CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069
Tel. (914) 421-1200
Fax (914) 428-4994
E-Mail: judgewatch@aol.com
Website: www.judgewatch.org

DATE: June 8, 2004

TO: Ralph Nader: Center for the Study of Responsive Law
Public Citizen: Joan Claybrook, President
Brian Wolfman, Director/Litigation Group*
Common Cause: Chellie Pingree, President
Ed Davis, Vice-President for Policy and Research
People for the American Way: Ralph G. Neas, President**
Elliot Mincberg, Legal Director/General Counsel
Alliance for Justice: Nan Aron, President
Brennan Center for Justice: Tom Gerety, Executive Director
Burt Neuborne, Legal Director
Deborah Goldberg, Director/Democracy Program
American Judicature Society: Allan Sobel, Exec. Vice-President/Director
The Constitution Project's Courts Initiative: Kathryn Monroe, Director*
Morton H. Halperin, Board Member/Courts Initiative:
Open Society Institute-Washington Office
Stephen Rickard, Acting Director*
Justice at Stake Campaign: Bert Brandenburg, Acting Executive Director*
Appleseed Foundation: Linda Singer, Executive Director

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

RE: **Your *On-Going* Responsibility to "Champion Basic Citizen Rights -- and the Vital Importance of Citizen Participation in Federal Judicial Selection" at Issue in the "Disruption of Congress" Case of *United States of America v. Elena Ruth Sassower*:**

(1) by individually or collectively submitting a statement to the Court in advance of the June 28th sentencing;

(2) by providing legal and *amicus curiae* assistance on the appeal, including to vindicate the elementary proposition that "a citizen's respectful request to testify at a public congressional hearing is not – and must never be deemed to be – 'disruption of Congress'" by challenging the constitutionality of D.C. Code §10-503.16(b)(4), *as written and as applied*;

(3) by alerting your media and academic contacts to this case.

---

* previous contact was with predecessor in that position

** first-time contact

On June 28th, I am to be sentenced to up to six months in jail and a $500 fine[1]. This, as a result of my wrongful conviction in April on the baseless and malicious "disruption of Congress" charge – for which, last year, I turned to each of you for help in "championing basic citizen rights – and the vital importance of citizen participation in federal judicial selection".

In the event you have forgotten my entreaties to you, *to wit*, my June 16, 2003 memo to Ralph Nader, Public Citizen, and Common Cause and my September 10th and September 16th letter/memos transmitting the June 16th memo to the rest of you, they are posted on the homepage of CJA's website, *www.judgewatch*[2]. Such correspondence highlighted the corruption of federal judicial selection/confirmation underlying the "disruption of Congress" case against me – and requested that you *independently* verify this by reviewing the "Paper Trail" of substantiating primary source documents posted on CJA's homepage.

As stated in the September 10th memo, sent to each of you[3],

---

[1] The original June 1st sentencing date was put over to June 28th, following my time-consuming and costly trip to Washington to appear before Judge Brian Holeman on June 1st to reiterate my request for an adjournment, which I had sought by two faxed May 28th letters – to which he had not responded. The basis for the requested adjournment was my legal entitlement to "reasonable time" to review and present written comment with respect to the May 28th pre-sentence report. [These two May 28th letters are posted on the homepage of CJA's website under the heading "Paper Trail Documenting the Corruption of Federal Judicial Selection/Confirmation & the 'Disruption of Congress' Case it Spawned"].

[2] This correspondence is posted as part of the "Paper Trail"– with my June 16, 2003 memo additionally featured at the top of the homepage. These are also all accessible *via* the sidebar panel, "*Correspondence-Organizations*" and, as to Mr. Nader, *via* "*Correspondence-Others*".

[3] This includes Nan Aron, for whom I left four urgent phone messages prior thereto -- as the September 10, 2003 memo itself recounts (at fn. 7). Ms. Aron never saw fit to speak with me – including following her receipt of the September 10, 2003 memo. Nevertheless, seven months later, she was available to give comment to Legal Times for its front-page story, "*The Trial Of A Judicial Gadfly*" (4/12/04). The relevant paragraph is as follows:

> "'She has been a frequent critic of many nominees and quite frequently has gone forward with great fanfare to support her point of view,' says Nan Aron of the Alliance for Justice, noting that Sassower contacted her organization about the Wesley matter. Aron says she does not remember much about Sassower's concerns about Wesley, but notes that the judge had strong support from his home state senators – a key point in ensuring confirmation. The alliance did not oppose his nomination."

