

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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: UNITED STATES OF AMERICA :
: Vs. : CR. 82-269-01-N
: EDWARD JOHN HASBROUCK :
: Defendant :
: :
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BEFORE: HON. DAVID S. NELSON,

District Judge

Federal Courthouse
Boston, Massachusetts
October 11, 1983

APPEARANCES:

FOR THE GOVERNMENT: ROBERT S. MUELLER, III, ESQ.

FOR THE DEFENDANT: EDWARD JOHN HASBROUCK, Pro Se,
and BENJAMIN HILLER, ESQ.

COURT REPORTER: MURIEL F. JAMES
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OCTOBER 11, 1983

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2
3 THE CLERK: CR 82-269, United States of America
4 versus Hasbrouck.

5 Would the parties identify themselves for the
6 record, please.

7 MR. MUELLER: Robert Mueller for the United
8 States. Good afternoon, your Honor.

9 THE COURT: Good afternoon.

10 MR. HASBROUCK: Edward Hasbrouck.

11 MR. HILLER : Benjamin Hiller, your Honor, stand
12 by counsel.

13 MR. WEADOCK: Thomas Weadock for the Probation
14 Department.

15 THE COURT: You have the probation records with
16 you?

17 MR. WEADOCK: Yes, your Honor.

18 THE COURT: I don't know what's in front of me
19 right now, except that there is indication, Mr. Hasbrouck,
20 that you are not abiding by my orders enunciated at the time
21 of the sentencing. And too, I got letters from you, and
22 others in your behalf, but that's not the issue in front of
23 me. The issue in front of me is whether or not you're going
24 to abide by the conventions that I set forth, you're going to
25 fulfill your probation special conditions, and if not, I take

1 one course of action. If so, then I'm going to have to be
2 assured.

3 Now, perhaps what comes across to me is that you have
4 decided, as nicely as you can put it, as conciliatory as you
5 can make it, that your notion of what is permissible,
6 acceptable, should be the notion that applies.

7 I try to make it clear that the law has been
8 determined as constitutional, that you had a trial in which
9 you did not prevail, that sentence was duly assessed upon
10 you. That it is not for the Court, for any judge whatsoever,
11 except to give up the robe and take a different position, to
12 do anything but to abide by the constituted law. And then
13 the only issue that's permitted to me to discuss and to
14 determine is whether or not you're abiding by the conditions
15 of your probation. And, if not, to take those steps
16 required.

17 Now, I obviously have tremendous amount of
18 discretion, but that discretion has limits, bounded, by what
19 is proscribed not only by the law but by commonsense. I made
20 it clear at the beginning that I'm not involved in your
21 political movement. I'm not involved in supporting it or
22 doing anything to disparage it as far as in the capacity as a
23 judge. So I'm looking at it straightforward as any other
24 offense being committed, and I take into consideration, and
25 that's why we are having a hearing, as to what I can deem as

1 the good will, the intention, the integrity of the person in
2 front of me. And the reason then that I suffer this length
3 of time, that I allow all of this to go on without having
4 done something earlier, is simply that I guess that I
5 concluded that you are acting out of good conscience. But it
6 is not what you think ought to be that's going to prevail in
7 this situation.

8 So, if you can speak to this proposition, then I'll
9 hear you. The idea is that I want to make it clear that you
10 will not, you will positively not be able to fulfill the
11 conditions of your probation doing what you want to do in the
12 way you wanted to do it. That is to further your cause, the
13 cause of all the others who have joined you in this
14 situation. That I wanted you to do what is required of all
15 of the other persons who are placed on probation and told to
16 do alternative service. And so your proposition by letters
17 and discussions with the probation officer, and so forth, are
18 not acceptable as a substitute for what was intended.

