November 17, 2004

President George W. Bush
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

U.S. Senator Orrin Hatch
Chairman, Senate Judiciary Comm.
224 Dirksen Senate Office Bldg.
Washington, D.C.

Re: FREE ELENA SASSOWER, Prisoner #301-340, DC Jail.

FREE ELENA SASSOWER BEFORE THANKSGIVING!

FREE ELENA – on her 143rd day of 180-day bogus jail sentence
for bogus "Disruption of Congress" charge.
U.S. v. Elena Ruth Sassower, Case #M-4113-03
D.C. Superior Court, Judge Brian F. Holeman

FREE ELENA – Jailed Simply for Defending the Right to be Heard!

Dear President Bush and Senator Hatch:

This letter follows my November 8, 2004 1-pg. letter to President Bush, bringing this
matter of the grave injustice done to Elena Sassower to his attention. I recap that letter
in full directly below. Thereafter, I provide you further detail re the Federal
government’s egregious misconduct, repeatedly trampling Ms. Sassower’s rights.

But first, I again plea to you President Bush to - Free Elena Sassower before
Thanksgiving! I now make that request, that plea, also to you Senator Hatch as the
current (and outgoing) Chairman of the Senate Judiciary Committee (SJC). I would also
request that each of you, bring this important matter to the attention of Senator Hatch’s
expected SJC successor, Senator Arlen Specter, Senator Majority Leader Bill Frist,
Ranking Democrat Patrick Leahy, as well as each member of the SJC. Because this
matter is of such great importance, I also request that you see that each senator in fact be
given a copy of this letter. Thank you
Recap of November 8, 2004 Letter to President Bush

Dear President Bush:

On June 28, 2004, on the other side of the world, America was made proud, by the successful turnover of sovereignty to the Nation of Iraq, with the purpose of establishing the rule of law and democracy - there. The despot, the tyrant, Sadam Hussein was gone. He was captured and incarcerated. Iraq had been liberated. Iraq was free!

However, President Bush, you must not be aware that - on that very same day - in our own Nation’s Capitol, in our very own Court system, the rule of law was trashed. America was shamed. On June 28, 2004 in the DC Superior Court, in U.S. v. Sassower, Judge Brian Holeman condemned Elena Sassower to an immediate 6-months jail sentence on a bogus charge/conviction of “Disruption of Congress” – despite a pre-sentencing report that recommended NO JAIL TIME. Judge Holeman’s act is something one would expect in Sadam Hussein’s Iraq - not America.

In a word, what happened to Elena was – TYRANNY.

President Bush, Elena has spent 135 days in JAIL. She spent the 4th of July there. Don’t allow her to spend Thanksgiving there. Don’t allow her to spend Christmas there. Please President Bush – FREE ELENA! Please President Bush - FREE ELENA NOW!

Very, very, concerned

Further Detail.

Who is Elena Sassower? Elena is a graduate of Brown University, with a degree in English Literature. She is (and has been for the last 11 years) the Coordinator for the Center for Judicial Accountability, Inc. (hereafter CJA; website www.judgewatch.org), a non-partisan, non-profit citizens organization with a mission to reform and depoliticize judicial selection processes, to document the failure to properly discipline miscreant judges and to propose and ensure judicial accountability. Elena has testified several times in Congress on the above subjects, prior to her bogus arrest here. Further she has written several articles, papers, letters and legal briefs on the above subjects; of particular note here is “WITHOUT MERIT – The Empty Promise of Judicial Discipline”, (1997) Vol.4, No.1, Massachusetts School of Law, The Long Term View, pg. 90. Elena was also featured in the 1997 A&E series “Investigative Reports”, hosted by noted journalist Bill Kurtis, in the episode titled “Bad Judgment”, documenting the grave problem of judicial misconduct in America.1 Elena is also a Hebrew schoolteacher and youth mentor.

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1 The A&E product detail on the episode concludes “BAD JUDGEMENT asks a question that must be answered if the legal system is to survive – Who judges the judges?”
What did Elena do? On May 22, 2003 Elena simply attempted to exercise her 1st Amendment rights; she simply attempted – “petitioned” - to testify in a “public” SJC Confirmation hearing. This was after she had sent several letters to the SJC, with fact specific charges asserting the unfitness of nominee Judge Richard Wesley for the 2nd Circuit Federal Court of Appeals and requesting an opportunity to testify as to his unfitness. None of Elena’s letters were replied to. Elena then sent the SJC a letter advising that she would come to Judge Wesley’s public SJC confirmation hearing and would attempt to testify.