As Ms. Aron may be presumed to know from CJA's homepage "Paper Trail" – of which my

"The need for *independent* verification of CJA's latest primary source materials is exigent. The corruption of federal judicial selection/confirmation means that...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 safeguards [fn]. 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 [your] legal and other assistance." (at p. 3, emphases in the original).

---

phone messages and correspondence gave her notice -- CJA's opposition to Judge Wesley arose from his documented misconduct in two important public interest lawsuits, causing vast and irreparable injury to the People of the State of New York (particularized by our March 26, 2003 memorandum) – which Home-State Senators Schumer and Clinton (with whom she doubtless enjoys professional, if not personal, relationships) REFUSED to confront IN ANY RESPECT. Indeed, Ms. Aron well knows that the "strong support" of Home-State Senators cannot be taken at face value – as federal judgeships are used by them to satisfy patronage and other political interests, to which considerations of fitness may take a very backseat. [*See* fns. 7 & 8, *infra*].

NONE of you have ever denied or disputed the accuracy or significance of the posted primary source documents in establishing the corruption of federal judicial selection/confirmation. This includes the most pivotal document: CJA's March 26, 2003 memorandum, particularizing the documentary evidence establishing the unfitness of the judicial nominee whose confirmation would be the subject of the May 22, 2003 Senate Judiciary Committee "hearing": New York Court of Appeals Judge Richard C. Wesley, nominated to the Second Circuit Court of Appeals.

Your failure to answer or otherwise address the simple question posed by my September 10th memo (at p. 5) as to whether or not you would agree that, on its face, the March 26, 2003 memorandum is "dispositive of nominee unfitness, *by any cognizable standard*" throughout the many months that I have been maliciously prosecuted for my respectful request to testify as to its serious and substantial content, covered-up by the bar associations and the relevant elected officers charged with protecting the public from unfit federal judicial nominees, can only mean that you are not – as you purport and as is commonly believed – committed to safeguarding the integrity of federal judicial selection/confirmation and facilitating meaningful citizen participation. What other interpretation is there?[4]

Last month, the dispositive significance of CJA's March 26, 2003 memorandum was highlighted by my Letter to the Editor, "*Portrayal in News Item Found 'Denigrating'*", in the May 19, 2004 New York Law Journal. In the event you did not see it, a copy is enclosed, as is a copy of my Letter to the Editor, "*Correcting the Record*", in Roll Call's May 10, 2004 issue[5].

---

[4] Likewise, what other interpretation is there for your abandonment of any advocacy to advance the unimplemented recommendations of The Ralph Nader Congress Project, Common Cause, and The Twentieth Century Fund to reform federal judicial selection/confirmation and facilitate citizen involvement – and your spurning of CJA's efforts to promote them, not just last year, but over the preceding seven years? This, separate and apart from your rebuff and shameful treatment of CJA, denying us our rightful place as a partner in advancing the public interest on judicial selection and discipline. *See*, CJA's prior correspondence with you, posted on our website, accessible *via* the sidebar panels "*Correspondence-Organizations*" and, as to Mr. Nader, "*Correspondence-Others*".

[5] These are also posted on CJA's homepage, as well as accessible *via* the sidebar panel "*Published Pieces*".

Because these two published Letters so concisely summarize the facts *corroborative of my innocence*, I intend to submit them, on my own behalf, at the June 28th sentencing – along with "hard copies" of the "Paper Trail" of CJA's correspondence on which they rest. This is set forth by my May 28, 2004 memorandum to Senate Judiciary Committee Chairman Hatch, Ranking Member Leahy, New York Home-State Senators Schumer and Clinton, and Senator Chambliss, affording them the opportunity to deny or dispute the accuracy of this correspondence -- particularly the memorandum I sent them exactly one year earlier, May 28, 2003, reciting what had taken place at the May 22, 2003 Senate Judiciary Committee's confirmation "hearing" and identifying the basis upon which I would subpoena them as my witnesses at trial[6].

A copy of the May 28, 2004 memorandum is enclosed. There has been no response from the Senators – including to its request that they answer the question as to "how much jail time" they deem "appropriate" for the "concocted 'crime'" of which I was convicted after their Senate Counsel succeeded, by a fraudulent motion, to quash my subpoenas for their trial testimony. As for the U.S. Attorney's response, he has cited it to the trial judge, D.C. Superior Court Judge Brian Holeman, as evidence that I have "not acknowledged that [my] actions were in any way wrong" and that I have shown "no remorse whatsoever".

