

COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

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

Petition for *En Banc* Review
of Consolidated Appeals
Pursuant to Rule 35(b),
Disqualification & Disclosure

ELENA RUTH SASSOWER,

Appellant.

v.

UNITED STATES OF AMERICA,

Appellee.

COUNTY OF WESTCHESTER)
STATE OF NEW YORK) ss:

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

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

2. Pursuant to Rule 35(b), I bring this petition for initial *en banc* review of these consolidated appeals. Subdivision (1)(B) requires that I “begin with a statement that...the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated”.

3. My consolidated appeals present a succession of “far-reaching and substantive issues” as to which “this Court has the opportunity, if not the obligation, to make law.” This was so-stated at ¶4 of my June 28, 2005 procedural motion, which I filed on that date simultaneously with the filing of my appellate brief. The importance of the

four “Issues Presented for Review” identified by my brief was then concisely summarized by ¶¶5-8 of that motion.

4. Without reasons, a three-judge panel of this Court [Reid, Glickman, Pryor] denied my June 28, 2005 procedural motion by an unsigned order date-stamped July 14, 2005 – as to which, on July 28, 2005, I made a motion for reconsideration and other relief, including *en banc* review, & disqualification of/disclosure by the three judge panel.

5. Relevant to this petition are ¶¶20-22 of my July 28, 2005 reconsideration motion. As therein set forth:

“20. As stated at ¶4 of my June 28, 2005 motion – without dispute from the U.S. Attorney – the issues presented by my brief are ‘far-reaching and substantive’, giving the Court ‘the opportunity, if not the obligation, to make law’. These issues are particularized at ¶¶5-8 – again without dispute from the U.S. Attorney.

21. Any one of these issues – and assuredly the first – present ‘questions of exceptional importance’, for which *en banc* hearing of these consolidated appeals would be appropriate pursuant to Rule 35.

22. Pursuant to Rule 35(b), I may bring a petition for hearing *en banc*, prefaced with a statement that ‘the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated.’ It is my intention to promptly do so, resting on the recitation of ¶¶4-8 of my June 28, 2005 motion, which I believe sufficient for such purpose.”

6. Consistent therewith and in the interest of judicial economy, I refer the Court to the unchallenged recitation in ¶¶4-8 of my procedural motion, which I incorporate by reference as if fully set forth herein. The Court has already been furnished with the requisite original and 9 copies, which I request be read *en banc* in support of this petition.

7. As to ¶8 of my procedural motion, identifying that Professor Andrew Horwitz, author of “*Coercion, Pop-Psychology and Judicial Moralizing: Some Proposals for Curbing Judicial Abuse of Probation Conditions*”, 57 Washington and Lee Law

Review 75 (2000), would be filing an *amicus* brief in support of my fourth appellate issue as to the inappropriateness and unconstitutionality of the probation terms imposed upon me by Judge Holeman, I take the liberty of sharing an extract from Professor Horwitz' draft brief:

“A review of local case law suggests that this Court has never had the opportunity to review a direct challenge to a condition of probation that was grounded on the argument that the condition violated the defendant's fundamental constitutional rights. While the law in the District of Columbia is not particularly well developed in the area of permissible probation conditions generally,^{fn.} this Court has established certain fundamental guidelines with respect to the limitations on conditions that may be lawfully imposed. As it relates to the scope of constitutional protection afforded to a probationer, however, the issue presented here seems to be one of first impression for this Court.”

8. If Professor Horwitz' research is correct, my fourth appellate issue joins my other three appellate issues in being “of first impression for this Court”, as summarized by ¶¶5-7 of my procedural motion and more fully developed in the corresponding pages of my appellant's brief.

9. Should this Court's judges be unable to be fair and impartial in addressing this petition for *en banc* review, including for the reasons reflected by my reconsideration motion and, in particular, by its extensive footnote 2, their duty is to disqualify themselves pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts.

^{fn.} The paucity of local case law on the scope of permissible probation conditions is revealed by the lower court documents filed with respect to this issue. See, e.g., Trial Court Order dated November 23, 2004, reproduced in Appellant's Appendix at A-10-15 (citing only one relevant District of Columbia case); Government's Opposition to Defendant's Motion to Correct an Illegal Sentence, reproduced in Appellant's Appendix at A-1756-64 (citing only two relevant District of Columbia cases). None of these cases involved a defendant's claim that his or her constitutional rights had been violated. These cases will be analyzed in a subsequent section of this brief. See infra at ____.”


As to those judges not disqualifying themselves, their further duty is to make appropriate disclosure, pursuant to Canon 3F of the Code of Judicial Conduct for the District of Columbia Courts, including as to the matters identified at ¶25 of my reconsideration motion.

8. Should the Court wish me to further particularize the grounds upon which I believe disqualification of, and disclosure by, individual judges is warranted, I will promptly do so to ensure that the Court meets its duty to confront the exceptionally-important legal and constitutional issues presented by my appellant's brief.



ELENA RUTH SASSOWER

Sworn to before me this
4th day of August 2005



Notary Public

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