True to her word, Elena came to the hearing on May 22, 2003. She sat patiently, respectfully, silently, for 2 hours at the back of the hearing room. Then Senator Saxby Chambliss, Chairman (the only Senator present) gaveled the hearing to a close. (Senator Chambliss never asked if there were any further witnesses desiring to testify – for or against – the nominee.) Elena then rose, and made a polite respectful inquiry:

“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?”

How was Elena treated? The SJC response? The Capitol Police immediately handcuffed Elena (behind her back); she was arrested and incarcerated for 21 hours - held incommunicado the entire time. Elena was then charged by the U.S. Attorney’s Office with “Disruption of Congress” in DC Superior Court. Elena’s rights and due process were repeatedly denied, in pre-trial matters, during the trial and in sentencing, by a biased judge – Brian F. Holeman. Elena was railroaded in a Kangaroo Court. Her trial was a sham proceeding. Her conviction was a forgone conclusion. In 2 words, Elena was the target of – Judicial Retribution.

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2Later, after her arrest and being charged, in preparation for her defense at trial Elena attempted to subpoena certain involved senators and their staff. A motion to Quash the subpoenas was made by Senate Counsel. There it was admitted Elena had made repeated requests for an opportunity to testify at Judge Wesley’s confirmation hearing and further stated in pertinent part: “The defendant’s [Elena] request to testify was never granted, consistent with the Committee’s normal practice not to hear in person from non-congressional witnesses other than the nominees.” Imagine that, the SJC’s normal practice is to exclude citizens, the public from their own government. Why then go through the charade of a hearing? This is government by the government, for the government. The motion to Quash was granted.

3Reminiscent of the British-King George’s seditious libel cases against the colonist. See the trial of John Peter Zenger, August 4, 1735, New York City. We know what that lead to. Ironically, similar cases then arose in President John Adams’ administration, including the impeachment of U.S. Supreme Court Justice Samuel Chase. His trial in the Senate began in 1805; he was not convicted. See “Constitutional Law – Cases & Materials” by Gerald Gunther, 10th Ed. (1980) Foundation Press, Chap.1, Sec.1, pg.12 “The Historical Setting of the Marbury Case”, Part 1, “Political Considerations”.

4Judicial Retribution actually is a widespread condition in the legal system. See “JUDICIAL DISQUALIFICATION – Recusal and Disqualification of Judges” (1996) Aspen Publishers Inc., by Richard E. Flamm. In fact, Flamm has an entire section, 1.10.5 – Possible Judicial Retribution for Filing a Disqualification Motion, devoted to the subject and provides many specific examples of documented cases. See also Barrett v. Harrington, 130 F.3d 246 (6th Cir. 1997), Soliz v. Williams (1999) 88 Cal.Rptr. 184, Canon v. Commission on Judicial Disqualifications (1975) 14 Cal.3d 78, Briggs v. Superior Court (1932)
But there would be more. Elena was sentenced on June 28, 2004—again the very day America was turning over sovereignty to Iraq. The pre-sentencing report’s recommendation was: no jail time, probation and community service. Despite that report, Judge Holeman wanted Retribution—90 days JAIL time.

But Judge Holeman was not through. Elena had to agree to the following conditions. No notice of these conditions was given to Elena before the hearing; this was the first time she was told of them.) The Conditions:

1. Elena must cease and not have any communication with her two home state U.S. senators, Senators Schumer and Clinton for 2 years;
2. Elena must stay away from 16 designated Capitol office buildings for 2 years;5
3. Elena must report all of her activities as Coordinator for the CJC to the U.S. Attorney’s Office for 2 years;
4. Elena must write letters of apology to Judge Wesley (the nominee whom she sought to present opposition to the SJC when she was arrested), Senators Schumer and Clinton, and their staffers, stating how “remorseful” she was;
5. Elena must attend anger management classes.5

When Elena refused to accept these conditions (each a clear violation of due process and other Constitutional safeguards, and imposed as judicial retribution and to send a


5See the very recent case of Huminiski v.Corsones, ___F.3d___ (2nd Cir. 2004) another clear example of judicial retribution and dispositive authority (like Landmark Communications, Inc. v. Virginia, below at pg. 5) establishing just how abusive and illegal — against the Constitution - the conduct of the government actors has been here. A “2nd Circuit: Vermont Gadfly Wrongly Barred From Courthouse”, October 8, 2004, Associated Press, article on the case, reported Scott Huminiski believed a judge had not correctly handled a criminal case he had in a Vermont court, so he then “criticized” the judge and other officials, by writing letters and putting up signs on his van parked in the Courthouse parking lot. Court officials worried that Huminiski “might be” planning violence, so they had no-trespass order issued by a fellow judge, barring Huminiski from “courthouses and their grounds throughout the state”. After a 7-year legal battle, the 2nd Circuit Court of Appeals found that Huminiski had never acted out in the courts and that Vermont court officials and judges had wrongly barred Huminski from the courts. “There are facts on the record that might raise the concern that Huminiski was, at least in part, being punished for his political protests, or being prevented from continuing them,” by his exclusion from court property, the court said. Gadfly? Beyond abuse by the government in cases like Huminiski, Landmark, etc., and Sasserow, is the established media’s biased, perjorative, slanted, reporting against the citizen and usually blind favoritism of the judiciary. (See “Defiance Leads to Cellblock — Senate Disruptor Won’t Apologize” June 29, 2004 pg.A05, Washington Post and “Unremorseful NY Judicial Watchdog Gets 6 Months in Jail” July 8, 2004, New York Law Journal).