What is your view? Based on the primary source documents posted on CJA's homepage, do you regard my "actions" as "in any way wrong" for which I should be showing "remorse"? Would you not agree that these documents attest to my fidelity to the highest standards of citizen participation in federal judicial selection – and embody so much of what you publicly espouse, as for instance, by Justice in the Making – A Citizen's Handbook for Choosing Federal Judges"[7]? This 1993 booklet of the Alliance for Justice states, "Citizen

---

[6] Both CJA's May 28, 2003 and May 28, 2004 memoranda are posted on the homepage "Paper Trail".

[7] Only in preparing to write this memo did I discover the existence of the Citizens' Handbook – and this from the Alliance's website. On the same webpage as describes how the Alliance's Judicial Selection Project "encourages public participation in the selection and confirmation process" and "promot[es] standards for federal judges", the Handbook is identified as "guid[ing] groups on how to get involved in the judicial selection process." [www.allianceforjustice.org/judicial/about/inex.html]

It took several long-distance phone calls over a two-week period to secure the Handbook from the Alliance's office manager, who told me it was "out-of-date" and could not be provided

participation in the selection process is imperative" (at p. 2) and that

> "Historically it has been through the Senate that citizens have made their voices heard. But there are numerous opportunities for the public to act earlier – in the selection phase, as well as in the confirmation process" (at p. 24).

To that end, the booklet is annotated by "CITIZEN ACTION MEMOS", advising:

> "...Citizens should begin by contacting the office of the Senator...and request information on the process. The public should also function as a watchdog and closely monitor the process and its outcome." (at p. 11)
>
> "Citizens can contact the appropriate [American Bar Association] circuit representative to provide information about a prospective nominee..." (at p. 14)
>
> "Citizens can influence the blue slip process by communicating their views on a ...nominee to the home-state Senator..." (at p. 21)
>
> "[Senate Judiciary] Committee staff is open to input from citizens and outside organizations and is particularly eager to hear about first-hand experiences from those in the community where nominees have been practicing law. The Committee will receive information from confidential sources and honor an individual's request for anonymity, but it prefers to place the information in the public record. Information held in confidence may limit the Committee's ability to completely investigate an issue.
>
> A letter to the Committee requesting an opportunity to testify is generally sufficient to trigger a call from a Committee investigator. If allowed to testify, witnesses

---

unless it was first cleared by Ms. Aron. It was not faxed to me until May 27th – and only after I directly stated to the office manager that since Ms. Aron had commented to Legal Times in connection with the "disruption of Congress" criminal case against me (*see*, fn. 3, *supra*), she surely knew that I had been subsequently convicted – and that such Handbook might be useful for me at the upcoming sentencing.

> should be prepared for intense questioning by the Senators. Citizens groups can also prepare questions in advance and send them to the Senator chairing the hearing. However, just sending questions does not ensure that they will be asked. Follow-up phone calls must be made. Groups may also want to draft questions that can be sent to the nominee after a hearing if any issues need further exploration..." (at p. 22).[8]

The public, which has been led to believe that you are committed to its interests in matters judicial, has a right to expect that you will not – as you have until now – "stand idly by" in the face of *independently-verifiable* documentary proof of dysfunction and corruption in every facet of the federal judicial selection/confirmation process: involving Home-State Senators, bar associations, the Senate Judiciary Committee and its leadership, the President, and the Senate leadership – all established by a tour-de-force of citizen action, of which you should be proud and supportive. You have an *on-going* responsibility to confront this case – and to seize upon its explosive potential to

---

[8] Needless to say, CJA's in-the-trenches experience with federal judicial selection/confirmation, spanning more than a decade, refutes much of what is represented in the Citizens' Handbook. Indeed, notwithstanding CJA's contacts with the Alliance go back to May 1992 – when we provided it with what was then the most breathtaking model of citizen action – *to wit*, a 50-page "Law Day" critique, with a compendium of more than 60 exhibits, documenting the corruption of the pre-nomination federal judicial screening process through a case-study example, the Alliance never asked for our comment or suggestions in developing the Handbook the following year. Nor did it even send us a copy so that we could have immediately furnished it with "suggestions...to enhance the quality of the judiciary and the public's participation in the process", which is what the preface to its Handbook invited.

