COUNTY LINES/MAREK FUCHS

When the Judge Sledgehammered The Gadfly

New York Times Sunday Westchester ed. 11/07/04

paragraphs

(1) ELENA SASSOWER, a White Plains Hebrew-school teacher and judicial activist, is — as even her staunchest defenders note — something of a handful. Her conversational style can best be described as relentless, and her passions, expressed in long recitations, can exhaust the most earnest listener.

(2) But even allowing for that, her defenders can't get past one little fact: that some of those relentless words, not threatening but apparently very annoying to a Washington judge, have landed her behind bars. For speaking out of turn at a Senate hearing in 2003, she is now more than four months into a six-month sentence in a medium-security jail.

(3) Ms. Sassower and her mother, Doris, run a White Plains group called the Center for Judicial Accountability. It specializes in frontal assaults on the clubby process that often puts judicial nominees on the bench. Their beef is more systemic than ideological: nominations, they say, seem to go not to the most knowledgeable judges but the best connected.

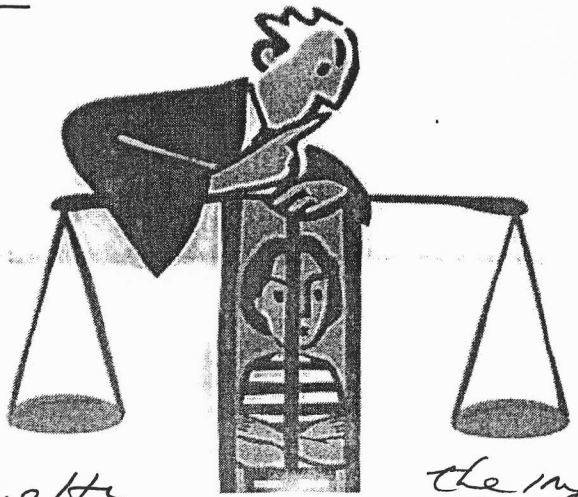
(4) Obviously, this stance has not endeared her to the judicial establishment (or the elected officials who approve nominations) — on top of which, add her reputation for delivering her views with the subtlety of a claw hammer.

(5) When she began to focus on the nomination of Richard Wesley to the Second Circuit of the United States Court of Appeals, she was warned by police officers at the Capitol in Washington not to disrupt his confirmation hearing.

(6) She did not heed the warning. Toward the end of the hearing, she asked to speak, she says, persisting even after the gavel came down.

(7) Unseemly as officials may have found this behavior, it is rare that even cacophonous outbursts result in charges, let alone jail terms. In May, when protesters disrupted a House Armed Services Committee session by unfurling a banner and shouting at Defense Secretary Donald H. Rumsfeld to resign, they were ushered out — but not charged or arrested.

(8) Ms. Sassower, however, was charged with disorderly conduct (and by the way, Mr. Wesley's nomination was



Note from Elena Sassower

This copy was made from the copy that was sent me while incarcerated and which I read with 6 weeks left to serve of my 6-month jail sentence

What a malicious cruelty to see myself so falsely portrayed & the important legal + constitutional issues all obliterated

confirmed). Court transcripts reveal that her trial, which took place in April, was a production, with Ms. Sassower, who has no law degree, conducting her own defense. She charmed neither jury nor judge, but when she was found guilty, the prosecution recommended only a five-day suspended sentence.

(9) Judge Brian F. Holeman of Superior Court gave her a three-month sentence, but expressed a willingness to suspend it as long as Ms. Sassower agreed to meet some conditions: to take anger-management classes; stay away from the Capitol complex; sever all contact with members of the Senate Judiciary Committee; and apologize.

(10) The apology, according to court transcripts and an interview with Ms. Sassower from a jail pay phone, was the biggest sticking point. She absolutely refused to apologize.

(11) So Judge Holman retracted his offer to suspend, then doubled her sentence.

(12) Said he: "Ms. Sassower, once again, your pride has gotten in the way of what could have been a beneficial circumstance for you. This incarceration begins forthwith; step her back."

(13) Even those who have found Ms. Sassower difficult emphasize that she has never been even remotely threatening. Ralph M. Stein, a Pace University Law professor, remembers her auditing his classes and attending talks he has given. She launched into "polite but fulminating" assaults, said Mr. Stein, but she never crossed the line.

