

Friday, January 5, 2007

The Congressional disruption statute needs to go.

U.S. Capitol, by F. Malotau (available through Creative Commons Attribution ShareAlike 2.5) In January 2006, I filed an amicus brief on behalf of the District of Columbia National Lawyers Guild, supporting appellant Elena Sassower in *Sassower v. U.S.*, D.C. Court of Appeals Appel Nos. 04-CM-760 and 04-CO-1600. Ms. Sassower proceeded pro se at trial and on appeal for this prosecution where she was accused of violating an unconstitutionally vague and overbroad District of Columbia statute prohibiting disruption of Congressional sessions, hearings and deliberations. In this instance, Ms. Sassower was arrested by Capitol police (your tax dollars at work) after she said at the conclusion of a Senate Judiciary Committee hearing on judicial nominees: "Mr. Chairman, there's citizen opposition to Judge [] based on his documented corruption as a New York Court of Appeals judge. May I testify?" After being convicted, the Superior Court judge initially sentenced Ms. Sassower to a suspended sentence of just over three months, but changed the sentence to the maximum of six months incarceration after Ms. Sassower stated that she would not send the apology letters ordered by the judge, saying she was not remorseful and would not lie that she felt remorse. Unfortunately, the District of Columbia Court of Appeals affirmed Ms. Sassower's conviction. My amicus brief challenged the Constitutionality of the disruption of Congress law. However, the Court of Appeals asserted that the issue was not raised at the trial level, and, therefore, had not been preserved for appeal. The Court of Appeals made the mistake of proceeding to find that the statute is Constitutional on its face, without providing a Constitutional analysis of the statute beyond citing to two previous improvidently-reached Court of Appeals decisions. The Court of Appeals is empowered to overturn its own decisions, and my amicus brief urged the court to find the statute unconstitutionally vague and overbroad in violation of the First Amendment, particularly with reference to Supreme Court holdings concerning vague and overbroad restraints on free expression. Unfortunately, the District of Columbia Court of Appeals avoided ruling about the trial judge's imposition of six months of jail after Ms. Sassower declined to send apology letters, by saying that the issue was moot. While the issue may be moot as to Ms. Sassower, who has already served her sentence, it is an issue that likely will arise with future defendants who will have completed their sentences by the time their appeal is reviewed. As my amicus brief insists: "To uphold [Ms. Sassower's] conviction will be to drape the Senators who were present in the courtroom [I meant to say hearing room] in the cloaks of royalty at best, and the sinister protections of the Kremlin at worst. The Capitol, however, is the center of the federal democracy, and the elected senators have no right nor business to so cloak themselves." Hopefully the Court of Appeals will grant Ms. Sassower's petition to rehear the case en banc. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00