Likewise, throughout the subsequent years of CJA's in-the-trenches activism and interaction with the Alliance, no one informed us of the Handbook's existence or asked for our comment as to whether and in what ways its recommendations accorded with our experience. This includes in 1996, when we not only provided the Alliance with documentary proof of the corruption of both pre- AND post-nomination federal judicial selection process, but the complete spurning of citizen participation by the major players in federal judicial selection/confirmation, culminating in my arrest on a trumped-up "disorderly conduct" charge on June 25, 1996 in the hallway outside the Senate Judiciary Committee. [*See*, CJA's correspondence with the Alliance, posted on our website under "*Correspondence-Organizations: Alliance for Justice*" – and, as to the referred to documentary presentations, "*Correspondence-Federal Officials-Senate Judiciary Committee*".]

Perhaps even more serious, the Alliance never – throughout these page dozen years – utilized CJA as an information source, including for its "reports" on federal judicial nominees from New York, where CJA is based. This includes its "report" on Judge Wesley – as to whom it took no position [*See*, fn. 3, *supra*].

achieve the non-partisan, good-government reform of federal judicial selection/confirmation that would otherwise be impossible to secure. I, therefore, call upon you to submit a statement to Judge Holeman, either individually or collectively, in advance of the June 28th sentencing, setting forth your view with respect to the "disruption of Congress" charge and requesting that any sentence be stayed pending appeal, particularly a sentence of jail time.

The most elementary proposition in the case – single-handedly championed by me to the very end of trial -- was set forth by my June 20th memo:

> "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'." (at p. 3, underlining in the original).

This proposition is A MATTER OF LAW -- that must now be vindicated on appeal by a challenge to the constitutionality of D.C. Code §10-503.16(b)(4), *as written and as applied*, lest the dangerous precedent of this case be allowed to stand. I request your legal and *amicus curiae* assistance for such purpose – as likewise to advance the other important appellate issues. Among these, my right, pursuant to D.C. Code §10-503.18, to have had the case venued in the U.S. District Court for the District of Columbia, rather than the D.C. Superior Court, and my right, under the Sixth Amendment to the U.S. Constitution, to the trial testimony of the subpoenaed Senators – a right reinforced by the U.S. Supreme Court's decision in *Crawford v. Washington*, 124 S.Ct. 1354. These issues, as all others, are components of the overarching appellate issue: my entitlement to Judge Holeman's disqualification for demonstrated actual bias.

As vocal advocates of "fair and impartial courts", publicly proclaiming that "there are mechanisms to hold judges accountable"[9], you should embrace the opportunity to participate in the appeal of a conviction procured by a judge whose bias pre-trial was already so pervasive and prejudicial in depriving me of discovery to which I was entitled and in countenancing the U.S. Attorney's prosecutorial misconduct as to have TWICE compelled me to move for his disqualification and to thereafter bring a writ of mandamus/prohibition against him[10]. The sufficiency of these documents – entitling me, *as a matter of law*,

---

[9] *See*, website of Justice at Stake Campaign (www.justiceatstake.org/contentView.asp) "Why Judicial Independence Matters".

[10] *See*, my February 23, 2004 and March 22, 2004 motions for Judge Holeman's

to Judge Holeman's pre-trial disqualification, as well as to the additional requested relief of change of venue/removal – will be the threshold issues on appeal.

As to what took place at trial, Judge Holeman's perversions of due process went beyond anything I could have imagined: the most indefensible evidentiary rulings – ALL flowing from his legally unsupported and insupportable, factually barren, where not outrightly false, orders disposing of my decisive October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations and for sanctions and my December 31, 2003 opposition to the prosecution's motion *in limine*[11] – for which I had sought his pre-trial disqualification and change of venue/removal. Among Judge Holeman's trial rulings: his refusal to allow me to mention anything about the content of the March 26, 2003 memorandum, his refusal to allow me to mention anything about the "blue slip" prerogative of Home-State Senators Schumer and Clinton, his refusal to allow me to mention that the true arresting officer, concealed by the underlying prosecution documents, had been the subject of a police misconduct complaint filed by me in 1996, and his refusal to allow me to introduce into evidence the underlying prosecution documents, whose recitation of what took place at the May 22, 2003 Senate Judiciary Committee "hearing" was materially false and misleading[12].

Judge Holeman interrupted and cut off my opening statement, calling in marshals who remained in court and surveilled me throughout most of the trial, cut off my cross-examination of prosecution witnesses, cut off my direct examination of my witnesses. As for my own testimony from the witness stand, Judge Holeman, *sua sponte* and without prior notice, cut me off and would not allow me to testify as to the very events giving rise to the "disruption of Congress" charge, *to wit*, what took place at the May 22, 2003 Senate Judiciary

---

disqualification and my April 6, 2004 petition for a writ of mandamus/prohibition against him – all posted on the homepage "Paper Trail".

