No. 07-228

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 DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR REHEARING

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APPENDIX

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* RA- stands for rehearing appendix, thereby differentiating it from the appendix to the petition for a writ of certiorari, which is A-

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PETITION FOR REHEARING

I

The Official Misconduct of the Court's Clerk & His Staff Warranting Recall/Vacatur

This petition for rehearing of the Court's October 1, 2007 order denying the petition for a writ of certiorari [RA-1] is necessitated by the official misconduct of the Court's Clerk and his staff. In wilful violation of this Court's rules, they have refused to file and transmit to Chief Justice Roberts, as Circuit Justice for the District of Columbia, and, upon his determination, to the Court, two motions dispositive of the Court's mandatory supervisory and ethical duties with respect to the cert petition.

These two dispositive motions, each pursuant to this Court's Rule 22.1 and further invoking Rule 21, are:

> (1) petitioner's September 17, 2007 motion [RA-2] to compel the United States Solicitor General to file the Government's response to her cert petition; and
>
> (2) petitioner's two-branch October 9, 2007 motion [RA-24] for: (a) clarification of the Chief Justice's April 26, 2007 opinion in *Boumediene, et al. v. George W. Bush, et al.*, 127 S.Ct. 1725, which the Clerk's Office represented would be the basis for its rejecting petitioner's motion for an extension of time to file a petition for rehearing; and (b) recall/vacatur of the Court's October 1, 2007

order and adjudication of petitioner's September 17, 2007 motion.

The Clerk's Office has further concealed the very existence of these motions by wilfully failing to record their receipt and disposition on its computerized docket of the case [RA-45][1], thereby creating a false case history.

The Clerk has additionally prevented the Chief Justice from administratively addressing his misconduct by apparently not transmitting to the Chief Justice, as petitioner requested [RA-53], her separate October 9, 2007 letter-complaint [RA-55] and its supporting proof, *to wit*, her unfiled and undocketed October 9, 2007 motion – and its physically annexed unfiled and undocketed September 17, 2007 motion.

The Clerk and his staff have refused to respond to petitioner's telephone inquiries as to the status of her October 9, 2007 motion and its accompanying alternative letter-complaint to the Chief Justice. Nor have they sent her any written communication about them [RA-60].[2] Petitioner has, therefore, been burdened with perfecting this petition for rehearing so as not to forfeit her rights.

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[1] There has been no change in the docket since the Court's October 1, 2007 order.

[2] Presumably the original and 10 copies of the October 9, 2007 motion, delivered by the U.S. postal service to the Court on October 10, 2007 and which the Court's Office of Legal Counsel thereafter stated to petitioner were being "processed" by the Clerk's Office [RA-63], are somewhere in the Clerk's Office or the courthouse.

According to the Court's Office of Legal Counsel, the Court has "no formal procedures" for complaints against the Clerk and his staff. However, it has informed petitioner that she could send a complaint directly to the Chief Justice at the courthouse. She has done this [RA-57], simultaneous with her filing of this rehearing petition.

Canon 3B(2) of the Code of Conduct for United States Judges – to which this Court's Justices look for guidance[3] and which binds all other federal judges – states:

> "A judge should require court officials, staff, and others subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge."[4]

Pursuant to Rule 28 U.S.C. §671(a):

> "The clerk shall be subject to removal by the Court. Deputy clerks shall be subject to removal by the clerk with the

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[3] Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993).

[4] Similarly, Canon 3C(2) of the American Bar Association's Model Code of Judicial Conduct states:

> "A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties."

Such Canon has been adopted and replicated in rules binding state and District of Columbia judges.

> approval of the Court or the Chief Justice of the United States".

The Chief Justice's administrative determination of petitioner's complaint against the Clerk and his staff, including whether its disposition should be by the Court, takes precedence over the Court's vote on this rehearing petition since a finding that petitioner's September 17, 2007 motion [RA-2] complied with the Court's rules, entitling her to its filing and transmittal to the Chief Justice prior to entry of the Court's October 1, 2007 order denying her cert petition [RA-1], would warrant recall/vacatur of the order. Such would moot this rehearing petition.

Reinforcing the appropriateness of recall/vacatur of the October 1, 2007 order – whether by the Chief Justice or the Court – is that the Clerk's misconduct was not "harmless". Petitioner's September 17, 2007 motion entitled her to the relief sought: a "request", if not order, for the Solicitor General's response to the cert petition. This, by its showing that the Court cannot accept the Solicitor General's waiver of the Government's response to the cert petition [RA-14] as it violates his mandatory obligations under ethical rules of professional responsibility, as well as his duty before the Court – unaccompanied, as it is, by any notification that he is bringing the fact-specific, documentary evidence of judicial and prosecutorial corruption that is the subject of the cert petition [RA-15-23] to the attention of disciplinary and criminal authorities, or by any statement affirmatively endorsing the Court's granting of cert.

