

No. 07-228

IN THE SUPREME COURT OF THE UNITED STATES
October Term 2006

ELENA RUTH SASSOWER,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

MOTION TO "REQUEST", IF NOT ORDER,
THE UNITED STATES SOLICITOR GENERAL TO FILE
THE GOVERNMENT'S RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court
of the United States and Circuit Justice for the District of Columbia:

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

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

1. I am the innocent petitioner *pro se* in the "disruption of Congress" case herein in which the Government is a party, represented before this Court by the United States Solicitor General, substituting for the United States Attorney for the District of Columbia.

2. I bring this motion to request that the Chief Justice, as the Circuit Justice for the District of Columbia, "request" the Solicitor General to file the Government's response to my Petition for a Writ of Certiorari to the District of Columbia Court of Appeals, or,

alternatively, that the Chief Justice present this motion to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General to file the Government's response to my Petition.¹ Pursuant to this Court's Rule 15.1, it appears that such "request" may take the form of an order, thereby mandating the Solicitor General's compliance.

3. My Petition for a Writ of Certiorari was docketed on August 21, 2007 (Exhibit A) and is presently calendared for conference on September 24, 2007.

4. Notwithstanding the Court's Rule 15.3 gives a respondent 30 days from the docketing of a petition for a writ of certiorari to file a brief in opposition – thereby affording the Solicitor General until September 20, 2007 – he took a mere six days from the docketing of my 36-page Petition² and its substantiating 310-page appendix to notify the Court, on August 27, 2007, that:

"The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court." (Exhibit B, underlining added).

5. Unless the Solicitor General is to be exempted from mandatory ethical rules of professional responsibility applicable to every lawyer, let alone exempted from his transcendent responsibilities as a Government lawyer, indeed, one in highest authority, this Court cannot accept such waiver unaccompanied, as it is, by a statement of the Solicitor General that he is bringing the fact-specific, documentary evidence of judicial and prosecutorial corruption that is the subject of my Petition to the attention of "appropriate

¹ In such event, I am herewith filing this original motion with 10 copies pursuant to this Court's Rule 21.2c

² I take this opportunity to thank the Chief Justice for granting my motion to exceed page limits, as likewise my motion for an extension of time to file my Petition – and abjectly apologize for the typographical error on the Petition's first page, in the name of the Chief Justice, no less, whose middle initial should have been G, not D.

professional authority”. Quite simply, the Solicitor General's waiver herein violates his mandatory obligations under Rule 8.3 of the District of Columbia’s Rules of Professional Conduct and Rule 8.3 of the American Bar Association's Model Rules of Professional Conduct, which it mirrors, as well as his duty as the Government's representative before this Court.

5. Rule 8.3 of D.C.'s Rules of Professional Conduct, entitled “Reporting Professional Misconduct”, states, in pertinent part:

“(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge’s fitness for office shall inform the appropriate authority.”

6. Additionally pertinent, Rule 3.8 of D.C.'s Code of Professional Conduct, entitled “Special Responsibilities of a Prosecutor” – the commentary to which begins “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate...”. It, too, mirrors Rule 3.8 of the American Bar Association's Model Rules of Professional Conduct and its commentary.

7. This Court has articulated the U.S. Attorney's role in our justice system – a role assumed by the Solicitor General when he takes over for the U.S. Attorneys in advocacy before this Court:

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer.", *Young v. U.S. ex rel Vuitton et Fils S.A.*, 481

U.S. 787, 803 (1987), quoting *Berger v. United States*, 295 U.S. 78, 88 (1935).

8. In *Brady v. Maryland*, 373 U.S. 83, 88 (1963), this Court quoted former Solicitor General Simon E. Sobeloff as to the Solicitor General's role:

"The Solicitor General is not a neutral, he is an advocate; but an advocate for a client whose business is not merely to prevail in the instant case. My client's chief business is not to achieve victory but to establish justice. We are constantly reminded of the now classic words penned by one of my illustrious predecessors, Frederick William Lehmann, that the Government wins its point when justice is done in its courts."³

9. This Court's Rule 15.2 is very specific as to the purpose of a brief in opposition to a petition for a writ of certiorari:

"In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition..." (underlining added)

10. The Solicitor General is not exempted from counsel's "obligation to the Court to point out any perceived misstatement" material to its grant of certiorari – which, had there been any, he could easily have ascertained from the U.S. Attorney for the District of Columbia for whom he here speaks⁴. Consequently, his waiver of the Government's

³ Such appears at footnote 2 of *Brady v. Maryland*, annotating the text:

"An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: 'The United States wins its point whenever justice is done its citizens in the courts.'"