(14) New York State Senator John A. DeFrancisco, who has served on the state judiciary committee for 12 years, said that just after he took over as chairman, Ms. Sassower came to testify at a public hearing "wielding a dolly with her and three or four big boxes of materials." She was impossible to keep on message, he said, and he eventually had to tell her that she could not continue. But in the end, she was harmless.

(15) Nathan Lewin, a well-known Washington lawyer, evidently agrees with that assessment; he is working pro bono to free Ms. Sassower, who is 48.

(16) "Elena makes things more difficult for herself than the ordinary person," Mr. Lewin said, "but judges are not supposed to lose their temper or be vindictive."

(17) And Ms. Sassower, expressing few illusions about her relatively friendless state, put it this way: "It's not a matter of who is on my side. But why are they not questioning what happened? I shouldn't be in jail. I'm just here because everyone is standing idly by."

"When the Judge Sledgehammered The Gadfly"

New York Times column by Marek Fuchs
(November 7, 2004, Westchester Section, Front Page)

> "Columnists in the news pages hold a special place at The Times. Each has wide latitude to speak with an individual point of view, always informed by diligent reporting and intelligent reasoning.", December 4, 2002 staff memo by Times Managing Editor Gerald Boyd, as quoted in Hard News – The Scandals at *The New York Times* and Their Meaning for American Media by Seth Mnookin (at p. 93).

As hereinafter demonstrated, Mr. Fuchs' November 7, 2004 column is the very opposite of "diligent reporting" and "intelligent reasoning". It is deliberately defamatory, knowingly false and misleading, and so completely covers up the politically-explosive underlying national and New York stories of the corruption of the processes of judicial selection and discipline, involving our highest public officers, as to be explicable only as a manifestation of The Times' "profound and multitudinous conflicts of interest"[1].

ANALYSIS

The Title: ***"When the Judge Sledgehammered The Gadfly"***

The word "gadfly" is pejorative: "a persistent irritating critic; a nuisance"; "a persistently annoying person" [www.thefreedictionary.com/gadfly – The American Heritage Dictionary, updated 2003]. It is this pejorative connotation that is presented in the very first sentence of Mr. Fuchs' column, as in virtually every subsequent sentence.

Paragraph 1, Sentence 1:

"ELENA SASSOWER, a White Plains Hebrew school teacher and judicial activist, is – as even her staunchest defenders note – something of a handful."

> Mr. Fuchs does not disclose the identities of any of these so-called "staunchest defenders" who consider me "something of a handful". Inasmuch as "staunchest defenders" would not have asked for anonymity – and Times policy disfavors

[1] As to those "profound and multitudinous conflicts", *see* CJA's accompanying July 29, 2005 letter to Times Executive Editor Bill Keller (at pp. 4-7) – and the referred-to underlying correspondence, posted on CJA's website, www.judgewatch.org, most comprehensively *via* the sidebar panel, "*Press Suppression*" – "*The New York Times*".

anonymous sources except in circumstances not here applicable[2] -- there was no reason for Mr. Fuchs not to have identified them, except for the obvious reason that my "staunchest defenders" would not have so-characterized me. By definition, "staunchest defenders" would have had much good to say about me – none of which appears in Mr. Fuchs' column. Indeed, by making my "staunchest defenders" the source of negative comment about me, Mr. Fuchs subtly reinforces its reliability since my "staunchest defenders" are presumed to have no ulterior motive for presenting me in a negative light.

I have been unable to locate any of the "staunchest defenders" with whom Mr. Fuchs spoke, excepting my mother and sister. Of the more than half-dozen CJA members and supporters whose names my mother told me she gave to Mr. Fuchs, all have stated that he never contacted them.

Paragraph 1, Sentence 2:

"Her conversational style can best be described as relentless, and her passions, expressed in long recitations, can exhaust the most earnest listener."

Mr. Fuchs also does not disclose the identity of the "most earnest listener" who might be "exhaust[ed]" by my "conversational style". Nor does he explain why such "most earnest listener" would not – by reason of his earnestness – concentrate on the substance of my words, instead of my "style" of conversation. Again, by attributing to my "most earnest listener" a negative response to me, when, by definition, a "most earnest listener" is presumed to be motivated to react positively, Mr. Fuchs subtly reinforces the plausibility of the negative.