6 This is reminiscent of the re-education and indoctrination camps of Stalin’s Soviet Gulags and Moa’s Communist China.
warning - to other citizens – do not challenge federal judges or the SJC), Judge Holeman, without explanation doubled the sentence to 180 days (6-months, the maximum punishment), with NO stay, pending Elena’s right to appeal. This is despite this being a classic 1st Amendment case, with no violence and Elena having no criminal record. 7

President Bush and Senator Hatch, so that you can fully appreciate just how bogus and unjust Judge Holeman’s sentence of Elena was and is, I attach with this letter the 9-pg. Note – DIRECTOR’S LEGAL ANALYSIS OF THE SENTENCING TRANSCRIPTS, prepared the CJA Director, Doris Sassower, Elena’s mother. Also attached is a 1-pg. “Profile of Giraffe Heroes” on Doris Sassower for background purposes. Thereafter several post-sentencing petitions for relief were made on Elena’s behalf, elrief, to Judge Holeman’s appellate colleagues fared no better. All have been immediately denied, without comment. Simply put: further Judicial Retribution8

What is astounding - is that an earlier US Supreme Court decision - Landmark Communications, Inc. v. Virginia, 435 US 829 (1978) – a case that largely parallels this debacle – clearly established that Elena’s conduct here was proper and that of the government actors here - was unconstitutional. In Landmark, the 3 branches of Virginia government acted in concert - against the People and the 1st Amendment.9 There the Virginia trial court allowed the defendant to be wrongly tried and wrongly convicted, followed by the Virginia Supreme Court’s rubber stamp affirming that wrongful conviction. The Supreme Court reversed the conviction and held that the Virginia criminal statute barring accurate disclosure of information about confidential proceedings before a Judicial Inquiry and Review Commission (translation: a citizen complaint about a judge’s misconduct) was unconstitutional when applied to “third persons who are strangers to the inquiry, including news media.”

7 The extent of the retribution against Elena can be seen by a simple comparison of Elena’s case with the recent “celebrity” case of Martha Stewart. Stewart was convicted of four (4) felonies – each involving an aspect or moral turpitude; yet Stewart was given only 3 and ½ months of prison time and given a stay pending her appeal. In contrast, Elena, wrongly charged/convicted on just one (1) bogus misdemeanor involving fundamental claims of 1st Amendment rights violations, was given 6 months in jail, taken immediately to jail, without a stay.

8 The appellate justices that heard these writs simply ignored their oaths and the law, and sided with their colleague Judge Holeman. See Little v. Kern County Superior Court, 283 F.3d 1075 (9th Cir. 2002) which shows that this conduct by judges is not uncommon. In Little a lawyer was wrongly found in direct contempt (a process quite analogous to the bogus charge of “Disruption of Congress” here) by a trial judge and sentenced with jail time. The judge then, in clear contravention of a statute, denied a stay of sentence, to allow filing of a writ. Like here, in Little, the California Appellate Court, followed by the California Supreme Court, both denied the writ without out comment. The 9th Circuit Court Appeal determined that those courts, as well as the federal District Court (that granted the writ), had each ignored the actual bias of the trial judge who had wrongly found the lawyer in direct contempt. For further examples of trial judges abusing their direct contempt powers, see: Eaton v. City of Tulsa, 415 US 697 (1974); In re Little, 404 US 553 (1972); and, Holt v. Virginia, 381 US 131.

9 Just like the government actors here. Clearly the actors here, learned nothing from Landmark or just simply ignored it and thus the Constitution. This is tyranny.
Chief Justice Warren Burger stated in pertinent part, in the unanimous ruling of the Court:

“...We conclude that the publication Virginia seeks to punish under its statute lies near the core of the First Amendment, and the Commonwealth's interests advanced by the imposition of criminal sanctions are insufficient to justify the actual and potential encroachments on freedom of speech and of the press which follows therefrom. See, e.g., Buckley v. Valeo, 424 U.S. 1, 64-65 (1976).