⁴ This Court's rules required me to serve the Solicitor General with three copies of the Petition – presumably one of which he forwarded for review and comment to the U.S. Attorney for the District of Columbia. This would be consistent with procedure outlined by the Chief Justice's article "*Riding the Coattails of the Solicitor General*" (*Legal Times*, March 29, 1993) in cases where the Government is not a party and the Court invites his response to a cert petition:

“right to file a response” (Exhibit B) must be deemed a concession that the U.S. Attorney for the District of Columbia does not deny or dispute the Petition's factual and legal showing as to the state of the record and the issues before the Court by reason thereof. Yet, such record, being one of pervasive judicial lawlessness by the District of Columbia Court of Appeals, covering up pervasive judicial lawlessness in the District of Columbia Superior Court and pervasive prosecutorial misconduct before both courts by the U.S. Attorney for the District of Columbia⁵, must necessarily trigger – if the Solicitor General's “business” truly is to “establish justice” – either an affirmative endorsement for this Court's granting of the Petition or notification to the Court that he is referring the Petition to disciplinary and criminal authorities for investigation and prosecution of the involved D.C. judges and U.S. Attorney staff. Instead, the Solicitor General has proffered his one-sentence waiver of the Government's “right to file a response”.

11. There is no reason for the Court not to “request”, if not order, the Solicitor General to file a brief as to the Government’s response to the judicial and prosecutorial corruption particularized by my Petition and substantiated by the appendix documents. Doing so is incumbent upon any court committed to ensuring the integrity of the most

“The procedure of the Office of the Solicitor General in responding (which it always does) is to request a draft from the pertinent Justice Department division in 30 days and to try to meet an informal, internal deadline for responding to the Court in 60 days.”

At bar, “the pertinent Justice Department division” would be the U.S. Attorney for the District of Columbia.

⁵ Prosecutorial misconduct of the U.S. Attorney for the District of Columbia was the subject of reprimand and warning by the United States Court of Appeals for the District of Columbia Circuit in its decision in *United States v. Williams*, 952 F.2d 418 (1991). The U.S. Attorney’s described misconduct of misstating the record in his respondent’s brief is infinitesimal compared to my case where, *inter alia*, the U.S. Attorney's brief was a demonstrated “fraud on the court” for which I sought sanctions and his referral to disciplinary and criminal authorities [Petition, at p. 30].

important institutional players in the criminal justice system: judges and prosecutors. Such is consistent with the “appropriate action” called for by Canon 3B of the Code of Conduct for United States Judges⁶ and would set a role model example for emulation by other courts. As set forth in the powerful – and troubling – law review article “*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)):

“If the Supreme Court started the process of openly commenting on ethical issues inherent in their cases, other courts would follow. Without leadership or a role model there will be no movement.” at p. 116.

12. Even where the Government is not a party, the Court may request the views of the Solicitor General “At the certiorari stage, prior to deciding whether to grant review”. Such was stated by the Chief Justice, formerly Principal Deputy Solicitor General (1989-1993), in his article “*Riding the Coattails of the Solicitor General*” (Legal Times, March 29, 1993). The article identifies that “Any one justice can precipitate an invitation” for the Solicitor General’s views.

13. As the Chief Justice’s article highlights the considerable weight the Court gives to the Solicitor General’s views, it underscores the prejudice to me by the Solicitor General, whose coattails I was entitled to ride by his response to my Petition’s “Questions Presented for Review” and argument with respect thereto (Exhibit C). Inasmuch as the Government is here a party, the Solicitor General’s response is now rightfully compelled

⁶ As set forth by my Petition in support of its fourth and culminating question “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?” (Exhibit C, p. 36).

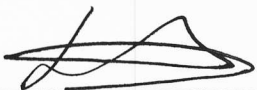
“Codes of judicial conduct uniformly require that judges ‘take appropriate action’ when they receive ‘reliable evidence’ of judicial misconduct. Among these, the Code of Conduct for United States Judges, to which this Court’s Justices look for guidance, Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993).”

by order of the Court. Such will enable the Justices to better recognize their obligations in face of the flagrant injustice done by the District of Columbia courts not only to me, but to the issues of constitutional magnitude and public importance that I brought for their adjudication and which are now before this Court.

WHEREFORE, petitioner respectfully prays that the Chief Justice, or, alternatively, the Associate Justices and/or the Court "request", if not order, the United States Solicitor General to file the Government's response to her Petition for a Writ of Certiorari to the District of Columbia Court of Appeals.


ELENA RUTH SASSOWER

Sworn to before me this
17th of September 2007



Notary Public


LAURA MARJI
Notary Public, State of New York
No. 01MA6049278
Qualified in Westchester County
Commission Expires Oct. 10, 2010 

TABLE OF EXHIBITS

- Exhibit A: Supreme Court's August 21, 2007 letter to Petitioner, with enclosed form
- Exhibit B: U.S. Solicitor General's August 27, 2007 waiver of the Government's "right to file a response"
- Exhibit C: Pages from Petition for Writ of Certiorari
pp. i-iii: "Questions Presented"
pp. 2-3: "Statement of the Case"
pp. 34-36: "Reasons for Granting the Writ"

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TO PETITION FOR A WRIT OF CERTIORARI**

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