Senate Judiciary Committee hearing petitioner had spoken.

The U.S. Attorney's letter also noted that there was a videotape which it might introduce at trial. Petitioner requested a copy, as well as a copy of the stenographic transcript of the hearing. When produced at the first court conference[2], these showed: (1) petitioner did not begin speaking until after the presiding chairman, Senator Saxby Chambliss, had announced the hearing adjourned; (2) petitioner did not say "Judge Wesley, look into the corruption of the New York Appeals Court"; and (3) petitioner's only other words at the hearing were "Are you directing that I be arrested?", which she three times repeated, without answer from Senator Chambliss, just as he had also not answered her

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[2] A copy of the videotape is being lodged with the Clerk's Office in support of this petition. Petitioner's analysis of it, the stenographic transcript, and the underlying police documents are part of the record and appear herein at A-xxx.

question "May I testify?" [A-xxx].

The video and transcript also established the material falsity of an amended *Gerstein*, a copy of which the U.S. Attorney had not provided petitioner, but which she found in the court file at the time of the first conference [A-xxx]. Additionally, the video furnished tell-tale evidence that petitioner's arrest was pre-arranged. It showed that in the eight seconds petitioner is speaking, an unsurprised Senator Chambliss reaches for his glasses and then for a paper from which, by the tempo of his words, he apparently reads after petitioner is led from the hearing room by Capitol Police [A-xxx].

Entirely missing from the U.S. Attorney's letter was petitioner's 39-page May 21, 2003 fax to Capitol Police entitled "NOT BEING ARRESTED" [A-xxx]. Such fax – not produced until months later in response to petitioner's First Discovery Demand – established that petitioner's presence and intent at the May 22, 2003 Senate Judiciary Committee hearing were known in advance to Capitol Police, as well as to Senate Judiciary Committee Chairman Orrin Hatch, Ranking Member Patrick Leahy, and New York Home-State Senators Charles Schumer and Hillary Rodham Clinton. Her intent, in the event the presiding chairman did not himself inquire whether anyone present wished to testify – as had been done in the past – was to respectfully request to testify with "citizen opposition". The fax reflected that Capitol Police had threatened petitioner that if she so-requested, she would be arrested and that petitioner had challenged this on two grounds. First, that it is the presiding chairman – not the police – who is in charge of the hearing and his decision whether to direct her arrest for respectfully requesting to testify. Second, that it would "deviate from the precedent" of the Senate Judiciary Committee's June 25, 1996 confirmation hearing at which petitioner had not been arrested for requesting to testify in opposition to a federal judicial

nominee. As summarized by the fax, petitioner's arrest on June 25, 1996 was for alleged "disorderly conduct" in the hall outside the Committee room after the hearing had ended – a charge so completely trumped up that she had filed a misconduct complaint against Capitol Police.

Petitioner's May 21, 2003 fax further revealed that her contact with Capitol Police on that date was the result of its telephoning her, at the instance of Senator Clinton's office, on whose voice mail she had left two messages for the Senator's chief of staff about the misconduct of the Senator's counsel and legislative correspondent, also a lawyer. The fax recited the specifics of their misconduct [A-xxx]. Neither had read her previously submitted written statement detailing the documentary evidence of Judge Wesley's corruption as a New York Court of Appeals judge, they refused to read it, and, by their own admission, had not read the substantiating casefile evidence which accompanied it. Nevertheless, they told petitioner that Senator Clinton would not take any steps to stop the confirmation nor endorse her request to be permitted to testify at the hearing. In so stating, they refused to give Senator Clinton petitioner's written statement so that she could review it herself. Nor would they give Senator Clinton petitioner's correspondence requesting her personal review of the Senate Judiciary Committee's failure to make any findings of fact and conclusions of law concerning the written statement – all the more egregious as it also covered up the fraudulence of the barebones bar association ratings approving Judge Wesley's confirmation.

The D.C. Superior Court Record Underlying Petitioner's April 6, 2004 Petition for Mandamus, Prohibition, Certiorari, Etc.

Petitioner's position, from the outset, was that "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 that the videotape of the Senate Judiciary Committee's May 22, 2003 hearing and her May 21, 2003 fax to Capitol Police established that the U.S. Attorney had no legitimate case to prosecute. However, she could not secure adjudication of this by D.C. Superior Court. Nor could she secure enforcement of her discovery rights, being sabotaged by the U.S. Attorney.[3] Instead, D.C. Superior Court maneuvered to bring petitioner to trial – and without the documents and witnesses essential to her defense, which she was also to be precluded from presenting.

The judge most profoundly violating petitioner's rights was newly-sitting D.C. Superior Court Judge Brian F. Holeman, against whom she made two pretrial disqualification motions, dated February 23, 2004 and March 22, 2004. Each sought change of venue from D.C. Superior Court.

Petitioner's March 22, 2004 disqualification motion was made pursuant to Superior Court Civil Rule 63-I, applicable by Criminal Rule 57(a) [A-xxx]. Supported by her 27-page affidavit and incorporating her prior 22-page February 23, 2004 affidavit, petitioner demonstrated that Judge Holeman's conduct and rulings were so abusive and devoid of factual and legal basis as to manifest pervasive actual bias reaching the "impossibility of fair judgment" standard of *Liteky v. United States*, 510

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[3] Among the ulterior interests and disqualifying conflicts motivating the prosecution: the Assistant U.S. Attorney who signed the May 23, 2003 prosecution letter had not only been counsel at the Senate Judiciary Committee, but petitioner had chronicled her misfeasance in that capacity in 1998. Such misfeasance was of a similar nature to that of Senate Judiciary Committee counsel underlying the "disruption of Congress" case [A-xxx].