[11] These two documents, as likewise my December 3, 2003 affidavit in further support of my October 30, 2003 discovery/disclosure/sanctions motion are all posted on the homepage "Paper Trail".

[12] Judge Holeman's refusal to allow into evidence the knowingly false and misleading underlying prosecution documents was highlighted by my May 25, 2004 letter for inclusion in the pre-sentence report. It is posted on the homepage "Paper Trail", as is my referred-to July 7, 2003 memo to the American Civil Liberties Union, comparing the underlying prosecution documents to the videotape and transcript of the Senate Judiciary Committee's May 22, 2003 confirmation "hearing".

Committee confirmation "hearing"[13]. Indeed, I was not only prevented from testifying as to the May 22nd arrest, but as to the three previous days, whose critical events are chronicled by my important May 21-22 correspondence with Chairman Hatch, Ranking Member Leahy, Senators Schumer and Clinton, and Capitol Police. Thereafter, upon the prosecution's improper and badgering rebuttal examination of me, Judge Holeman locked me up for an hour because of my perfectly legitimate response – following which, and over my objection, he rested my defense case and, thereafter, cut off my closing statement. The trial transcript – costing approximately $6,000 – was ordered immediately upon my conviction on April 20th.

In light of your strong advocacy of "judicial independence", you will have an opportunity to explore whether Judge Holman's flagrant pre-trial and at-trial "protectionism" of the powerful Senators whose corruption of federal judicial selection/confirmation underlies the "disruption of Congress" charge against me was influenced by the fact that the D.C. Superior Court, as likewise the D.C. Court of Appeals, is directly funded by Congress, which was one of the bases upon which I had asserted I was entitled to change of venue/removal. Indeed, inasmuch as the District of Columbia has a "merit selection" system for appointment of judges to both these courts, you will also have an opportunity to examine the kind of "justice" it has produced – and will yet produce -- in this profoundly important and politically-explosive case.

As for the June 28th sentencing and a stay pending appeal, I would greatly appreciate your assistance in presenting the challenge to the constitutionality of D.C. Code §10-503.16(b)(4) to be raised on appeal – including by your own memorandum of law as *amicus curiae*. In a day or two, I will send you my draft memo-in-progress. I have no doubt but that with your legal expertise and the massive resources at your disposal, you could swiftly fashion it into a memorandum that would powerfully contribute to the protection of fundamental First Amendment citizen rights, endangered by my unprecedented arrest and conviction for a crime of which I am totally innocent.

As reflected by my prior correspondence with you – and equally true now – I am eager to meet with you to personally discuss any aspect of the "disruption of Congress" case and the extraordinary primary source documents on which it rests. Either prior thereto or in conjunction therewith, I would be pleased to furnish you with a full copy of the litigation file -- and the decisive videotape of

---

[13] This is particularized at pages 3-4 of my May 25, 2004 letter for inclusion in the pre-sentence report -- posted on the homepage "Paper Trail".

the May 22, 2003 Senate Judiciary Committee confirmation "hearing", over and beyond "hard copies" of CJA's "Paper Trail" of correspondence establishing the corruption of federal judicial selection/confirmation.

Please let me hear from you as soon as possible so that we can work together in developing appropriate legal and other strategies. Needless to say – and I so request – it is critically important that you alert your innumerable media and scholarly contacts to this groundbreaking case. No further time should be wasted in advancing the long-overdue non-partisan, good-government reform of federal judicial selection/confirmation that would benefit ALL this nation's citizens, regardless of ideology.

I look forward to your prompt response.

Thank you.

Enclosures: (1) "*Portrayal in News Item Found 'Denigrating'*", Letter to the Editor, New York Law Journal, May 19, 2004
(2) "*Correcting the Record*", Letter to the Editor, Roll Call, May 10, 2004
(3) CJA's May 28, 2004 memorandum to Senate Judiciary Committee Chairman Hatch, Ranking Member Leahy, New York Home-State Senators Schumer & Clinton, and Senator Chambliss

cc: Citizen Works: Lee Drutman, Communications Director**
Fund for Modern Courts: Ken Jockers, Executive Director
Cato Institute:
Roger Pilon, Senior Fellow & Director
Center for Constitutional Studies
Washington Legal Foundation:
Paul Kamenar, Senior Executive Counsel
Free Congress Foundation:
Marion Harrison, President**
Director/Federal Judicial Monitoring Project
Robert D. Thompson, Vice-President/Coalitions for America
Judicial Watch:
Tom Fitton, President**