"In Mills v. Alabama, 384 US 214, 218 (1966), this Court observed: ‘Whatever may exist about interpretations of the first Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect free discussion of governmental affairs.’ (fn.t. omitted). Although it is assumed judges will ignore the public clamor or media reports and editorials in reaching their decisions and by traditions will not respond to public commentary, the law gives '[j]udges as persons, or courts as institutions ... no greater immunity from criticism than other persons or institutions.' Bridges v. California, 314 U.S. 252, 289 (1941) (Frankfurter, J., dissenting). The operations of the courts and the judicial conduct of judges are matters of utmost public concern.”

It is no secret that in the last several decades America’s confidence in our government has been spiraling downward. (See “SCANDAL – The Culture of Mistrust in American Politics” by Susan Garment (1991) Doubleday.) The same is true of our legal system and of our Courts. For example, a June 24, 2004 p.A14 LA Times article “Justice

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10 No greater immunity? As this case and reality readily demonstrate, there are virtually no limits, including the Constitution, as to what will be done to protect judicial misconduct. See U.S. v. Lanier, 73 F.3d 1380 (6th Cir. 1994), where the Court (in a 10-5 en banc decision) reversed Lanier’s conviction of using his judicial position to commit 5 sexual assaults on female court litigants and staff. Acting more out of embarrassment and pressure, than integrity and justice, the Supreme Court reversed, ruling the 6th Circuit used an “unnecessarily high” standard and remanded the case back to the 6th Circuit for rehearing. U.S. v. Lanier, U.S. (1997); “Conviction of Disobed. Judge May Be Restored – High Court Ruling”, April 1, 1997, front page LA Daily Journal; “Judge Convicted of Sex Assaults Missing – Now Considered a Fugitive”, September 13, 1997 pg.A13; “Ex-Judge Fleeting Sex Charges Caught – Captured in Mexico Trying to Get Fake ID”, October 15, 1997, pg.A3. Upon rehearing, the 6th Circuit, reinstated Lanier conviction and 25-year sentence. The unfortunate reality is that judges in fact have absolute immunity from civil suit – which which even includes malicious and corrupt acts - which is an unconstitutional power grab judges (Justice Stephen Field) gave themselves – for judicial acts. See Bradley v. Fisher, 80 US 335 (1872) and Stump v. Sparkman, 435 US 349 (1978). Although Lanier was criminally prosecuted here, look at how long it took, the circuitous route, and the fact is, Tennessee county and state officials (particularly in the legal and judicial communities) never prosecuted or stopped him.

11 From the founding of CJA generally, and the conduct by Elena throughout the matter of Judge Wesley particularly, the utmost concern of both have been the integrity and accountability of the judiciary. Clearly that has often not been the concern of the SJC.

12 Trial lawyers, tort reform, skyrocketing medical costs and malpractice insurance, and judicial nominations/confirmations were all subjects of the recent presidential election. VP candidate Senator John Edwards went around claiming "... it's the best legal system in the world", yet was virtually never called on that by the media. It was pointed out in the VP debate that Edwards was a member of the SJC, but missed the vast majority of meetings.
system is ‘Broken’, Lawyers [ABA] Say”, not only has the current president of American Bar Association (and former Detroit mayor) Dennis Archer stating “The system is broken. We need to fix it.”, but also quotes current Associate Supreme Court Justice Anthony Kennedy stating “Our resources are misspent our, punishments too severe, our sentences too long.”

U.S. v. Elena Sassower is the poster child for the broken system.

- Misspent resources: How many tens of thousands of dollars did the U.S. Attorneys waste in prosecuting Elena? How much was spent and wasted in keeping her locked up for 6-months?
- Punishment too severe: Being persecuted on a bogus “Disruption of Congress” charge, for simply politely, properly, respectfully exercising a citizen’s 1st Amendment rights of speech and petition - in an attempt to keep our judges accountable and honest? For attempting ensure integrity in our law and government? Loss of liberty? Threatened with anger management?
- Sentence too long: Elena was given the max: sentence of 6-months, $500 fine, immediately taken to jail and denied any stay. She never should haven charged.

That brings up the seminal question of Elena’s case: What harm could Elena’s question, “May I testify?”, have in fact caused? Or even possibly cause? None. And None. The hearing was over, when Elena made her simple request. Any potential harm (which would only be in the imagination of those on the SJC), could have been readily eliminated by simply directing Elena to be quiet and to have a seat, or to leave-go outside the hearing room, if she could not be quiet. Why was that not done? The SJC, Capitol Police, the U.S. Attorney’s Office and Judge Holeman should be made to answer that question. Better yet is the question of Why was Elena simply not allowed to testify? The SJC should be made to explain what they were afraid of? What dangers did Elena’s simple words – free speech – pose to them?