U.S. 540, 551, 556, 565 (1994). Petitioner also reiterated and expanded upon an array of extrajudicial facts set forth by her previous motions, impinging upon Judge Holeman's fairness and impartiality, as they had on the succession of temporarily-assigned D.C. Superior Court judges who had preceded him and whose violative conduct and rulings petitioner also demonstrated.[4]

Based on her showing of violative judicial behavior in the D.C. Superior Court and the failure of its upper echelons charged with supervisory responsibilities to respond to her entreaties for help, including the Chief Judge of its Criminal Division, Noel Anketell Kramer, petitioner also sought transfer of the case to the U.S. District Court for the District of Columbia – relief she asserted was available pursuant to D.C. Code §10-503.18 [A-xxx], which her March 22, 2004 motion cited for the first time.

Judge Holeman response was to deny removal/transfer by falsely claiming, *inter alia*, that petitioner had not cited "any legal authority supportive of the requested relief" – when she had cited D.C. Code §10-503.18 [A-xxx]. He also denied petitioner's request for a stay of the trial by falsely purporting that it was being sought "pending appeal of this ruling", rather than pending her bringing of a writ of mandamus and prohibition to the D.C. Court of Appeals and/or a removal petition to the U.S. District Court.

Not until a week later did Judge Holeman deny the disqualification branch of petitioner's March 22, 2004

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[4] These included the D.C. Superior Court judge whose seat Judge Holeman filled, whose husband, as the former Chief of Capitol Police, had wrongfully dismissed petitioner's 1996 police misconduct complaint against the very police officer who was the true arresting officer on the "disruption of Congress" charge, but whose identity the underlying police reports falsified.

motion [A-xxx]. By then, petitioner had served him with her April 6, 2004 petition for a writ of mandamus and prohibition to disqualify him and for certiorari and/or certification of questions of law as to her entitlement to removal/transfer under D.C. Code §10-503.18.

In denying disqualification, Judge Holeman identified none of the facts, law or legal argument petitioner had presented, except to say that she had complained that his orders were "all based on conclusory claims" or "did not state reasons". His April 6, 2004 order said nothing about petitioner's showing that his rulings were factually and legally insupportable – which he did not deny. Instead, he falsely asserted that bias and prejudice, to be disqualifying, must have "originated from sources outside of court proceedings" and that petitioner "failed to establish that the alleged bias and prejudice stems from an extrajudicial source". In so doing, he did not identify that petitioner had pointed to extrajudicial sources of his bias and prejudice. Nor did he identify or discuss *Liteky* – including the quote from *Liteky* from both petitioner's disqualification motion and her mandamus petition that "an allegation concerning some extrajudicial matter is neither a necessary nor sufficient condition for disqualification under any of the recusal statutes". Instead, Judge Holeman falsely purported that petitioner "failed to cite any legal authority for the requested relief" of his disqualification [A-xxx].

Petitioner's April 6, 2004 Petition

Petitioner's petition to the D.C. Court of Appeals for a writ of mandamus and prohibition to disqualify Judge Holeman rested on three grounds:

(1) the D.C. Court of Appeals' own decisional law, *Anderson v. United States*, 754 A.2d 920 (2000), citing its *en banc* decision in *Scott v. United States*, 559 A.2d 745 (1989), for the proposition: "this court has recognized that where a trial judge should recuse, but declines to do so, a

writ of mandamus is an appropriate remedy". Petitioner demonstrated that her right to mandamus was *a fortiori* to both those cases;

(2) the D.C. Court of Appeals' own decisional law, *Banov v. Kennedy*, 694 A.2d 850 (1997), citing its decision in *Yeager v. Greene*, 502 A.2d 980 (1985), for the proposition that mandamus is traditionally available "to confine [a]...court to a lawful exercise of its prescribed jurisdiction "...where the right to relief is "clear and indisputable". Petitioner demonstrated that Rule 63-I was mandatory in divesting a judge of jurisdiction to proceed in the face of a sufficient affidavit, such as her March 22, 2004 affidavit;

(3) well-settled U.S. Supreme Court caselaw, reflected in *Banov* and *Yeager*, reserving mandamus for "extraordinary" and "exceptional" circumstances. Petitioner argued that such circumstances exist where a disqualification motion demonstrates pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky*, as her March 22, 2004 affidavit had done in demonstrating that Judge Holeman's orders were "'so totally devoid of evidentiary support as to render them unconstitutional under the Due Process Clause of the Fourteenth Amendment' *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960)".

The petition also sought certiorari and/or certification of questions of law, posing the question:

> "Whether D.C. Code §10-503.18 entitles petitioner to removal/transfer of the underlying criminal case to the U.S. District Court for the District of Columbia, where, additionally, the record in the D.C. Superior Court establishes a long-standing pattern of egregious violations of her fundamental due process rights and 'protectionism' of the government."

Lastly, the petition sought "appropriate action"

against Judge Holeman and the U.S. Attorney pursuant to D.C.'s Canon 3D of the Code of Judicial Conduct.

Petitioner filed a full copy of the D.C. Superior Court record in substantiation of her requested relief. Simultaneously, she filed a motion to stay the trial pending adjudication of the mandamus/certiorari petition. Included was a request for disclosure by, and/or disqualification of, D.C. Court of Appeals judges pursuant to Canons 3E and F of D.C.'s Code of Judicial Conduct. The basis was their long-standing personal and professional relationships with senior D.C. Superior Court judges – the supervisory judges, in particular – whose misconduct was exposed by the record. Petitioner stated that if the Court of Appeals judges were to discharge their mandatory "Disciplinary Responsibilities" under Canon 3(D)(1), their "closest judicial brethren may face disciplinary and criminal prosecution" as investigation would reveal:

> "the extent to which [Judge Holeman's] brazenly dishonest and corrupt conduct was not his own, but, rather, part of a collusive plan to 'protect' powerful U.S. Senators and Capitol Police by railroading petitioner to trial on this bogus 'disruption of Congress' charge, without the documents and witnesses to which she is entitled".