The September 17, 2007 motion highlighted the importance the Court attaches to the Solicitor

General's views by citing the Chief Justice's own article, "*Riding the Coattails of the Solicitor General*", (Legal Times, March 29, 1993) [RA-9]. It argued that the Solicitor General's response to the cert petition is threshold to the Court's proper consideration of the petition – especially to recognition of its own mandatory obligations embodied in the petition's fourth and culminating "Question Presented" [RA-15-17]:

> "4. Does this Court recognize supervisory and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable 'reliable evidence' of judicial misconduct and corruption?
>
> (1) to make referrals to disciplinary and criminal authorities
>
> (2) to adjudicate the appellate issues, subverted by the underlying judicial misconduct and corruption, where those issues are of constitutional magnitude and public importance..."

As for petitioner's October 9, 2007 motion [RA-24], it detailed the Clerk's misconduct in connection with her September 17, 2007 motion, showing that the Clerk's Office had no legal basis for rejecting the motion [RA-38] and that the Clerk had refused to respond to petitioner's September 21, 2007 letter on the subject [RA-46], whose serious and substantial questions included whether other petitioners in criminal cases had their motions to compel the Solicitor General's response similarly rejected [RA-50]. The motion closed as follows:

"the possibility that the Clerk's Office is functioning in this case – and in other criminal cases – to 'protect' the Government from accountability by blocking the Court from deciding motions to compel the Government's response frustrates the Justices from appropriate consideration of cases such as this where the criminal justice system has been hijacked for the ulterior political and personal purposes which [the cert] petition reflects.

32. Criminal defendants who make the long, arduous, and expensive journey to this Court in vindication of their lives, liberty, and property must not be denied the Government's response to particularized charges of collusive conduct between judges and prosecutors, as here at issue. Compelling such responses would assist the Court so that, even in denying cert review, it may advance justice by discharging its supervisory and ethical duties to refer 'reliable evidence' of judicial and prosecutorial corruption and misconduct to disciplinary and criminal authorities, as Canon 3B(3) of the Code of Conduct for United States Judges requires.

33. Examination of [petitioner's] September 17, 2007 motion – and [the] cert petition on which it is based – shows they are dispositive of the Court's supervisory and ethical duties both as to the motion and the petition." [RA-41].

II

Upholding Judicial Independence & its Meaning for The First Amendment and The Rule of Law

On September 19, 2007 – the very day the Clerk's Office was returning to petitioner her September 17, 2007 motion [RA-52] – Chief Justice Roberts was speaking at Syracuse University. The occasion was the dedication of a new building at its communications school, the façade of which is wrapped in the 45 words of the First Amendment. Much of the Chief Justice's speech focused on the importance of an independent judiciary, without which the First Amendment cannot "ensure[] that the voice of the real non-conformist, the upstart, the underdog, the unfashionable can also be heard":

> "'Do not think for a moment that those words alone will protect you... Without an independent judiciary to give substance to the constitutional text as law, the words are nothing but empty promises. Our Framers understood that constitutional guarantees amount to little without courts with the power to interpret them fairly and impartially...free from political pressure and outside influence."[5]

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[5] The Chief Justice's September 19, 2007 speech was broadcast nationally on October 20, 2007 by c-span's "America & the Courts" program and is accessible from its website, www.c-span.org.

This case bears out the Chief Justice's words. At bar, political speech that is at the very heart of the First Amendment – a citizen's respectful request to testify in opposition to a federal judicial nominee at his public Senate Judiciary Committee confirmation hearing – was held to be "disruption of Congress" by courts dependent on Congress and so compromised by that dependency and other conflicting interests that they utterly trashed the rule of law.

The entirety of the 36-page petition for a writ of certiorari was devoted to showing how the District of Columbia judiciary – both its Court of Appeals and trial level Superior Court judges – corrupted the judicial process to "protect" Congress and others. This, by wilfully and deliberately failing to confront their disqualifying relationships, interests, and demonstrated actual bias, which petitioner had set forth again and again in disqualification/disclosure motions, whose very existence and content the judges concealed and falsified in orders and decisions so factually and legally baseless as to be 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) – each one reinforcing the "impossibility of fair judgment" standard for disqualification for pervasive actual bias, articulated by this Court in *Liteky v. United States*, 510 U.S. 540 (1994). Culminating this abomination: the D.C. Court of Appeals' Memorandum Opinion and Judgment [A-13].

The fraudulence of that Memorandum Opinion and Judgment is detailed by petitioner's petition to the D.C. Court of Appeals for rehearing and rehearing *en*

banc, joined with a motion to vacate it for fraud and lack of jurisdiction, and for disqualification, disclosure, and transfer [A-297-310]. Such highlighted that the Memorandum Opinion and Judgment, after concealing, without adjudication, petitioner's motion to disqualify the appellate panel and D.C. Court of Appeals [A-282-296], not only covered up the pervasive actual bias of the D.C. Superior Court trial judge, none of whose rulings it examined [A-14-16], but falsified the "disruption of Congress" incident [A-14] – *as verifiable from the videotape and transcript of the Senate Judiciary Committee hearing* [A-178-182][6] – and falsified petitioner's First Amendment challenge to the constitutionality of the disruption of Congress statute [A-17-18] – *as verifiable from her appeal brief* [A-240-251]. This, to uphold a conviction and statute that would otherwise have had to be overturned on First Amendment grounds.