19 Now, if you make the argument that somehow or other
20 you're not, you know, you are doing these things, and
21 therefore the public good and all that sort of business, but
22 that's beside the point. Nothing that I have ordered was to
23 defer you from your political and social judgments and
24 commitments. It was to say that in addition to that, if you
25 wish to carry those out, you must do something rather more

1 specific than you think it is. And that it is not related to
2 that. When somebody else comes in, a laborer, a working
3 person appears before me, and I place him on probation and
4 place special conditions I do not allow that he can go to his
5 daily work and say that fulfills my commitment. I say beyond
6 your daily work, beyond putting food on the table, and
7 finding a house, a roof under which your children may live,
8 you must do something else, something out of your ordinary
9 responsibility. Otherwise, there is no one punishment, and
10 there is no recognition of the violation of the law. And
11 what others have done in cases like this, which I refused to
12 do because I did not think it required that, is they do it
13 simply. They take you away from your job, take you away from
14 our interests, and they place you in jail. And that
15 satisfies it. And you can bet that the very very large
16 majority of this community wouldn't at all be sorry if you
17 went away to jail. That doesn't concern me or interest me.
18 It is that I thought it was appropriate and valuable to you
19 and to the system, if in fact you were willing to carry out
20 those responsibilities aside from the things that you are
21 interested in and wished to do. That's the proposition. And
22 if I can't work that out, I do have that alternative, which
23 would be a disgraceful alternative in a sense, but the only
24 one open to me. So on that basis I would like to hear what
25 you have to say about it.

1 MR. HASBROUCK: Perhaps I could start by asking you
2 what you did mean me to do, because I tell you quite honestly
3 that I really don't know what was intended, and I was even
4 more confused, and I'm even more confused now, hearing --

5 THE COURT: All right. You won't be confused any
6 more. So I'll make it explicit. You will not be confused
7 any more.

8 The proposition that I made was, and it is certainly
9 a matter of transcribed record, is that you were not to be
10 able to be allowed to fulfill your requirements by what work
11 or hours you placed in the peace movement or the anti-
12 registration movement. That that would never satisfy the
13 terms.

14 What I did say was that you would sit down with what
15 I consider reasonable people in the probation department and
16 try to work out some alternative means of fulfilling the
17 requirements of that sentence, but that it had to be
18 acceptable to the probation department and ultimately to me.
19 And the only proposition that you put forth was that you --
20 I went back and started quoting your letters, and this one in
21 front of me particularly -- is what amounts to doing exactly
22 what I did not want to see occur.

23 So I made these possibilities. We have have work in
24 hospitals, we have work in other institutions, we have other
25 available options open for service in the number of hours

1 that I assessed that has nothing to do essentially with the
2 work you were involved in and upon which you have this
3 singular purpose. So, I left it at that option hoping that
4 what you would do and what the probation department would be
5 able to concur in is something in which you gave of yourself
6 to other needs, for other purposes, and that without any
7 attempt to interfere or to limit what efforts you want to
8 make on behalf of peace and registration, and that sort of
9 thing.

10 So it was not to prevent that from happening,
11 because putting you in jail would do that. So, if you can't
12 come up with an alternative, such as I have generally
13 described, I will then decide upon the specific thing and
14 tell you to perform that service or suffer the consequences.

15 Is that any more clear to you?

16 MS. HASBROUCK: It's clearer to me. I'm still not
17 sure if I can make you understand what I see as a direct
18 contradiction between your saying on the one hand that you
19 are not imposing your political judgment of the work I do,
20 and don't want to interfere with it, and saying on the other
21 hand that the only work which you will not approve, even were
22 it otherwise of community service, is that particular work.

23 THE COURT: Right.

24 MR. HASBROUCK: I have a problem with that.

25 THE COURT: Well, there's no more problem with it

1 because that's what I'm exactly saying. You will not be able
2 nor permitted to do that direct work as against the
3 conditions of your probation. You may, you may even be
4 encouraged to do whatever else you want to do in the line
5 that you were involved in, as long as it is not inconsistent
6 with the law.