Petitioner further noted that both D.C.'s Superior Court and Court of Appeals get their funding directly from Congress, that, upon information and belief, their Chief Judges accompany each other to Congress for such purpose, and that the judges on both courts are appointed by the president with the advice and consent of the Senate or one of its committees.

On April 8, 2004, without awaiting or requesting a response from the U.S. Attorney or from Judge Holeman, a three-judge D.C. Court of Appeals panel, consisting of Judge Frank Q. Nebeker, and Judges Glickman and Farrell, denied petitioner all relief. Their unsigned eight-

sentence order omitted all the facts, law, and legal argument she had presented, including that the requested mandamus was for judicial disqualification, that the certiorari/certification related to the venue provision of the "disruption of Congress" statute, and that petitioner had additionally sought "appropriate action" pursuant to Canon 3(D). Also omitted was petitioner's request for disclosure, of which there was none. As for disqualification, the order falsely represented, *inter alia*, that petitioner had "failed to identify any support for her blanket assertion that the courts and judges of this jurisdiction cannot be impartial in cases, such as her's, which involve the United States Congress".

Post-Petition Proceedings in D.C. Superior Court

The following week Judge Holeman presided over petitioner's jury trial which, on April 20, 2004, concluded with her conviction – the result of a mountain of unsupported and insupportable pre-trial and trial conduct and rulings by him. These included: (1) quashing her subpoenas for the testimony of the senators, including Senator Chambliss, purported to be the complainant by the underlying police reports, based on the "speech and debate" clause of the U.S. Constitution; (2) barring petitioner from introducing into evidence the underlying police reports; (3) barring petitioner, from introducing into evidence, or even mentioning that the true arresting officer, concealed by the underlying police documents, had been the subject of her 1996 police misconduct complaint, arising from petitioner's June 25, 1996 arrest in the hallway outside the Senate Judiciary Committee on the trumped up disorderly conduct charge; (5) barring petitioner from informing the jury that such charge had never gone to trial; (6) barring petitioner from introducing into evidence or even mentioning the basis for CJA's opposition to Judge Wesley's confirmation; (7) barring petitioner from even mentioning that Senators

Clinton and Schumer, as New York's Senators, had the power to encumber, if not block, Judge Wesley's confirmation; (8) refusing to allow petitioner to testify as to the events of May 19-22, 2003 pertaining to her arrest, including what took place at the Senate Judiciary Committee's May 22, 2003 confirmation hearing – and her intent; (9) denying, with conclusory boilerplate, petitioner's two motions for judgment of acquittal whose basis was the dispositive nature of the videotape and her 39-page May 21, 2003 fax to Capitol Police, entitling her to dismissal *as a matter of law* [A-xxx].

On June 28, 2004, in face of a court services presentence report which did not recommend incarceration and a U.S. Attorney request for a five-day suspended incarceration, Judge Holeman sentenced petitioner to six months incarceration, a $500 fine, and $250 assessment under the Victims of Violent Crime Compensation Act – all the maximum under the "disruption of Congress" statute. The six-month jail term was a superseding sentence, which Judge Holeman imposed because petitioner declined his conditions for suspending his initially-announced 92-day jail sentence. Among these conditions: that she stay away from Capitol grounds; stay away from the Senators and Judge Wesley, including by telephonic and written communications; that she keep time records of her work at CJA accurate to 1/10 hour increments, that she write letters of apology to the Senators and to Judge Wesley expressing her regret for any inconvenience caused.

Judge Holeman rejected petitioner's request for a stay pending appeal, incarcerating her immediately.

Petitioner's Motions for Release from Incarceration Pending Appeal

On June 28, 2004, petitioner's legal advisor filed a notice of appeal and motion in the D.C. Court of Appeals for her release pending appeal. By an unsigned July 7,

2004 order, a three-judge panel denied it, without reasons and without affording petitioner an opportunity to reply to the U.S. Attorney's opposition papers. The panel included Judge Nebeker, a panelist on the April 8, 2004 order denying mandamus/certiorari, who – unbeknownst to petitioner – had formerly been chief of the U.S. Attorney's appellate division. Joining him were Judges Steadman and Reid – the latter having a twin brother, George Bundy Smith, a New York Court of Appeals judge who had participated with Judge Wesley in the corruption about which petitioner had requested to testify at the Senate Judiciary Committee's May 22, 2003 hearing and for which she was arrested for "disruption of Congress". Such familial relationship was unknown to petitioner.

The incarcerated petitioner moved for reargument, reconsideration, and renewal. Observing that the without reasons July 7, 2004 order gave rise to an inference that the panel could not support its denial, petitioner stated that the sufficiency of her legal advisor's motion for her release was reinforced by the affidavit she had begun writing upon waking up in jail on June 29, 2004 which, but for the Court's premature denial of the motion, she would have filed in support. She annexed the affidavit as Exhibit C to her motion, describing it as highlighting with particularity, the "clear and convincing evidence" of Judge Holeman's pervasive actual bias – pretrial, at trial, and post-trial – requiring reversal of [her] conviction *as a matter of law* and meeting the standard for a stay pending appeal. She challenged the U.S. Attorney to deny this and to confront the unconstitutionality of the disruption of Congress statute, *as written and as applied*, set forth in a draft memorandum of law she had intended to hand-up at her June 28, 2004 sentencing, but had been unable to by Judge Holeman's conduct. Petitioner stated that what had taken place at the Senate Judiciary Committee's May

22, 2003 hearing was memorialized by a videotape, constituting "celluloid DNA". She described it as "incontrovertible evidence, not supplanted by the adverse jury verdict".

Petitioner's motion also included five additional branches of relief: (2) sanctions against the U.S. Attorney for his materially deceitful opposition to her legal advisor's motion and for disclosure by him and culpable staff as to their knowledge of the record, including her mandamus/certiorari petition; (3) disqualification of Judge Nebeker for demonstrated actual bias based on the April 8, 2004 order; (4) disclosure by Judges Steadman and Reid, with similar disclosure by Judge Nebeker if he did not disqualify himself; (5) removal/transfer of the case to the U.S. Court of Appeals for the District of Columbia; and (6) such other and further relief as reinstating Judge Holeman's originally-announced 92-day sentence and vacating the six-month sentence.

