

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

DATE: September 10, 2003

[12 pages]

TO: Washington-Based Members of the Constitution Project: Courts Initiative
Alan Morrison, Director/Litigation Group--Public Citizen
Fax: 202-588-7795 E-mail: akallarakal@citizen.org
Elliot Minberg, Legal Director/General Counsel--People for the American Way
Fax: 202-293-2672 E-mail: eminberg@pfaw.org
Nan Aron, President--Alliance for Justice
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Morton H. Halperin, Board of Directors/Constitution Project: Courts Initiative
Director, Open Society Institute-Washington Office
Fax: 202-530-0128 E-mail: mhalperin@osi-dc.org

Geri Palast, Executive Director--Justice at Stake Campaign
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Common Cause--Justice at Stake "Campaign Partner"
Ed Davis, Vice President for State and Field Operations
Chellie Pingree, President
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edavis@commoncause.org

Enclosed is my letter of today's date to Barbara Reed, Director of the Constitution Project's Courts Initiative -- to which you are each indicated recipients. The letter requests to meet with you -- either collectively or individually -- on Wednesday, September 17th, or Thursday, September 18th, to discuss the primary source documents underlying CJA's enclosed June 16, 2003 memo -- and, based thereon, to develop an action agenda to advance the unimplemented non-partisan, good-government recommendations for reform of the federal judicial confirmation process, long ago made by The Ralph Nader Congress Project (1975), Common Cause (1986), and the Twentieth Century Fund Task Force on Judicial Selection (1988).

cc: Joan Claybrook, President, Public Citizen
Ralph Nader, Center for the Study of Responsive Law
Theresa Amato, President, Citizen Works
Barbara Reed, Director, Courts Initiative/Constitution Project

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Elena Ruth Sassower, Coordinator

By Fax: 202-721-5659 (11 pages)
By E-Mail: reed@constitutionproject.org

September 10, 2003

Barbara Reed, Director, Courts Initiative
The Constitution Project
1120 Nineteenth Street, N.W.
Washington, D.C. 20036

RE: (1) Unreturned phone calls;
(2) Request for a meeting on September 17th or 18th to discuss the primary source documents underlying CJA's June 16, 2003 memo – and, based thereon, to develop an action agenda to advance the *unimplemented non-partisan, good-government recommendations* for reform of the federal judicial confirmation process, long ago made by The Ralph Nader Congress Project (1975), Common Cause (1986), and the Twentieth Century Fund Task Force on Judicial Selection (1988).

Dear Ms. Reed:

This follows up the four phone messages I left on your voice mail: on August 12th, August 18th, August 21st, September 2nd – to which I have received no return call. These messages requested that you immediately transmit the appellate papers in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* -- which I sent you more than two years ago¹ -- to the Justice at Stake Campaign. Such requested transmittal was for purposes of providing the Justice at Stake Campaign with further evidence – beyond what is posted on our website, www.judgewatch.org – of the

¹ The appellate papers were sent to you to support a request for The Constitution Project's *amicus* and other assistance in the appeal. My transmitting coverletters, dated March 7, 2001 and May 11, 2001, are both posted on CJA's website [[see Correspondence: Organizations-Constitution Project](#)]. According to my notes of our subsequent July 12, 2001 phone conversation, your response to these papers was to tell me that The Constitution Project "doesn't get involved in individual cases" and was "reluctant to take a position". Your only suggestion as to where I could turn for assistance was "Texans for Public Justice" – which you never thereafter supplemented with any other suggestion – despite your having told me that you would "try to see whether [you could] dig up other groups involved in litigation".

meticulous, fully-documented nature of CJA's work on the twin issues of judicial

independence and accountability, earning us a place as a “Campaign Partner” – alongside The Constitution Project and such other “Campaign Partners” as the American Bar Association, American Judicature Society, Brennan Center for Justice, Common Cause, and Fund for Modern Courts.