Back to Landmark Communications, Inc. v. Virginia. On the question of harm, Chief Justice Burger there stated:

“The Supreme Court of Virginia relied on the clear-and-present danger test in rejecting Landmark’s claim. We question the validity of that standard here; moreover, we cannot accept the mechanical application of the test, which led that court to its conclusion. Mr. Justice Holmes’ test was never intended ‘to express a technical legal doctrine or to convey a formula for adjudicating cases’ Pennekamp v. Florida, 328 US 331, 353 (1946) (Frankfurter, J., concurring). Properly applied, the test requires a court to make its own inquiry into the imminence and magnitude of the danger said to flow from the particular utterance and then to balance the character of the evil, as well as its

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13 How ironic, this event and these statements occurred just four (4) days before Elena’s sentencing by Judge Holeman on June 28, 2004. Even more ironic, this occurred in Washington, DC in connection with the ABA’s news conference releasing a report/study about the failures of the criminal justice system. Apparently Judge Holeman does not read the paper or watch the news, or he does, but then just ignores it.
likelihood, against the need for free and unfettered expression. The possibility that other measures will serve the State's interest should also be weighed.”

Clearly Judge Holeman never made his own inquiry into the imminence and magnitude of the danger said to flow from Elena’s polite, respectful utterance “May I testify?”

Clearly Elena was correct when she stated:

“The elementary proposition to be championed in this case is that a citizen’s respectful request to testify at a congressional committee's public hearing is not — and must never be — ‘disruption of Congress.”

Clearly Judge Holeman never weighed the other measures State’s interest could have been served by. Such as simply: ignoring Elena; asking her to be quite and sit down; or be quiet or leave-go outside.\(^{14}\)

A further example is the September 27, 2004 cover story of BusinessWeek magazine “THE BATTLE OVER THE COURTS — How Politics, Ideology, and Special Interests are Compromising the U.S. Justice system”, by Mike France and Lorraine Woellert.

Earlier, on September 1, 2004 C-SPAN aired “The 2004 Elections and the Courts” in New York City (during the Republican Party Convention), featuring attorneys Nan Aron (Alliance for Justice) and Betsy Cavenish (NARAL) on one side, and attorneys C. Boyd Gray and Victoria Toensing on the other. All agreed that the selection process for federal judges was “uncivil” and that there was a dire need for greater civility, more robust debate on nominees and increased participation from the public.\(^{15}\) All agreed that both the nomination and selection processes of justices were — extremely calculated and extremely political.

Another forum on the “2004 Election and the Supreme Court”, put on by Justice At Stake and The American Constitution Society took place on November 16, 2004 in Washington, DC (and aired on C-SPAN). The moderator was Walter Dellinger and on the panel was Dahlia Lithwick-Slate.com, Senior Editor, Nina Totenberg-NPR, Legal Affairs Correspondent and Stuart Taylor-National Journal, Senior Writer. All agreed that both the nomination and confirmation processes of justices were — extremely calculated and

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\(^{14}\) Equally clear is that Elena suffered the same fate when she sought post-conviction relief from the appellate justices.

\(^{15}\) Why would any citizen now dare to participate in the process now, after witnessing the retributive tyrannical treatment Elena has suffered from the hands of the SJC, Capitol Police, U.S. Attorney’s Office and the exalted “judiciary”. Clearly these are people and entities to fear. The Constitution, the 1st Amendment, the rule of law, and the “rights” of citizens mean nothing to them.
extremely political.\textsuperscript{16}

The fact of the matter is that the SJC has been derelict to its duty for sometime. The People of America have been getting federal judges who are more connected, than qualified. (See "WITHOUT MEERIT: The Empty Promise of Judicial Discipline" by Elena Sassower, (1996), above.) The SJC is cutting deals on nominees, instead of protecting America and ensuring that judges put on the bench are competent and have integrity.

Even worse, is after a nominee is confirmed and gets on the bench – joins the club - virtually no bad conduct can get them disciplined or impeached. For example, is an August 7, 2002 Associated Press article by Anne Gearan “Self-policing Federal Judges Rarely Impose Penalties”, which reported in pertinent part:

\begin{quote}
“Federal judges usually police one another’s behavior, but they rarely meet out punishment. Of 766 ethical complaints lodged last year, only 1 resulted in a penalty. ... In the single case last year in which the judge was punished, the penalty was a private censure and no details, not even the judge’s name were released. The system encourages lenient treatment, American University law professor Paul Rice said Tuesday. ‘They have an obligation to police themselves, and of course that is the problem,’ he said. Judges sit on the boards that review allegations of ethical misconduct and are loath to punish a colleague, Rice said.”\textsuperscript{17}
\end{quote}