As to Judge Nebeker, petitioner provided an extensive analysis of the April 8, 2004 order showing it had concealed all the facts, law, and legal argument of her mandamus/certiorari petition because they were dispositive of her right to Judge Holeman's disqualification and to transfer of the case. She stated that absent Judge Nebeker disqualifying himself, he should confront this analysis.

As to Judges Steadman and Reid, petitioner requested disclosure, including: (1) whether they personally reviewed her mandamus/certiorari petition, from which they would have seen that the April 8, 2004 order had wrongfully denied her relief to which she was entitled, *as a matter of law*; (2) whether the impartiality of their judgment was affected by their personal and professional relationships with Judge Nebeker and the two other judges who had rendered the April 8, 2004 order – or with "any other[] [judges], whether on [the D.C. Court of Appeals, the D.C. Superior Court, or the

New York Court of Appeals (past or present)"; (3) whether they personally reviewed petitioner's underlying February 23, 2004 and March 22, 2004 motions for Judge Holeman's disqualification – from which they would have seen that petitioner was entitled to "immediate release from jail, as Judge Holeman was without authority to proceed further in face of such timely and sufficient motions".

Petitioner additionally questioned whether Judge Reid's fairness and impartiality was affected by the fact that her mandamus petition exposed that the Court's *Anderson* decision in which Judge Reid had participated denied the judicial disqualification 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 *Liteky* had rejected six years earlier.

As for removal/transfer, petitioner stated that such was compelled by the record of the case in the D.C. Superior Court, now supplemented by the record at the D.C. Court of Appeals.

The U.S. Attorney again opposed petitioner's release. Petitioner's reply papers demonstrated such opposition to be even more deceitful than the U.S. Attorney's opposition to her legal advisor's motion for her release and sought additional sanctions, disclosure, and disciplinary and criminal referrals of him and culpable staff. Petitioner highlighted that the U.S. Attorney had not denied or disputed any of the facts, law, or legal argument presented by either her Exhibit C affidavit or draft memorandum of law – nor her contention that these demonstrated her entitlement to reversal of her conviction, *as a matter of law*, and to release from incarceration pending appeal. Indeed, petitioner pointed out that the U.S. Attorney had not even been willing to assert – as her motion had challenged him to – that she had had due process.

By the time petitioner's reconsideration motion was fully submitted on September 13, 2004, she had been incarcerated more than 2-1/2 months – a span attributable to procedural roadblocks the D.C. Court of Appeals had subjected her to [A-xxx]. She memorialized this in further motion papers, seeking clarification and disclosure, including as to whether she was being invidiously treated.

By an unsigned September 16, 2004 order, Judge Reid, now joined by Judge Terry, a former appellate chief at the U.S. Attorney's office, and by Judge Newman, ignored the clarification/disclosure and denied the reconsideration motion. Their order concealed that at issue was petitioner's release from incarceration pending appeal – as to which it made no finding, nor even a claim, that she had not met the standard for release. Rather, the order asserted:

> "Appellant continues to rely upon the arguments made in her petition for a writ of mandamus.... However, this court has considered and rejected those arguments on two occasions; first, in its order denying mandamus relief, and second, in its order denying appellant's motion for release pending appeal. On this third iteration they remain, insufficient and unpersuasive."

In so doing, the order identified none of the facts, law, or legal argument of the mandamus/certiorari petition or petitioner's showing that the Court's prior two "iterations", its April 6, 2004 and July 7, 2004 orders, had also not identified any of the facts, law, or legal argument it had presented. Also ignored was petitioner's Exhibit C affidavit and draft memorandum of law – both uncontested by the U.S. Attorney – establishing her entitlement to release, apart from her mandamus/certiorari petition.

As for the "other relief" sought by petitioner's motion, the order identified none of it, including

disqualification and disclosure, of which there was none.

Petitioner's Motion & Expedited Appeal to Prevent Mootness

A week later, as petitioner's incarceration approached the day on which she should have been released under Judge Holeman's originally-announced 92-day sentence, her newly-serving *pro bono* attorney made an "Unopposed Emergency Motion for [Petitioner's] Release to Preclude Mootness of Appellate Issue". The issue sought to be preserved for appeal was "the validity of any sentence exceeding 92 days' imprisonment". Judge Reid, with Judges Farrell and Terry, denied it by an unsigned September 23, 2004 order, without prejudice to "refiling in Superior Court" [A-xxx] – meaning before Judge Holeman.

Upon Judge Holeman's without-reasons denial of the refiled motion, likewise unopposed by the U.S. Attorney, *pro bono* counsel perfected an "Emergency Appeal" therefrom. Again, the U.S. Attorney expressly did not oppose petitioner's release. Nevertheless, Judge Nebeker, joined by Judges Glickman and Washington, denied it in an unsigned October 14, 2004 order purporting that petitioner had failed to show "reversible error" under D.C. Code §23-1325 – although that is not the standard for release. The order also *sua sponte* dismissed the perfected emergency appeal as "duplicative" of the unperfected appeal – without identifying any the facts, law, or legal argument presented by the perfected appeal – or even that the sole appellate issue was preventing mootness, as to which the three-judge panel did not rule.

Pro bono counsel thereafter made a motion before Judge Holeman challenging the legality and constitutionality of the six-month jail sentence, pursuant to D.C. Code §23-110(a) and D.C. Criminal Rule 35a, which he denied. On December 21, 2004, *pro bono*

counsel filed a notice of appeal therefrom. Petitioner remained incarcerated until December 23, 2004, the conclusion of her six-month sentence.