Additionally – and because The Constitution Project’s summer 2003 “Broadside” announced that you had been invited by New York’s “newly-created Commission to Promote Public Confidence in Judicial Elections, chaired by initiative member and former Fordham Law School dean John D. Feerick” to “act as consultant and provide briefing materials” – my August 18th, August 21st, and September 2nd messages reminded you of CJA’s direct, first-hand experience with New York judicial elections, of which we have a wealth of primary-source materials. I stated that we were eager to provide these materials to the Commission, as well as to be interviewed and give testimony -- and expressly requested your assistance in making the appropriate arrangements.

As to both these matters, please let me hear from you without further delay.

On another subject, I take the opportunity of this letter to request that The Constitution Project build on its 1999 Task Force report, “*Justice Held Hostage: Politics and Selecting Federal Judges*” in Uncertain Justice. Identifying that “The nomination and confirmation of federal judges requires careful, on-the-merits deliberation by the executive and legislative branches” (at p. 13), the report made NO assessment of evidence that “careful, on-the-merits deliberation” for lower federal court nominees was NOT taking place. Specifically, I request that the Courts Initiative examine CJA’s latest primary source materials on federal judicial selection/confirmation, posted on our www.judgewatch.org homepage², so as to *independently* verify the corruption which The Constitution Project REFUSED to verify five years ago when, in its incarnation as Citizens for Independent Courts, we provided it with earlier primary source materials. Such earlier primary source materials confirmed and reinforced a state of affairs described in 1975 by The Ralph Nader Congress Project in the chapter “*Judicial Nominations: Whither ‘Advice and Consent’*” of its book The Judiciary Committees, described in 1986 by Common Cause in its study Assembly-Line Approval: ...Senate Confirmation of Federal Judges, and described in 1988 by the Twentieth Century Fund Task Force on Judicial Selection in its report Judicial Roulette – three important works

² Of course, CJA would be pleased to facilitate such examination by providing “hard copies” of these primary source materials – as well as of the underlying primary source materials, much of which are posted on other “pages” of CJA’s website.

which “*Justice Held Hostage*” did not even cite in footnotes³.

The need for *independent* verification of CJA’s latest primary source materials is exigent. The corruption of federal judicial selection/confirmation means that now, as five years ago, unfit judicial nominees are being seated for “lifetime” federal judgeships – with the potential to cause vast and irreparable injury to litigants and the public, unrestrained by safeguards⁴. It is also exigent for me, personally – since on May 22, 2003, that corruption led to my arrest and 21-hour incarceration on a criminal charge of “disruption of Congress”, for which I am now being prosecuted. What was my “crime”? At the conclusion of the Senate Judiciary Committee May 22nd “hearing” to confirm judicial nominees, I respectfully requested to testify in opposition to one nominee, based on documentary evidence of his corruption as a New York Court of Appeals judge. As the primary source materials posted on CJA’s homepage reflect, the nominee’s demonstrated on-the-bench corruption was covered-up by barebones bar association ratings, whose fraudulence the Senate Judiciary Committee refused to investigate.

United States of America v. Elena Ruth Sassower is the criminal case against me. It can be a powerful catalyst for advancing the *unimplemented* non-partisan, good-government recommendations for reform of the federal judicial confirmation process, long ago made by The Ralph Nader Congress Project, Common Cause, and the Twentieth Century Fund Task Force on Judicial Selection. Such is highlighted by my June 16, 2003 memo to Ralph Nader, Public Citizen, and Common Cause. Entitled “**Championing Basic Citizen Rights – the Vital Importance of Citizen Participation in Federal Judicial Selection**”, it requested their legal and other assistance. Although posted on CJA’s homepage, I enclose a copy to support my request herein for The Constitution Project’s legal and other assistance.

³ The omission of Judicial Roulette – the most comprehensive and recent of these three works – is all the more startling as Lloyd Cutler, Co-Chair of Citizens for Independent Courts – and now Co-Chair of The Constitution Project -- was a member of the Twentieth Century Fund Task Force on Judicial Selection which produced it.