If Mr. Fuchs is the unidentified "most earnest listener" to whom he is referring, he would have had many, many quotes from my "long recitations" to include in his column. His column, however, contains only a single quote from me – and that in its final paragraph, where Mr. Fuchs has me commenting upon my "relatively friendless state".[3]

---

[2] *See* New York Times' May 7, 1999 "Guidelines on Our Integrity"; New York Times' July 28, 2003 Report of the "Committee on Safeguarding the Integrity of Our Journalism" (pp. 27-8); Bill Keller's February 25, 2004 memo on "Confidential News Sources"; and New York Times' September 2004 handbook on Ethical Journalism (at pp. 5-6). Also, New York Times' May 2, 2005 Report on "Preserving Our Readers' Trust" (at pp.7-8) and Bill Keller's June 23, 2005 memo on "Assuring Our Credibility".

[3] Less than two months later, following an outpouring of support by write-in ballots from across the country and locally in a poll that ended on December 31, 2004, I was named a "White Plains Person of the Year" and hailed for heroism as a "Defender of the Constitution" by the web-based White Plains CitizeNetReporter [http://www.whiteplainscnr.com/article3198.html].

Paragraph 2, Sentence 1:

"But even allowing for that, her defenders can't get past one little fact: that some of those relentless words, not threatening but apparently very annoying to a Washington judge, have landed her behind bars."

The opening phrase, "But even allowing for that, her defenders can't get past one little fact", creates the misimpression that the immediately preceding two sentences – which are each negative – are positive. At the same time, it falsely assumes an "objective" voice by distancing itself from my "defenders", whose defense of me is supposedly belied by "one little fact".

As to this supposed "one little fact", Mr. Fuchs provides two characterizations joined by speculation: "relentless words…apparently very annoying to a Washington judge". He provides no particulars as to what these "relentless words" were, when they were spoken, and why they would have been "very annoying" to "a Washington judge". Nor does Mr. Fuchs say that it is lawful or constitutional for such words to have "landed [me] behind bars" or that a judge would be justified in putting me there based on his "annoy[ance]" at these words.

Again, Mr. Fuchs subtly reinforces the legitimacy of what he is saying by portraying it as something my "defenders…can't get past" -- as my "defenders" would be presumed to have a response, if there was one. His implication, underscored by his not identifying their response, is that they had none.

Here, too, Mr. Fuchs does not disclose the identities of my "defenders" – and whether they are the same as my unidentified "staunchest defenders", who assuredly would have had a response.

Paragraph 2, Sentence 2:

"For speaking out of turn at a Senate hearing in 2003, she is now more than four months into a six-month sentence in a medium-security jail."

If my "speaking out of turn at a Senate hearing" is the "one little fact" my "defenders can't get past", such is also not a "fact". Rather it is another characterization, whose source Mr. Fuchs also does not identify.

Moreover, it is false. The reason for my six-month incarceration was that I declined terms of probation – a "little fact" Mr. Fuchs himself concedes, but not until paragraphs 9-12 of his column.

Conspicuously, Mr. Fuchs does not disclose what I told him, either as to the reason for my incarceration or what took place at the 2003 "Senate hearing". In view of my supposed "relentless" and "long recitations" I could be presumed to have discussed these with him at length – unless I am not a "staunchest defender" in my

own defense.

As Mr. Fuchs' notes should reflect, I informed him precisely what I had said at the May 22, 2003 hearing, when I had said it – and that there was a corroborating Senate videotape, constituting "celluloid DNA". And I believe I emphasized to Mr. Fuchs that it would conceal the bogus, malicious nature of the "disruption of Congress" charge against me, if he simply reported – as other newspapers had – that I had "spoken" or "spoken out" – without identifying my precise words, which 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?".

I surely told him that if he were not going to identify my precise words, he must at least report that my words consisted of a respectful request to testify in opposition – a request not made until AFTER the hearing had already been announced "adjourned". Revealing this would expose that what I had done was not – as a matter of law – "disruption of Congress".

Mr. Fuchs does not state whether he viewed the videotape – or even that there exists a videotape. Nor does he identify whether he read either my written analysis of it (and of the Senate hearing transcript), posted on CJA's website, www.judgewatch.org, or my memorandum of law on the unconstitutionality of the "disruption of Congress" statute, *as written and as applied* – also posted on the website.[4] I believe I specifically asked him to examine both these documents.

Paragraph 3, Sentence 1:

"Ms. Sassower and her mother, Doris, run a White Plains group called the Center for Judicial Accountability."