Petitioner's June 28, 2005 Perfected Appeal & Related Motions

On June 28, 2005 – a year to the day of petitioner's incarceration – she perfected her two consolidated appeals, presenting four appellate issues [A-xxx]. These four were precisely the same as she had summarized by her Exhibit C affidavit that she had put before the Court 11 months earlier to secure her release from incarceration. Her first appellate issue was Judge Holeman's pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky*; her second issue was her entitlement to change of venue to federal court pursuant to the venue provision of the disruption of Congress statute; her third issue was the unconstitutionality of the disruption of Congress statute, *as written and as applied* – which reproduced, virtually verbatim, her previously-submitted draft memorandum of law on the subject; and her fourth issue was the appropriateness and constitutionality of Judge Holeman's probation conditions and the lawfulness and constitutionality of the superseding six-month jail sentence he imposed when petitioner exercised her right to decline those conditions.

Petitioner's brief was 119 pages – 97 pages of which were devoted to her first issue: Judge Holeman's pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky*. She, therefore, filed a procedural motion for permission to "exceed the page limits" or, alternatively, to submit a revised brief within page limits based on a ruling as to the particularity required to establish the "impossibility of fair judgment" standard of *Liteky*. Petitioner stated that in the 11 years since *Liteky*, the D.C. Court of Appeals had apparently

not found any case of pervasive actual bias meeting that standard or had never had this explicit appellate issue before it. She pointed out that since the definition of "pervasive" is everywhere, she could not rest her brief on any one of Judge Holeman's mountain of reversible errors. Rather, by definition, the burden she was required to carry was to span the course of the proceeding before Judge Holeman to demonstrate the pervasiveness of his bias.

Petitioner further pointed out that her 97-page showing of Judge Holeman's pervasive actual bias – and her separate chronological recitation of that bias by her 161-page supplemental fact statement – were also relevant to her second appellate issue as to whether D.C. Code §10-503.18 entitled her to removal/transfer 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". Petitioner stated that if the statute were to be interpreted as requiring a criminal defendant to make a showing of bias in the D.C. Superior Court to secure venue in the U.S. District Court, the 97 pages of her brief establishing Judge Holeman's pervasive actual bias were germane to the sufficiency of her showing.

Petitioner's procedural motion additionally contained three other branches of relief: (a) permission to lodge original trial exhibits, whose exclusion by Judge Holeman was encompassed by the appeals; (b) incorporation of the record of her April 6, 2004 mandamus/certiorari petition, as well as of her October 6, 2004 "Emergency Appeal"; and (c) a court conference to address any or all of the foregoing - or such other matters as "may aid in resolving the appeal".

By an unsigned July 14, 2005 order [A-xxx], Judge Reid, joined by Judges Glickman and Pryor, denied the procedural motion, without reasons, without identifying

any of the facts, law, or legal argument petitioner had presented, and by materially concealing the motion's four branches of relief.

Petitioner moved for reconsideration. Combined therein was a request that the panel disqualify itself for actual bias and interest and for disclosure. Petitioner showed that the July 14, 2005 order did not reflect a fair and impartial tribunal, nor five prior orders in which Judges Reid and Glickman had participated. She stated that absent reasoned adjudication of the four actual branches of her procedural motion, the panel was duty-bound to disqualify itself and, failing that, to make disclosure. She specified this to include the disclosure Judges Reid and Glickman were required to have previously made, but had not: Judge Glickman in adjudicating her mandamus/certiorari petition and Judge Reid in adjudicating her reconsideration motion for release from incarceration. No opposition was interposed by the U.S. Attorney.

By an unsigned August 5, 2005 order [A-xxx], Judges Reid and Glickman, now joined by Judge Nebeker, denied the unopposed reconsideration motion, without reasons except for a paragraph containing a string of court rules and caselaw citations, uncorrelated, inapposite, and, as to *Liteky*, outrightly false in purporting that "judicial rulings alone do not constitute bias requiring recusal". Their order identified none of the relief sought by petitioner's motion – nor any of the facts, law and legal argument she had presented. This included petitioner's requested disqualification and disclosure, of which there was none.

Petitioner also brought an August 4, 2005 petition for *en banc* initial hearing of the appeals, reiterating and expanding on the showing by her procedural motion that all four of her appellate issues were not only "far-reaching and substantive", but of "first impression", giving the Court "the opportunity, if not the obligation, to

make law". Simultaneously, she sought disqualification of the Court's judges and, absent that, the previously-requested disclosure which none of them had made. No opposition was interposed by the U.S. Attorney.

By an unsigned October 5, 2005 order [A-xxx], the Court denied petitioner's unopposed petition for *en banc* initial hearing: no judges in regular active service having requested a vote thereon – these being Chief Judge Washington, and Judges Terry, Schwelb, Farrell, Wagner, Ruiz, Reid, Glickman, and Kramer. The order did not identify petitioner's request for disqualification and disclosure – and there was none.

Petitioner's October 14, 2005 Motion for Disqualification, Disclosure, Transfer/Removal, etc.

On October 14, 2005, petitioner moved to vacate the August 5, 2005 order for fraud, for reconsideration and vacatur of the October 5, 2005 order, and for removal/transfer of the appeals to the U.S. Court of Appeals for the District of Columbia.

Petitioner's 29-page affidavit demonstrated that the August 5, 2005 and October 5, 2005 orders were the latest in a long series of orders to conceal her requested disqualification/disclosure and to deny her relief to which she was entitled, *as a matter of law*, without reasons or by reasons that were demonstrably false. She stated that the record spanning from her April 6, 2004 mandamus/certiorari petition to her August 4, 2005 petition for *en banc* initial hearing of the appeals established that there was "no cognizable judicial process" and that the Court was operating "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". Petitioner characterized the Court's continuum of unsigned orders as readily-verifiable judicial frauds – and stated that participating judges were disqualified for

pervasive actual bias, absent extenuating explanation.