⁴ The worthlessness of the “safeguards” as are purported to restrain federal judicial misconduct was long ago empirically demonstrated by CJA – most importantly by the federal civil rights action, *Doris L. Sassower v. Hon. Guy Mangano, et al.* Such perfect test case is not only featured as such on CJA’s website [see Test Cases: Federal (Mangano)], but was provided five years ago to “Citizens for Independent Courts” as “constituting a unique case study of judicial misconduct, BLAST[ing] to smithereens all the standard rhetoric about judicial independence and accountability” (CJA’s 12/2/98 ltr). [see Correspondence: Organizations-Constitution Project].

As the case is scheduled for a court conference on Friday, September 19th, at 9:30 a.m., please let me know, as soon as possible, whether I might meet with you at The Constitution Project's offices on Wednesday, September 17th, or Thursday, September 18th. If you are unavailable, I would appreciate your arranging for me to meet with any of the hundreds of distinguished members of The Constitution Project and Courts Initiative, listed on your website. I would especially be grateful if you would arrange for me to meet with Washington-based members who, over these past several months, have refused and ignored my entreaties to discuss the primary source documents posted on CJA's homepage as chronicling the corruption of federal judicial selection/confirmation. Among these members:

(1) "Alan B. Morrison, Esq., Co-Founder, Senior Attorney, and Former Director, Public Citizen Litigation Group", an express recipient of the June 16th memo⁵;

(2) "Elliot M. Minberg, Esq., Vice President, General Counsel, and Legal Director, People for the American Way", to whom I sent the June 16th memo under a separate June 18th coverletter⁶ -- and who was a member of the Citizens for Independent Courts Task Force on Judicial Selection that produced the 1999 report, "*Justice Held Hostage: Politics and Selecting Federal Judges*"; and

(3) "Nan Aron, President, Alliance for Justice"⁷, with whom, since 1996, I have

⁵ Mr. Morrison's indefensible response to this memo is recounted in my June 19th e-mail to Tamar Scialo, Executive Assistant in Public Citizen's Congress Watch, posted on CJA's website: [see Correspondence: Organizations-Public Citizen]. My subsequent urgent phone messages to speak with Public Citizen's President, Joan Claybrook, about the June 16th memo and Mr. Morrison's conduct were on June 26th, July 8th, July 17th, July 24th, July 28th (202-588-1000). I received no return call and on August 15th left a further urgent phone message for Ms. Claybrook -- following which her assistant, Eileen Walsh, called to tell me that Ms. Claybrook was leaving the next day for Europe and would not be back until after Labor Day. More than a week has now passed since Labor Day -- and I have yet to hear from Ms. Claybrook or anyone on her behalf.

⁶ This June 18th coverletter is posted on CJA's website [see Correspondence: Organizations-People for the American Way]. My subsequent voice mail messages for Mr. Minberg (202-467-4999) were on July 28th, August 13th, and August 21st, to which I received no return call.

⁷ My initial telephone call for Nan Aron was on June 18th (202-822-6070) -- and, in her absence, it was returned the next day by an assistant, to whom I gave full particulars relating to CJA's June 16th memo and the primary source materials posted on the homepage of CJA's website. I received no follow-up from Ms. Aron, for whom I left subsequent urgent phone messages on July 17th, July 28th, and August 21st. I received no return call to any of these messages, nor follow up by Lou Bograd, formerly the Alliance's Legal Director and now a consultant, with whom I spoke on August 21st.

sought to forge a coalition of organizations to advance the non-partisan, good-government recommendations for reform of federal judicial confirmation reflected by the June 16th memo -- without response [*see* www.judgewatch.org: *Correspondence: Organizations-Alliance for Justice*].