7 MR. HASBROUCK: Whether you intend it or not, it's
8 clear to me that the effect of that has the effect of my
9 being on probation, has the effect of my being in prison, is
10 primarily to repress my political activity. So I understand
11 that that is probably not your intent but I hope you will
12 understand that that's the effect --

13 THE COURT: No, it's not the effect and it is
14 positively not my intent. But is not the effect that is
15 said without thinking. It is not the effect. You do not
16 have to spend, and you cannot spend 24 hours a day on your
17 own selfish reasons. They are selfish reasons, because you
18 yourself decide what is important and what is not important.
19 I'm telling you besides eating and sleeping and conversing
20 and socializing you shall do a thousand hours or whatever it
21 was that I prescribed, and/or you will then lose all
22 opportunity to do those things that you think are very
23 important. And if you think that's a good tradeoff for you,
24 to not be able to perform the things that you think are
25 important to the public, that's the way it has to be.

1 So what I'm saying is that somehow or other you must
2 find, I believe it's a thousand hours, you must find a
3 thousand hours of your life in a limited period of time to
4 satisfy other needs that I have assessed against you. It
5 should not be as it is to many other people, hundreds of
6 people that I placed on probation, that work for a living,
7 put in eight hours a day, take care of a family, all of that
8 sort of business, and they fulfilled their hours of
9 obligation to the alternative public service I'm suggesting
10 to you. And keep in mind, those are people that have
11 responsibilities far in excess of your present
12 responsibilities. So if you think they are incompatible,
13 then I'm going to resolve it by violating you on probation
14 and putting you in jail. And that's something I do not want
15 to do, and you know I don't want to do that. But that's the
16 issue.

17 MR. HASBROUCK: I know that you don't want to do
18 that. I don't want you to do that, very clearly. And what I
19 hear you saying is that you don't feel you have any choice.

20 I don't feel I have very much choice either. If the
21 definition of what you will approve as my community service
22 is work that I would not otherwise do, that I am doing only
23 because I am ordered to do it, that is slavery, that is the
24 same slavery as the draft, and I can no more submit to that
25 than submit to the draft.

1 THE COURT: You do this. Just do this. Keep
2 building and building, and building. Make it, just keep
3 building, so that you do leave no alternative. Just be
4 unreasonable in that respect and it will be easier for me.
5 Just keep building that. What you are saying is garbage. It
6 is not true. You have an opportunity to do much of what you
7 want to do and you think is in the public interest and still
8 be consistent to your conscience and still fulfill your
9 responsibility. And if that's not so you build a case, and I
10 don't care, I don't have no difficulty at all if you build it
11 that way. I will tell you that everything will cease and you
12 will go away to prison. I mean that. So just don't build
13 and build and build.

14 Now I called this, this is crazy for me to do this,
15 except that I say I have a certain concern, I want to make
16 sure, positively sure that no accord can be reached. I want
17 to make positively clear that it's worth my while, that it is
18 five o'clock, and everybody else is sitting around here, to
19 see if somehow or other you can at least feel better advised
20 to just take care of those hours. That's what I promised the
21 public you would have the responsibility of doing. That was
22 the alternative. The request made of me by the prosecution
23 was to put you in jail. And the letters I received -- thank
24 God my mother and father were married, so they are wrong
25 about that -- is to suggest that they knew exactly what to do

1 with the likes of you. I would like to know that you have
2 enough gumption to want to do those things that you think are
3 important to survival, to peace, to all those things that you
4 have in mind, but if you are going to do it with integrity
5 you have to take all the lumps with it. And if you think
6 that you can have smooth sailing and get all the things that
7 you want to do, and not have any respect at all for the law
8 and those requirements, then I don't have any problem with
9 that at all. I just say finished.

10 So I want you to think very carefully before you
11 build up that case which says I don't have any alternative.
12 Judge Nelson, you are doing the same thing, you are making me
13 join the draft, as it were. Well, that's garbage in my view.
14 As long as you think that's so and you build that case I have
15 no problem whatsoever, none whatsoever. I will violate you
16 on probation, and I will sentence you accordingly. And that
17 doesn't make any sense.