Petitioner asserted that because the correct interpretation of *Liteky* had always been dispositive of her rights, none of the Court's prior orders in her case had cited it or purported that judicial rulings could not be grounds of disqualification. The August 5, 2005 order was the first to do so, falsely representing *Liteky* as standing for that proposition and additionally implying, falsely, that she had presented judicial rulings "alone" [A-xxx], when, both as to Judge Holeman and the Court, she had also particularized extrajudicial factors impinging on fairness and impartiality.

Petitioner stated that the Court's judges had an interest in not acknowledging what *Liteky* held because their succession of fraudulent orders met the *Liteky* "impossibility of fair judgment" standard, establishing their own pervasive actual bias. As such, they had an interest in her first appellate issue – an interest compounded by the fact that it encompassed Judge Holeman's failure to make, or even identify, requested disclosure. Petitioner asserted "The Court will be constrained from ruling...that failure to make requested disclosure is *prima facie* disqualifying.... For it to do so would require it to find itself guilty of the same misconduct". Indeed, petitioner asserted that the parallels between her entitlement to Judge Holeman's disqualification/disclosure and disqualification/disclosure by the Court's judges were such that they would "in essence be deciding 'their own case'".

Petitioner also showed that the Court's interest extended to her three other appellate issues. All were before the Court by her mandamus/certiorari petition and during her incarceration by her reconsideration motion whose Exhibit C affidavit itself laid out the four appellate issues "in miniature". She stated that this gave the Court an interest in impeding exposition and disposition of these same issues on appeal as an appellate ruling in her

favor – let alone by the resounding, law-making rulings to which she was entitled – would establish the maliciousness of the Court's prior orders in concealing all the facts, law, and legal argument she had presented because they were dispositive of her rights, both as to mandamus/certiorari and release from incarceration.

Petitioner pointed out a further issue in which the Court was interested: the U.S. Attorney's litigation misconduct, as to which the Court had a mandatory duty to take "appropriate action" pursuant to Canon 3D of D.C.'s Code of Judicial Conduct. This included against the U.S. Attorney's appellate division chief, John Fisher. Petitioner showed that the Court's September 16, 2004 order [A-xxx] had not only concealed such explicitly-requested relief and her entitlement thereto, but critical extrajudicial facts, all undisclosed. Among these: that Judges Nebeker and Terry had previously been appellate division chiefs in the same U.S. Attorney's office as Mr. Fisher, indeed, that Mr. Fisher had worked directly under Judge Terry, including as his deputy chief. Further, Mr. Fisher had been applying to be appointed as one of the Court's judges in the very period in which petitioner's reconsideration motion for release from incarceration was pending before the panel on which Judge Terry was a member and which rendered the September 16, 2004 order.

Petitioner demonstrated that the Court's wilful violation of its Canon 3D responsibilities and obligations of disqualification and disclosure under Canons 3E and F had not only resulted in Mr. Fisher's appointment as a D.C. Court of Appeals judge. It had also resulted in the appointment of D.C. Superior Court Judge Kramer, to whom petitioner had turned for supervisory oversight before bringing the April 6, 2004 mandamus/certiorari petition, with its accompanying motion for disclosure from the Court's judges as to their relationships with her, absent their disqualification.

As to removal/transfer, petitioner stated that her good and sufficient grounds were presented by her reconsideration motion during her incarceration and that she could not improve on them, except to state the obvious:

> "that the Court's subsequent actions...establish, *prima facie*, [its] wilful and deliberate obliteration of any cognizable judicial process and jettisoning of mandatory ethical rules – Canon 3D, E, and F of the Code of Judicial Conduct for the District of Columbia Courts – designed to ensure the integrity of judicial proceedings."

Petitioner further stated that if any of the Court's judges harbored doubt as to the disciplinary, indeed criminal, consequences of the orders rendered in her case, they should seek an advisory opinion from D.C.'s Advisory Committee on Judicial Conduct – noting that the three of its five members were D.C. Court of Appeals judges: Glickman, Steadman, and its chair, Judge Vanessa Ruiz.

The U.S. Attorney interposed no opposition.

The Unsigned October 27, 2005 Barring Order

Petitioner's unopposed October 14, 2005 motion was not adjudicated by the Court *en banc*, but by Judges Reid, Glickman, and Nebeker. Without denying or disputing the accuracy of her uncontested showing that their August 5, 2005 order was a judicial fraud, as likewise their past orders, all of which had denied petitioner relief without identifying any of the facts, law, or legal argument she had presented, the panel denied her motion [A-xxx]. Their unsigned October 27, 2005 order [A-xxx] was also without reasons and without identifying any of the facts, law, and legal argument petitioner presented. Once again concealed was her request for their disqualification and disclosure, including of the extrajudicial facts she had specified.

Instead, the order directed the Court's Clerk to accept no further filings from petitioner except for her "conforming brief on the merits, due on November 7, 2005", and a "conforming reply brief, if any, due within 21 days after the filing of appellee's brief on the merits". Such direction was *sua sponte* and without affording petitioner any notice or opportunity to be heard, in contrast to *Corley v. United States*, 741 A.2d 1029 (1999) – the sole cited case, prefaced by an inferential "*See*". The order justified its direction by claiming that petitioner had "presented numerous times and without success" the requests made and that her "insistence on raising them yet again constitutes an abuse of this court's processes." It gave no details as to these repetitive requests, did not purport that their previous presentation had been frivolous, did not purport that their presentation by her October 14, 2005 motion was frivolous, and failed to identify a single reasoned adjudication responsive to any of these requests.

Petitioner's Requests for Supervisory Oversight & Judicial Misconduct Complaint

Upon petitioner's receipt of the October 27, 2005 order, she telephoned the chambers of D.C. Court of Appeals Chief Judge Washington, imploring his supervisory oversight. She explained that the consequence of the barring order was to prevent her from challenging it judicially and to railroad her appeals before a court demonstrated to be disqualified for pervasive actual bias and interest. She requested that he personally examine the casefile and, specifically, her October 14, 2005 disqualification motion and the panel's October 27, 2005 order, and that he also bring them to the attention of the Court's other judges so that they could make their own determinations.