I would also be particularly pleased to meet with yet another Washington-based member of The Constitution Project's Courts Initiative: Morton Halperin -- and all the more so since he is a member of your Board of Directors with whom I tried to make contact five years ago⁸. As Dr. Halperin was formerly Senior Vice-President of The Century Foundation, renamed from the Twentieth Century Fund, he should be particularly interested in the dramatic unimplemented recommendation of its Task Force on Judicial Selection, quoted in the June 16th memo (at p. 4). In any event, I would surely expect the Open Society Institute -- whose D.C. Office Mr. Halperin now directs -- to be interested in that recommendation, as it not only furthers "democratic processes", but a fit federal judiciary, rendering fair and impartial justice. Such describes what George Soros -- also a listed Courts Initiative member -- hoped to achieve by his Open Society Institute and its "Judicial Independence grantmaking program".

Copies of this letter are, therefore, being sent to Mr. Morrison, Mr. Minberg, Ms. Aron, and Dr. Halperin. Whether collectively, as members of The Constitution Project's Courts Initiative, or separately, on behalf of their respective organizations, I ask that they meet with me on September 17th or September 18th to discuss the primary source materials on CJA's homepage -- the most important of which is CJA's March 26, 2003 written statement. Do they -- or do they not -- agree that, on its face, such statement is "dispositive of nominee unfitness, *by any cognizable standard*"? (June 16th memo, p. 2)

A copy of this letter is also being sent to Geri Palast, Executive Director of the Justice at Stake Campaign. She, too, should attend our meeting. The salutary purpose for which the Campaign has been funded by Mr. Soros -- and the reason CJA seeks to be a "Campaign Partner" -- is because the Campaign "provides strategic coordination and brings unique organizational, communications and opinion resources to the work of its partners and allies at the national, state, and local levels". We sorely need this -- since the ONLY response we have ever gotten from the American Bar Association, American

Judicature Society, Brennan Center for Justice, Common Cause, The Constitution Project, and Fund for Modern Courts, to whom, time and again, we have reached out with primary-source materials documenting the corruption of judicial selection and

⁸ This is reflected by my unresponded-to September 18, 1998 letter to Dr. Halperin, posted on CJA's website [*see* *Correspondence: Organizations-Century Foundation*].

discipline – is a cold shoulder refusal to even discuss the materials.

Maybe Ms. Palast's presence would encourage Ed Davis, who is Common Cause's Vice President for State and Field Operations – and an express recipient of the June 16th memo -- to attend the meeting and do what he has refused to do over these past several months⁹: discuss it.

Yours for a quality judiciary
--and citizen participation in federal judicial selection,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

cc: Washington-Based Members of the Constitution Project-Courts Initiative
Alan Morrison, Director/Litigation Group--Public Citizen
Elliot Mincberg, Legal Director/General Counsel--People for the American Way
Nan Aron, President--Alliance for Justice
Morton H. Halperin, Board of Directors/Constitution Project-Courts Initiative
Open Society Institute-Washington Office
Geri Palast, Executive Director--Justice at Stake Campaign
Common Cause--Justice at Stake "Campaign Partner"
Ed Davis, Vice President for State and Field Operations
Chellie Pingree, President
Joan Claybrook, President, Public Citizen
Ralph Nader, Center for the Study of Responsive Law
Theresa Amato, President, Citizen Works

American Judicature Society
Brennan Center for Justice
Fund for Modern Courts

⁹ Ms. Palast and Mr. Davis both participated in the August 2003 report Justice for Hire: Improving Judicial Selection by the Committee for Economic Development, a Justice at Stake "Campaign Partner". As for Mr. Davis' response to CJA's June 16th memo, his inexplicable two-sentence June 19th e-mail is posted on CJA's website [see Correspondence: Organizations-Common Cause]. Upon calling him on June 26th, Mr. Davis refused to explain why Common Cause was unwilling to advocate for implementation of its own 1986 recommendations for non-partisan, good-government reform of the federal judicial confirmation process and refused to identify who participated in the decision reflected by his June 19th e-mail. Although I left detailed phone messages for Common Cause's President, Chellie Pingree, on June 26th, July 8th, July 17th, July 24th, August 12th, and August 21st (202-833-1200), requesting to speak with her, I received no return call.