18 MR. HASBROUCK: I don't want to argue with
19 you --

20 THE COURT: Thank you.

21 MR. HASBROUCK: I once tried to read the Malean
22 Dialogue to a judge and he got tired of it and cut me off
23 about halfway through. But I feel at the moment about like
24 the Maleans arguing with the Athenians --

25 THE COURT: He let you go halfway through. I'm a

1 lot more irascible. Please, I'm telling you, if you have no
2 means or ability to tell me that you will fulfill your hours
3 as required and worked out with the probation department, I
4 am going to set this up for a violation of probation, and I'm
5 going to take those steps that my conscience requires me.
6 And if you do work out something, and it's reasonable, and
7 it's rather than my imposing it and telling you you must go
8 and shine my windows or something, then I'm going to support
9 it. And those are the alternatives.

10 I have read what Mrs. Samuels has written, I have
11 talked to her on the case, talked to other people in
12 probation, and I guess I have never seen any group be so
13 cooperative in attempting to work it out. A long time ago,
14 if it was some other people, it might well have been a
15 violation on my desk written out by the probation department
16 asking me to sign it. And thus far it has not been
17 forthcoming. I don't want to reach that stage. But I tell
18 you if you can't work it out, you can't work it out, and it
19 leaves me in an easy position. I will simply honor the
20 violation and I will incarcerate you. That's the
21 proposition.

22 So I want you to think about it, talk to probation,
23 and if it is not worked out in the next week I'm going to
24 then set it down for a violation of probation, and we'll go
25 on from there. That's the proposition.

1 Is there anything else I should --

2 MR. HASBROUCK: I think that it's pointless to
3 require me to pay this sort of tribute to the Government. I
4 think it's pointless to have me on probation. I think it
5 would be pointless to imprison me. I don't think any of this
6 is doing either of us any good, or is likely to. And I
7 really question a system that goes through such futility that
8 I think is damaging all of the people that are involved in
9 it.

10 THE COURT: I don't have any alternative.

11 MR. HASBROUCK: And I would much rather put this
12 whole thing aside and all of us go home.

13 THE COURT: It doesn't work that way. You had the
14 alternative before you were convicted, and now you don't have
15 the alternative and I don't have the alternative. I don't
16 have the alternative. And nothing that I'm doing, by the
17 way, violates my conscience. But what you ask me to do would
18 violate my conscience. That's a fact. It would violate my
19 conscience to know that after you were convicted and you were
20 ordered to do something, and I found in my own conscience and
21 my own accordance of the law that it was consistent with
22 that, I will not violate my conscience either by abrogating
23 my responsibility to see the fulfillment of it.

24 And you have got to understand, there has to be
25 something weird about me, that all of the effort and time

1 spent on this, I don't know if there were many others that
2 would have suffered this much time and effort to make sure
3 that something was well understood. You are no different.
4 You have no greater rights than everybody else who comes
5 before the Court, or any of the other defendants coming here,
6 and I want you always to appreciate that. So none of us many
7 place ourselves higher than where God and society and the law
8 have left us.

9 MR. HASBROUCK: Well, you are placing yourself
10 higher than I up on that throne backed with the force of
11 law. And I'm down here. That's the situation. And to speak
12 to me of placing myself higher, it seems absurd. I didn't
13 come to this Court beseeching, I was brought into it.

14 THE COURT: Right. Just think about it. And I'm
15 going to inquire in a week's time from the probation
16 department, and then I'm going to act on any violation that
17 comes. I am still allowing deferring to a reasonable
18 understanding of what it is that you are expected to do, and
19 when and how, and expecting you to fulfill that. And if not
20 I give you to other people who know how to contain you for
21 the requisite amount of time and exact justice in that
22 respect.

23 I don't know if you wanted to say something, but
24 we'll put you on the record the next time.

25 MR. MUELLER: Thank you.

[Adjourned]

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1 UNITED STATES OF AMERICA)
2 DISTRICT OF MASSACHUSETTS) ss.
3 CITY OF BOSTON)
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6 I, Muriel F. James, Official Reporter,
7 do hereby certify that at the time and place, aforesaid, I
8 reported stenographically the proceedings had in Criminal
9 Action No. 82-269-01-N, United States of America versus
10 Edward Hasbrouck, and that the foregoing transcript is a
11 correct transcript of the proceedings taken therein, to the
12 best of my skill and ability.

13 IN WITNESS WHEREOF I have hereunto set my hand this
14 30th day of November, 1984.
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20 Official Reporter
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