Nor was petitioner's challenge to the disruption of Congress statute, *as written and as applied* [A-240-251], her only First Amendment issue before the D.C. Court of Appeals. She had also challenged, including on First Amendment grounds, the trial judge's probation terms for suspending execution of the 92-day jail sentence he had imposed [A-252-256][7].

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[6] "Petitioner sought to lodge a copy of the videotape with the Clerk's Office in support of [her] petition [for a writ of certiorari], but was told that such would be accepted only if the Court requests same..." [footnote 3 of cert petition]. Petitioner asks that the Court request the videotape or, at very least, that the Court request the Solicitor General's response to her analysis of it and the transcript [A-179-182].

[7] Likewise, the First Amendment was focal in the *amicus*

Among these probation terms:

> (1) that she write letters of apology to the Senators and federal judicial nominee, expressing remorse for "any inconvenience" caused by her "disruption of Congress" [A-200-201];
>
> (2) that she have "no verbal, written, telephonic, electronic, physical, or other contact" with those Senators and their staff (albeit some relaxation of the ban with respect to her home-state Senators – Senator Hillary Rodham Clinton and Charles Schumer) [A-200];
>
> (3) that she "stay-away" from the entire Capitol complex of all Capitol buildings and grounds [A-199-200]; and
>
> (4) that she submit to the trial judge daily time records, accurate to 1/10-hour increments, of her work as coordinator of the Center for Judicial Accountability, Inc. (CJA) [A-198].

As chronicled by the cert petition [pp. 14-20], the trial judge vindictively retaliated against petitioner

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curiae brief of Professor Andrew Horwitz, an expert on the judicial use and abuse of probation conditions in criminal sentencing and author of "*Coercion, Pop-Psychology and Judicial Moralizing: Some Proposals for Curbing Judicial Abuse of Probation Conditions*", 57 Washington & Lee Law Review 75 (2000), which he filed in the D.C. Court of Appeals in support of petitioner's consolidated appeals.

for exercising her right to decline his probation terms by immediately doubling the 92-day jail sentence to six months and incarcerating her "forthwith" [A-201-203]. The D.C. Court of Appeals then evaded petitioner's constitutional challenge to the probation terms and six-month sentence. It kept her jailed for six-months without addressing any of the facts, law, and legal argument she had presented in motions for release pending appeal, including a motion and expedited appeal to prevent mootness of that appellate issue. Its Memorandum Opinion and Judgment then baldly purported that since she had served her six-month sentence, the appellate issue was moot [A-18].

It may never be known whether the Chief Justice's September 19, 2007 speech, linking judicial independence with the vitality of the First Amendment and the rule of law, was influenced by this case, whose cert petition was distributed to the Justices on August 29, 2007 [RA-45] – and which had been the subject of two prior successful motions to the Chief Justice, as Circuit Justice, annexing the petition for rehearing and rehearing *en banc* and a draft of the cert petition. One thing is certain, however. The cert petition's chronicling of self-interested, pervasively biased and corrupt judicial conduct by two levels of the D.C. judiciary offers a decisive gauge of the Chief Justice's true commitment, and that of the Associate Justices, to judicial independence, the First Amendment, and the rule of law.

On rehearing, that commitment must be manifested by the Court's discharge of its supervisory and ethical duties by the granting of certiorari and

referrals of the D.C. judges and collusive federal prosecutors to disciplinary and criminal authorities. Only this will show that the Court will keep the judiciary's own house in order, without interference of the other governmental branches – a prerequisite for judicial independence.

CONCLUSION

Both sections of this petition for rehearing are about self-policing. The first section: the Court's policing of its own Clerk and his staff, operating in wilful and deliberate disregard of published Court rules and basic standards of professionalism. The second section: the Court's policing of the District of Columbia's highest court, whose wilful and deliberate violations of constitutional, legal, and ethical standards are so total as to compel this Court's appellate and supervisory jurisdiction to restore some semblance of the rule of law to that court – and to the comparably lawless D.C. Superior Court.

Neither relief is discretionary.

CERTIFICATE OF GOOD FAITH

I, ELENA RUTH SASSOWER, am the petitioner *pro se* herein and have written the foregoing petition for rehearing, which I do hereby affirm and declare conforms with the requirements of this Court's Rule 44.2 in that it is "limited to intervening circumstances of a substantial and controlling effect" and "presented in good faith and not for delay".

ELENA RUTH SASSOWER

Dated: October 26, 2007
White Plains, New York