More recent, a January 18, 2004 pg.B1 LA Times article “Judge May Face Sanctions – Federal jurist improperly took over case, judicial panel says” reported:

\begin{quote}
“A veteran federal judge faces disciplinary proceedings after he improperly seized control of a bankruptcy case in an effort to protect a woman whose probation he had decided to oversee personally. ... Penalties for district Judge Manuel L. Real, 79 who has been a controversial member of the federal judiciary in Los Angeles since 1966, could range from a private reprimand to loss of the authority to hear cases. ... The proceeding in the case have largely taken place out of the public eye. The judicial council of the 9th Circuit ... handed down its ruling on Real in mid-December, but the decision has never
\end{quote}

\textsuperscript{16} This article also was published in the LA Daily Journal under the title “Federal Judges Seldom Discipline Colleagues”, August 7, 2002, pg.4. These admissions are actually only a statement of the obvious. Recall the SJC bloody confirmation hearings of Robert Bork? Clarence Thomas? One the greatest myths ever perpetrated, mainly by the judiciary and the ABA, is that the judiciary is “independent”, “not political” and “above the fray”. If that were only true. By definition the judiciary is the 3rd branch of government, thus by nature its political. Further, politics reduced to its basic nature is about power. Power will attract the unscrupulous like bees to honey. Once the “myth” of judicial independence is debunked and the reality is confronted, the real debate and real work judicial accountability can begin. We must have true mechanisms of accountability for our legal system to be respected and to provide true justice.

\textsuperscript{17} Also see “THE BENCHWARMERS – The Private World of the Powerful Federal Judges” by Joseph C. Goulden (1974) Weybright & Talley.
been formally published and has not been placed on the court website. ... Legal experts say the council’s ruling means that some sort of penalty against Real is highly likely. That alone would make his case rare. More than 99% of the complaints filed against federal judges around the county are dismissed out of hand. The 9th Circuit council has reprimanded only two jurists in the last decade, while rejecting hundreds of complaints, according to official records. Beyond that, Real's opponents say, the case provides a textbook example of the way a federal judge — holder of a lifetime appointment — can abuse his power on behalf of an individual he favors. ... In 1984, Real fined [attorney Stephen] Yagman $250,000, a penalty that was later dismissed on appeal. The judge said the lawyer had filed a libel suit in bad faith. Yagman retorted by saying Real suffered from ‘mental disorders’ and compared him to Tomas de Torquemada, leader of the Spanish Inquisition. ... ‘Taking a case for the purpose of affecting the result is the antithesis of impartial judging,’ Said Stephen Gillers, vice dean of the New York University Law School and author of a legal ethics textbook. ‘These alleged transgressions deserved serious attention,’ he said. USC law professor Erwin Chemerinsky agreed, ‘I think it is important for the 9th Circuit to say a judge should not behave this way.'”

Even worse, is the failure of the SJC to see that bad federal judges are impeached. As pointed out in U.S. v. Hastings., 881 F.2d 706, 709 (11th Cir. 1982) there had only been 9 impeachments of federal judges, up to that time with only 3 convictions.\(^{18}\) The failure to impeach has not been because federal judges have been angels.

An example, is the case of Judge Andrew Hauk, Central District California. He “retired” (went on Senior Status) in 1982, due to numerous reversals “in scolding language” of his trial decisions because of bias and “intemperate and unpredictable behavior.” Rather than impeach or force Hauk to resign, areas of law were taken away from him.\(^{19}\).

Another example is Judge James Ware, Northern District California. He was a shoe-in for the 9th Circuit Court of Appeal, having already been confirmed by the SJC, when a tragic story - as to why he became an attorney, then a judge, that he had been telling in speeches and interviews for several years, beginning in 1973, was discovered to be a lie. Although Ware withdrew his own nomination to the appellate bench, he was not

\(^{18}\) That is only 9 judges over 191 years. Former federal District Court judge (Nevada) Harry Claiborne was later impeached and removed by the Senate in 1986 (while in prison, on his 1984 conviction for tax evasion). Claiborne claimed he was the victim of a federal vendetta.

impeached, nor forced to resign and remains district court judge, and at times has even had special assignments sitting as a justice on the federal appellate court.\textsuperscript{20}

Another example is the case of San Jose federal Judge Robert P. Aguilar, Northern District. As reported in “U.S. Drops Case Against Judge Who Resigns – Tried Twice on Charges of Disclosing a Wiretap and Trying to Sway Fellow Jurists”, June 25, 1996 pg.A3, \textit{LA Times}, the federal government dropped its 7-year prosecution of Aguilar – the first federal judge ever indicted in California – in exchange for his immediate resignation. A January federal appeals court decision “overturning Aguilar’s sole remaining conviction, for disclosing wiretap information”. In the agreement Aguilar acknowledged disclosing wiretap information, but did not admit criminal wrongdoing.