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*E-Mail: judgewatch@aol.com
Website:*

DATE: June 16, 2003

TO: Ralph Nader, Center for the Study of Responsive Law
By Fax: 202-234-5176

Public Citizen

ATT: Alan Morrison, Director/Litigation Group
By Fax: 202-588-7795
By E-Mail: akallarakal@citizen.org

Common Cause

ATT: Ed Davis, Tom Hicks/Lobbyists
By Fax: 202-659-3716
By E-Mail: edavis@commoncause.org
By E-Mail: thicks@commoncause.org

FROM: Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)

RE: Championing Basic Citizen Rights -- and the Vital Importance of
Citizen Participation in Federal Judicial Selection

This reiterates my phone calls and messages. I need your help in vindicating one of the most basic of citizen rights in a democracy: the right to request to testify at a public hearing – without being arrested for so doing.

On May 22nd, I was arrested at the U.S. Senate Judiciary Committee. My “crime” consisted of my simple request, at the conclusion of the Senate Judiciary Committee’s “hearing” to confirm five federal judicial nominees, to testify in opposition to one specific nominee. My exact words, stated from the far end of the backrow, where I had been seated, were:

“Mr. Chairman, there’s citizen opposition to Judge Wesley based on his documented corruption as a New York Court of Appeals judge. May I testify?”

For this respectful request, made after the presiding chairman had already announced that the “hearing” was “adjourned”, I was removed from the “hearing” room, handcuffed, and incarcerated for 21 excruciating hours. I am now faced with court proceedings on a misdemeanor criminal charge of “disruption of Congress”, whose punishment is six months in jail and a \$500 fine.

The extraordinary background to my arrest is meticulously chronicled by the documents posted on the homepage of the Center for Judicial Accountability’s website, www.judgewatch.org.—most specifically by: (1) my May 21st letters to New York Home-State Senators Schumer and Clinton; (2) my May 21st memorandum to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy; and (3) my May 21st letter to Capitol Police. My May 28th memorandum to Chairman Hatch and Leahy summarizes what took place at the May 22nd “hearing”, at which the only Committee member ultimately present was Senator Saxby Chambliss as presiding chairman. Underlying these documents is CJA’s March 26th statement setting forth the evidentiary proof of Judge Wesley’s corruption as a New York Court of Appeals judge. Evident from this, as from my May 5th, May 19th, and May 22nd memoranda to Chairman Hatch and Ranking Member Leahy -- all posted on CJA’s homepage --is the vicious assault on citizen rights represented by my arrest and incarceration

Evident, too, is that little has changed at the Senate Judiciary Committee since the damning assessments in the Chapter, “*Judicial Nominations: Whither ‘Advice and Consent’?*” by The Ralph Nader Congress Project in its 1975 book, The Judiciary Committees, and by Common Cause in its 1986 report, Assembly-Line Approval. If anything, the situation is worse – at least with respect to citizen participation. Where once the presiding chairman at the Senate Judiciary Committee’s confirmation “hearings” asked “if anyone in the room wished to speak on behalf of or against the nominee”¹⁰ – giving an aura of deference to citizen participation – he no longer asks that question. This, because the Senate Judiciary Committee long ago ceased to allow citizens to testify in opposition at confirmation “hearings” for lower court nominees. Little wonder, as allowing citizens to testify in opposition would expose to public view that the Committee is NOT investigating their opposition prior to the “hearings” -- even where, on its face, the opposition is dispositive of nominee unfitness, *by any cognizable standard*.

10The Judiciary Committee, p. 234

It was my hope – and expectation – that nearly forty years after Ralph Nader championed citizen rights and public interest advocacy – I would be able to easily find *pro bono* counsel to assist in my single-handed defense of citizen rights. However, I have been unable to locate such *pro bono* counsel.