In identifying my "mother, Doris", Mr. Fuchs does not identify that she and I do not merely "run" the Center for Judicial Accountability (CJA), but are its co-founders – and that "Doris" has more relevant credentials than her biological relationship to me. These impressive credentials are posted on CJA's website under "*Who We Are*" and "*Awards and Honors*" – and it is reasonable to surmise that Mr. Fuchs would have examined them – especially in light of the attention his column gives to my supposed personality, style, defenders, friends, and reputation.

It appears that Mr. Fuchs' inclusion of my "mother, Doris" in his column is to foster the impression that CJA is some inconsequential family operation – which he

---

[4] The written analysis and my draft memorandum of law, both posted on, or accessible from, CJA's homepage during my incarceration, are now on the "*DISRUPTION OF CONGRESS*" page of our website.

then furthers by his tagging CJA as a "White Plains group", rather than, as we are, a national, non-partisan, non-profit citizens' organization based in White Plains. In any event, Mr. Fuchs, who had a conversation of at least 20 minutes with my mother and had received from her an express mail package containing a petition she had written to secure my release, signed by hundreds of people[5], could be presumed to have recognized that she had been working tirelessly on my behalf and was second to none among my "staunchest defenders". His column, however, presents not a single quote or paraphrase attributed to her, whether about me, the "disruption of Congress" case, or about CJA.

Paragraph 3, Sentences 2 & 3:

"It specializes in frontal assaults on the clubby process that often puts judicial nominees on the bench. Their beef is more systemic than ideological: nominations, they say, seem to go not to the most knowledgeable judges but the best connected."

CJA has never purported to "specialize[] in frontal assaults" and Mr. Fuchs does not explain either the meaning of this unflattering characterization or its source. His inference is that we are intentionally provocative and combative, which he then reinforces by his reference to our "beef". Presumably, the purpose of depicting CJA's work in this coarse, unprofessional light is to make my arrest, conviction, and incarceration appear less shocking than they would if he described our advocacy as embodying the highest standards of professionalism, civic responsibility, and evidentiary proof -- as would have been evident to him from CJA's website, including the "PAPER TRAIL TO JAIL"[6], to which I referred him.

As to CJA's "special[ty]", it is also not limited to judicial nominations – or, more broadly, processes of judicial selection. It extends equally to processes of judicial discipline – a fact Mr. Fuchs conceals. Indeed, underlying the "disruption of Congress" case against me is CJA's meticulous documenting of the corruption of the New York State Commission on Judicial Conduct – embodied in the record of *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc, acting pro bono publico v. Commission on Judicial Conduct of the State of New York.* This would have been evident to Mr. Fuchs from CJA's March 26, 2003 written statement of citizen opposition – the single most important document on the "PAPER TRAIL".

---

[5] *See* my analysis of the final paragraph of Mr. Fuchs' column at pp. 16-18 *infra*.

[6] The "PAPER TRIAL TO JAIL", which, during my incarceration, was accessible *via* CJA's homepage, is now accessible *via* the "*DISRUPTION OF CONGRESS*" page. Prior to my incarceration, it had been posted on CJA's homepage and titled "*Paper Trail Documenting the Corruption of Federal Judicial Selection/Confirmation and the 'Disruption of Congress' Case it Spawned*".

As for Mr. Fuchs' introduction of the qualifier, "they say", such is intended to infer that it is our subjective view – not verifiable from evidence or shared by The Times -- that nominations "seem to go not to the most knowledgeable judges but the best connected". Yet, The Times had long refused to verify documentary evidence of corruption with respect to judicial appointments – as Mr. Fuchs could see for himself from my correspondence with The Times, posted on CJA's website[7]. Indeed, from the "PAPER TRAIL", he could see that this refusal extended to Judge Wesley's nomination to the Second Circuit Court of Appeals – and was the subject of complaint to the highest echelons at The Times, beginning with a June 11, 2003 memo addressed to the editorial board.

Tellingly, Mr. Fuchs does not identify even the most obvious of Judge Wesley's "connect[ions]: he was a pal of Governor Pataki when they served together in the New York State legislature -- and was the Governor's first appointee to the New York Court of Appeals. Nor does he identify CJA's contention that Judge Wesley's nomination to the Second Circuit Court of Appeals by President Bush was a reward, engineered by Governor Pataki, for Judge Wesley's having "protected" the Governor from the criminal ramifications to him of my public interest lawsuit against the New York State Commission on Judicial Conduct – the particulars of which, including a timeline, were set forth by CJA's March 26, 2003 written statement (at pp. 8-13).