\textbf{One Court attempted to deal honestly with the problem.} In \textit{Lo v. Los Angeles County Superior Court} (1998) 67 Cal.App.4\textsuperscript{th} 1045, a former criminal party sued the trial judge (George W. Trammell, III, who presided over her case, then later allegedly coerced sex from her) and the County and State on employer liability. Reversing the trial court sustaining a demurrer, the Court stated:

“We decline to burden this opinion with the myriad other cases, in California and other jurisdictions, in the intervening 25 years chronicling sexual abuse by judges. We decline to find an abuse of judicial power for personal gratification so unusual and startling to shield defendants from respondeat superior liability.\textsuperscript{2}

“The cases are rife with judicial abuses of power motivated by arrogance as well as sexual abuse. (See \textit{Cannon v. Commission on Judicial Qualifications} (1975) 14 Cal.3d 678.) Abuse of power can be motivated by greed, arrogance, sexuality, or any other improper motive. Our Constitutional system of checks and balances was designed to protect us against the Founder’s expectations that unchecked power would lead to rampant abuse. They considered abuse of power so

\begin{footnote}{\textsuperscript{20} The story was about 13-year-old Virgil Ware being shot and killed while riding on the handlebars of his brother – James Ware – in Birmingham, Alabama in 1963 by white racists. The story was true – Virgil was in fact shot and killed. The “lie” was that the Judge was just not the brother of – that James Ware. In telling the tragic tale, Ware would tell crowds the murder of his teen-age bother “made him hungry for justice”. See “Judge Lied About Civil Rights Death” November 7, 1997 pg.News-18 \textit{Daily News}, “Embattled Judge Ware Cancels Calendar After Media Maelstrom” November 10, 1997 pg.4 \textit{LA Daily Journal}, “A Judge Compromised” November 11, 1997 pg.6 \textit{LA Daily Journal} editorial, “IF THE TRUTH BE TOLD - Judge James Ware’s ‘Lack Of Honesty’ Should Cost Him the Bench” November 25, 1997 pg.6 \textit{LA Daily Journal} commentary piece and “Judge Censure For Lying About Childhood Event – Ware Receives First Such Reprimand From 9th Circuit Court” August 19, 1998 pg.1 \textit{LA Daily Journal}. See also \textit{Kimes v. Stone}, 84 F.3d 1121 (9th Cir. 1996) where Ware was the presiding USDC trial judge, reversed for dismissing a civil rights case against a judge (Stone) and attorneys accused of conspiring to steal an estate by manipulating court proceeding. Ware determined Judge Stone had “absolute immunity” and that the attorneys conduct was “privileged”. The appellate court affirmed on judicial immunity, but reversed on “privilege”. Not mentioned was that before Ware became a federal judge, he was a colleague of Judge Stone on the Santa Clara County Superior Court.}

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common as to design an entire system of government to expressly check it.”

On February 19, 1999 the California Supreme Court issued an order decertifying the above appellate opinion, directing it not be published in the Official Appellate Reports. The LA County DA and California Attorney General refused to bring criminal charges against Trammell. (See “L.A. County’s Dual Standard of Justice Marches On” by Charles L. Lindner, January 11, 1998 pg.M6, LA Times.) Eventually the U.S. Attorney’s Office brought charges against Trammell; he pled guilty to two counts of mail fraud on October 1, 2000. (See “Judge Trammell Gets 27-Month Prison Sentence – Trading Leniency of Sexual Favors Was Abuse of Position”, February 1, 2001 pg.1, LA Daily Journal.)

But the sad truth is that the “checks and balances” – “separation of power”, despite the grand efforts of our Founding Fathers, simply have not worked well with holding the judiciary accountable. The case of Bracey v. Graham, 420 U.S. 899 (1997) is a testament to that. In Bracey, Chief Justice Rehnquist wrote:

“Petitioner William Bracey was tried, convicted and sentenced to death before then-judge Thomas J. Maloney for his role in an execution-style triple murder (fn. omitted.) Maloney was later convicted of taking bribes from defendants in criminal cases. Although he was not bribed in this case, he ‘fixed’ other murder cases during and around the time of petitioner’s trial. Petitioner contends that Maloney therefore had an interest in a conviction here, to deflect suspicion that he was taking bribes in other cases, and that this interest violated the fair-trial guarantee of the Fourteenth Amendment’s due Process Clause. We hold that petitioner has made a sufficient factual showing to establish ‘good cause’ … for discovery …