The elementary proposition to be championed in the case of *United States of America v. Elena Ruth Sassower* (Superior Court of the District of Columbia, # M- 4113-03) is that a citizen's respectful request to testify at a congressional committee's public hearing is not – and must never be deemed to be – “disruption of Congress”. Yet the potential of the case goes beyond this important proposition. The evidence which, as part of my defense, I will be entitled to present of the Senate Judiciary Committee's cover-up of the documentary proof of Judge Wesley's corruption AND of fraudulent bar association ratings is so scandalous as to be a powerful catalyst to advance the salutary, non-partisan recommendations of The Ralph Nader Congress Project and Common Cause, long ago made, but unimplemented. These include recommendations for facilitating citizen participation in the process of selection of the lower federal judiciary and for substantiated bar ratings. As to the recommendations for citizen participation, I quote:

“...The Judiciary Committee should notify groups other than the ABA and the state bar associations concerning nominations. Until the committee can convince such groups that its nomination deliberations are not simply *pro forma* and sham, however, widespread participation by such groups will not be forthcoming.

...The Judiciary Committee must exploit independent sources of information about nominees if it is to perform its investigatory function...The committee should also encourage the formation of an investigative, research network of lawyers, law school professors, and journalists...It is essential that an adversary, independent, fact-finding capability and mechanism be built into the nomination process to replace the one the Founding Fathers relied upon, but which has atrophied from disuse.” The Judiciary Committees, The Ralph Nader Congress Project (1975), pp. 240-241.

“4. Relevant outside groups should be given adequate notice of nominations and invited to provide information.

Currently, notice of nominations among private organizations is greatly dependent on the efforts of these organizations rather than the Committee's actions to stimulate the

potential interest in the particular nominee or ongoing interest in judicial selection.

An active outreach program is not without precedent. During the 96th Congress, the Committee attempted to encourage greater public participation in the evaluation process. The Committee developed a long list of groups who were contacted to provide information, including the local bar associations of the jurisdictions with judgeships to be filled.

5. The Committee should provide adequate public notice of its hearings, particularly to those participating as witnesses.

...hearing dates should be scheduled with adequate time for outside groups to investigate nominees *and prepare testimony.*” Assembly-Line Approval, Common Cause (1986), p. 29, underlining in the original, italics added.

An even more dramatic recommendation was offered in the 1988 report, Judicial Roulette, by the Twentieth Century Fund Task Force on Judicial Selection:

“At a minimum, confirmation hearings on nominees for the lower courts should be announced in advance with notices in appropriate legal newspapers and the periodicals of state and local bar associations. In addition, the Task Force is in general agreement that the Senate’s advice and consent function under the Constitution could be made more effective were a subcommittee to conduct open hearings in the locale in which a nominee would be seated on the federal bench.”, Judicial Roulette, Twentieth Century Fund (1988), pp. 7-8, italics in the original, underlining added.

Because the criminal case against me can breathe life into these and other important, heretofore ignored recommendations, I am prepared to devote to it substantial time, energy, and money. However, before paying the \$5,000 fee for a retainer and expenses, quoted to me by the Washington lawyer I have consulted, I must know whether – and to what extent – I might count on each of you. If you are unable to provide *pro bono* legal assistance, either directly or by a referral, so as to obviate my incurring the \$5,000 fee, will you at least reward my sacrifice of time, energy, and money, by using your extensive press contacts to publicize the case so that it may achieve its lofty purpose?

At 2:00 p.m. this Friday, June 20th, I must appear in the Superior Court of the District of Columbia for a status conference (Room 217). I would gladly incur the added cost and inconvenience of coming down a day earlier if I could meet with you to discuss the case's potential to power long-overdue, sweeping, non-partisan reform for the benefit of all this nation's citizens.

Please let me know by noon on Wednesday, June 18th, so I may be guided accordingly.

Thank you.

cc: American Civil Liberties Union
ATT: Fritz Mulhauser, Staff Attorney
The Public