In the absence of any response, petitioner filed her "conforming brief on the merits" on November 7, 2005.

Its 50 pages was a repaginated *verbatim* repetition of her June 28, 2005 brief from which 63 pages of text, particularizing Judge Holeman's pervasive actual bias at trial and post-trial, had been removed. Otherwise the four appellate issues and argument were intact, substantiated by a three-volume, 1784–page appendix of the record, supporting the brief's conclusion:

> "WHEREFORE, vacatur/reversal is mandated, as a matter of law, as are disciplinary and criminal referrals of D.C. Superior Court Judge Brian Holeman and the U.S. Attorney for the District of Columbia pursuant to Canon 3D of the Code of Judicial Conduct for the District of Columbia Courts."

Two months later, still without response from Chief Judge Washington, petitioner sent him a January 10, 2006 letter [A-xxx], reiterating and supplementing her request for his supervisory and disciplinary oversight pursuant to Canons 3C and D. She asked that he confirm that he had undertaken the requested personal review of her October 14, 2005 disqualification motion and the panel's October 27, 2005 order; had brought both to the attention of the Court's other judges for their review; and that neither he nor they deemed it appropriate to recall the October 27, 2005 order and responsively adjudicate the October 14, 2005 motion. She also requested information that would enable her to confirm that the October 27, 2005 barring order was "unprecedented, first-ever" and further evidence of the Court's invidious treatment of her.

Petitioner's letter also updated the Chief Judge as to the continuing misconduct of Judges Reid, Glickman, and Nebeker, blocking her from routinely-granted procedural relief and making obvious that she would be precluded from other routinely-granted procedural relief, as well as from safeguarding her appeal by a substantive motion for the U.S. Attorney's disqualification and

sanctions, should its appellee's brief violate its obligations under ethical rules of professional responsibility. She stated that these three judges

> "rather than embracing [her] elucidation of the facts and law pertaining to the judicial misconduct of Judge Holeman, the prosecutorial misconduct of the U.S. Attorney's office, and the disqualification of each,...want only to curtail it so as to skew, if not avoid, its determination."

Petitioner closed by noting that Judges Reid, Glickman, and Nebeker – or court personnel – had apparently physically destroyed or secreted the most incriminating evidence of their cover-up of the judicial and prosecutorial misconduct below, *to wit*, her 119-page brief and 161-page supplemental fact statement. These were missing from the court file – and she requested that he direct an inquiry and apprise her of the results.

Chief Judge Washington did not respond. Six weeks later, petitioner sent a February 22, 2006 letter to the D.C. Commission on Judicial Disabilities and Tenure [A-xxx], constituting a judicial misconduct complaint against the Chief Judge for:

> "covering up the corruption of the judicial process by his fellow judges of the D.C. Court of Appeals, itself covering up the corruption of the judicial process by D.C. Superior Court Judge Brian F. Holeman, aided and abetted by [supervisory] D.C. Superior Court judges...as *readily verifiable* from the record before those judges in the "disruption of Congress" case."

Petitioner's letter was additionally a judicial misconduct complaint against these judges as well.

The complaint stated that Chief Judge Washington's wilful failure to respond to her January 10, 2006 letter or to otherwise discharge his administrative and disciplinary responsibilities, mandated by comparison of the October 27, 2005 order with her October 14, 2005 motion, constitute[d] judicial

misconduct *per se* – unless Canons 3C and D of the Code of Judicial Conduct for the District of Columbia Courts [were] to be stripped of their mandatory and hortatory meaning". It also showed that Judge Washington was himself involved in the complained-of corruption by his participation in two prior orders [A-xxx, A-xxx].

Petitioner sent a copy of the complaint to Chief Judge Washington "for himself & all complained-against D.C. Court of Appeals and Superior Court judges". She received no response.

The Chief Judge's Order as to the Videotape

The U.S. Attorney thereafter filed a "motion to release evidence". The referred-to evidence was the videotape of the Senate Judiciary Committee's May 22, 2003 hearing which the U.S. Attorney had introduced at trial and now sought to have the D.C. Superior Court return "so that it may be utilized to prepare the government's response to appellant's brief on appeal". Upon petitioner's vigorous opposition to giving custody of this "celluloid DNA" to the U.S. Attorney, Chief Judge Washington signed a March 15, 2006 order [A-xxx], "granting" the U.S. Attorney's motion "construed as a motion to supplement the record", and directing the Clerk of the D.C. Superior Court to "prepare and transmit the videotape to this court as a supplemental record".

Petitioner's Reply to the U.S. Attorney's Brief

On March 10, 2006, the U.S. Attorney filed its opposition brief, having previously obtained extensions of time. Petitioner, however, was unable to obtain an extension for her reply brief because of the barring order. Her motion for such relief was returned, unfiled. On April 4, 2006, she timely filed her reply. Its conclusion, substantiated by her preceding 20 pages, was:

> "The U.S. Attorney's opposition brief is an outright 'fraud on the court', intended to subvert the

> appellate process on [petitioner's] consolidated appeals. Unless immediately withdrawn, it reinforces this Court's mandatory disciplinary responsibilities pursuant to Canon 3D of the Code of Judicial Conduct for the District of Columbia Courts to sanction the U.S. Attorney and refer him for disciplinary and criminal investigation and prosecution."

Calendaring of Appeals & Denial of Petitioner's "Motion" for Oral Argument

Nearly 5-1/2 months later, the Court placed petitioner's appeals on the summary calendar for October 17, 2006, thereby requiring her to make a written request for oral argument.