Maloney was one of many dishonest judges exposed and convicted through ‘Operation Greylord,’ a labyrinthine federal investigation of judicial corruption in Chicago. See United States v. Maloney, 71 F.3d 645 (CA7 1995), cert. Denied, 519 U.S. ____ (1996); see generally J. Tuohy & R. Warden, “Greylord – Justice, Chicago Style” (1989). Maloney served as a judge in from 1977 until he retired in 1990, and it appears he has the dubious distinction of being the only Illinois judge ever convicted of fixing a murder case.(fn. omitted.) Before he was appointed to the bench, Maloney was a criminal defense attorney with close ties to organized crime who often paid off judges in criminal cases. App.54–66; 81F.3d 684 (CA7 1996) (Rovner J., dissenting) (‘[B]y the time Maloney ascended to the bench in 1997, he was well groomed in the art of judicial corruption’). Once a judge, Maloney exploited many of the relationships and connections he had developed while bribing judges to solicit bribes for himself. For example, Lucius Robinson, a bailiff through whom Maloney had bribed judges while in practice, and Robert McGee, one of Maloney’s former associates, both served as ‘bag men,’ or intermediaries, between Maloney and lawyers
looking for a fix. Two such lawyers, Robert J. Cooley and William A. Swano, were key witnesses against Maloney at this trial. *Maloney, supra*, at 650-652.\(^{21}\)

Why has the SJC repeatedly protected these miscreant judges, rather than the American judicial system and the American people? Surely we deserve better. But look what happens, when a brave, courageous citizen, Elena Sassower attempts to correct these wrongs, to make our judiciary better.

President Bush and Senator Hatch, the 1st Amendment to the Constitution states:

> "Congress shall make no law ... abridging the freedom of speech ... or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances."

Why has the Government violated the 1st Amendment in the case of Elena Sassower?

Former Associate Supreme Court Justice Louis Brandies stated: "If we desire respect for the law, we must first make the law respectable."

That statement applies to ALL of government. It is a grand restatement of principal from our Declaration of Independence, "... That to secure these rights, Governments are instituted among Men, deriving its powers from the consent of the governed." Why has the government disrespected Elena Sassower? Why has the government disrespected the Constitution??

Justice Brandies further stated: "The most important political office is that of private citizen."

The truth of that statement is in our founding constitutional principal that "WE THE PEOPLE" are sovereign. That government is under the people, our servant, and that any power government has it gets from the people, it is loaned to government. Why then has Elena Sassower been treated like dirt and that principal has been turned upside down and trampled?

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*\(^{21}\) In the recent past, the Governor of Illinois pardoned four (4) convicted death penalty defendants because of government misconduct and 162 convicted death penalty cases were commuted to life sentences because of doubt in the legal process. For another case "labyrinthine" of case "fixing" see U.S. v. Frega, No.97-50100, U.S. v. Malkus, No.97-50111, U.S. v. Adams, No.50113 (all 9th Cir. 1999), "Federal Bribery Probe Shakes San Diego's Legal Community" April 14, 1996 pgB14 LA Times; what Had 3 Judges Attempted to Hide in Their Minute Books June 13, 1996 pg__, San Diego Union-Tribune; and Adams v Commission on Judicial Performance (1995) 10 Cal.4th 866 and Adams v. Commission on Judicial Performance (1994) 8 Cal.4th 552. Greylord. Chicago and the Illinois death penalty cases and the San Diego cases would make one ponder How many other courthouses is this conduct going on in? Why have there not been more "Operation Greylords?"*
Former Associate Supreme Court Justice Robert Jackson stated in *Communications Assoc. v. Douds*, 339 US 382, at 442 (1950):

"... It is not the function of Government to keep the citizen from falling into error, it is the function of the citizen to keep the Government from falling into error."

Is that not exactly what Elena Sassower was doing, when she was arrested and hauled of to jail? President Bush and Senator Hatch, Why has the Government fallen into error here? Then fallen again, and again, and again ...? Is it not time to now stop further Government error and harm?

Is the standard for judicial confirmation hearings now to be the Elena Sassower standard? That if a citizen respectfully makes a request to testify, they are thrown in jail for 6-months?

To conclude President Bush and Senator Hatch (Senators Specter, Frist, Leahy and each SJC senator), will you let Elena to continue to rot in jail until her bogus 180 sentence is up, or will you act to Free Elena? Please FREE ELENA BEFORE THANKSGIVING.

Very, very concerned and wishing each of you, a warm & bountiful Thanksgiving,

GARY L. ZERMAN

GLZ/ms
cenc: Director’s Analyis
Profile
Cc: Doris Sassower  No Enclosures