Petitioner did so in a letter which also requested information as to why her appeals had not been placed on the regular calendar, where oral argument was automatic, and the names of the judges involved in such calendaring decision.

By a September 15, 2006 order signed by the Court's Clerk "on behalf of the merits division assigned to consider this matter" [A-xxx], petitioner's unopposed request for oral argument – which was deemed a "motion" – was denied. No reasons were given, nor other information provided.

Petitioner's October 16, 2006 Letter/Motion for Disqualification, Disclosure, Transfer

Not until October 12, 2006 did the Court release the names of the "merits division assigned": Judges Frank Q. Nebeker, Noel Anketell Kramer, and Vanessa Ruiz. Immediately, petitioner informed the Court's Chief Deputy Clerk that Judges Nebeker and Kramer were absolutely disqualified and should have *sua sponte* declined to sit on the appeals. In response to petitioner's inquiry as to the proper procedure for securing the

panel's disqualification, the Chief Deputy Clerk stated she was unaware of any procedure.

Petitioner thereupon addressed an October 16, 2006 letter to Chief Judge Washington and the three-judge panel, requesting the panel's disqualification for demonstrated actual bias and interest in the outcome of her four appellate issues. She stated that absent its disqualification, the duty of each judge was to address the specific facts set forth by her letter pertaining to their disqualification, both as to themselves and their judicial brethren of which they had knowledge. In that connection, petitioner expressly called upon them to disclose their knowledge of the "breathtaking extrajudicial fact" of which she only just become aware – and then by accident: that Judge Reid's twin brother was a sitting judge on the New York Court of Appeals and had participated with Judge Wesley in the corruption about which petitioner had requested to testify and for which she was arrested for "disruption of Congress". Petitioner asserted that such was sufficient in and of itself to have motivated Judge Reid's lawless conduct and to have influenced their own.

The U.S. Attorney interposed no opposition.

The Appellate Panel's December 20, 2006 Memorandum Opinion and Judgment & Petitioner's Petition for Rehearing, Rehearing *En Banc*, Etc.

On December 20, 2006, Judges Ruiz, Kramer, and Nebeker issued their Memorandum Opinion and Judgment [A-xxx] – to which petitioner responded by a January 2, 2007 petition for rehearing and rehearing *en banc*, joined with a motion to vacate it for fraud and lack of jurisdiction, disqualification, disclosure, and transfer [A-xxx]. Describing the 3-1/2 page Opinion and Judgment as "a judicial fraud, being insupportable factually, legally, and knowingly so", the petition stated:

"It affirms [petitioner's] conviction and sentence for 'disruption of Congress' by materially falsifying her four appellate issues[fn] and then disposes of each by false factual and legal assertions that are completely conclusory and which ignore ALL the contrary specific facts, law and legal argument she presented, because they are dispositive of her rights. This is accompanied by the panel's own fictionalized account of the 'disruption of Congress' incident – for which it provides no record reference and whose fraudulence is verifiable from the videotape of the incident, in the possession of the [DC Court of Appeals]. The dispositive nature of the videotape in establishing that what [petitioner] did at the U.S. Senate Judiciary Committee's May 22, 2003 judicial confirmation hearing could not constitute 'disruption of Congress', *as a matter of law*, and that she was prosecuted on materially false and misleading prosecution documents – which any fair and impartial tribunal would have thrown out, 'on the papers' – was centrally presented by petitioner's appeal, but is concealed, without adjudication, by the Opinion and Judgment.

Such Opinion and Judgment, making NO claim that [petitioner] had due process either before Judge Holeman or before this Court in any of the prior related proceedings is the latest unconstitutional manifestation of the actual bias and interest of the panel, whose disqualification [petitioner] sought by an October 16, 2006 letter-application – the existence of which the Opinion and Judgment also conceals, without adjudication."

The U.S. Attorney interposed no opposition.

By unsigned order dated March 20, 2007 [A-xxx], Judges Ruiz, Kramer, and Nebeker denied the unopposed rehearing petition, without reasons. The same order also

denied the petition for rehearing *en banc* – there being no D.C. Court of Appeals judges who had called for a vote on it. A single judge – Judge Fisher – was noted as having "recused himself from these cases". Not noted by the order was petitioner's motion for disqualification/disclosure by the Court's other judges, transfer, as well as vacatur of the Opinion and Judgment for fraud and lack of jurisdiction.

REASONS FOR GRANTING THE WRIT

This Court has 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 dimension, 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 an Application 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 John Henry Wigmore, 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: 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 that again and again during 2-1/2 years of proceedings, D.C. Court of Appeals judges wilfully concealed and failed to adjudicate petitioner's requests for their disqualification, for disclosure, and for change of venue. Such conduct suffices to disqualify them from the appeals, apart from the factual and legal baselessness of the orders they were issuing, meeting the "impossibility of fair judgment" standard of *Liteky*.

Tellingly, the Memorandum Opinion and Judgment conceals that petitioner's second appellate issue asked whether a record showing "a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism by the government" would entitle her to transfer to federal court under D.C. Code §10-503.18 [A-xxx] – a record specified by her brief as including the proceedings in the D.C. Court of Appeals [A-xxx].

The Memorandum Opinion & Judgment Further Manifests the D.C. Court of Appeals' Actual Bias and Interest in that 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 was a further manifestation of its actual bias [A-xxx]. Such Opinion and Judgment, shown 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).

This Court's Supervisory and Ethical Duties Require Action When a Petition for Certiorari Presents 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 Judicial Conduct for U.S. Judges, to which this Court's Justices look for guidance, National 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's dishonest adjudication of the four appellate issues petitioner presented – each of constitutional dimension and public importance.

As illustrative, 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 whose knowing falsity are instantly apparent from her appellant's brief [A-xxx]. Indeed, based on the brief, any fair and impartial tribunal would have been compelled to strike the statute as unconstitutional in both respects. Such must now be done by this Court.

ELENA RUTH SASSOWER