Paragraph 4:

"Obviously, this stance has not endeared her to the judicial establishment (or the elected officials who approve nominations) – on top of which, add her reputation for delivering her views with the subtlety of a claw hammer."

The word "stance" has a pugnacious connotation – especially coming after Mr. Fuchs' description of "frontal assaults" and "beef". As CJA's website makes obvious, our positions are founded on documentary evidence – which we have always provided to "the judicial establishment" and "the elected officials who approve nominations" to enable them to verify its seriousness and take appropriate steps.

Mr. Fuchs does not identify that "the judicial establishment" and these "elected officials" have steadfastly refused to confront this evidence. Instead, he transposes their response so that it relates not to evidence, which he never identifies, but to me. His use of the word "endear" then reinforces this personalization – and takes on added resonance because everything Mr. Fuchs has thus far presented about me is the opposite of "endear[ing]. This is then underscored by his immediate reference to my supposed "reputation for delivering [my] views with the subtlety of a claw hammer".

---

[7] The history of this correspondence with The Times, spanning more than a dozen years, is posted on the "*Press Suppression-New York Times*" page.

Such comparison builds on the overbearing, unpleasant quality about me he has already conveyed. It also gives weight to the little "gadfly" image of the title – there being less imbalance in a "claw hammer" being "sledgehammered" than a "gadfly".

Mr. Fuchs does not identify the sources from whom he has garnered my supposed "reputation". Is it from "the judicial establishment" and "elected officials who approve nominations" – and, if so, who? – and to what specifically are they referring? And what is my "reputation" among my "staunchest defenders"? – who Mr. Fuchs apparently never contacted (see analysis of paragraph 1, *supra*) and whose adulatory views were before him by the links on CJA's website to their websites, songs, and petition comments.[8]

Paragraph 5:

"When she began to focus on the nomination of Richard Wesley to the Second Circuit of the United States Court of Appeals, she was warned by police officers at the Capitol in Washington not to disrupt his confirmation hearing."

Mr. Fuchs' phase "she began to focus on the nomination of Richard Wesley" is a euphemistic cover-up. I did not "focus" on anything. Rather, I opposed a judicial nomination – and this, as CJA's coordinator. Moreover, "Richard Wesley" is not some private, untitled citizen, as Mr. Fuchs makes it appear. He was a judge on New York's highest state court, the New York Court of Appeals – with his verifiable misconduct in that capacity constituting the basis for citizen opposition, particularized by CJA's March 26, 2003 written statement.

Mr. Fuchs' single-sentence paragraph also falsely represents as simultaneous events that are separated by 2-1/2 months. As the "PAPER TRAIL" establishes, I promptly made known CJA's opposition upon President Bush's nomination of Judge Wesley on March 5, 2003. It was not until May 21, 2003 – 2-1/2 months later -- that I was warned by Capitol Police.

It is by obliterating these 2-1/2 months that Mr. Fuchs is able to conceal the corruption of federal judicial selection involving the American Bar Association, the Association of the Bar of the City of New York, New York Home-State Senators Schumer and Clinton, the leadership of the U.S. Senate Judiciary Committee, and the White House, chronicled by the "PAPER TRAIL".

---

[8] These links – which were on CJA's homepage during my incarceration – are now accessible *via* the "*DISRUPTION OF CONGRESS*" page. [*See* "Responses of WE, THE PEOPLE, to Elena's Incarceration" – "*Illustrative Outreach Efforts & Letters of Support of CJA Members & Supporters*"]

Paragraph 6, Sentences 1 & 2:

"She did not heed the warning. Toward the end of the hearing, she asked to speak, she says, persisting even after the gavel came down."

As Mr. Fuchs' previous paragraph referred to the warning by Capitol Police that I was "not to disrupt", the inference of his words that I "did not heed the warning" is that I did "disrupt". He then makes this explicit by his next sentence, which is materially false and misleading in three respects.

First, it was not "[t]oward the end of the hearing" that I "asked to speak". The hearing was already over, having been announced "adjourned" by the presiding chairman.

Second, I never told Mr. Fuchs that I "asked to speak" – which perhaps explains why he does not put it in quotes. I told him that I had respectfully requested to testify and recited for him the precise words I had used: "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?".

Third, I did not "persist[] even after the gavel came down" – and he does not identify the words purportedly constituting my "persist[ence]".

Tellingly, Mr. Fuchs does not identify any source for the characterizations in these sentences, other than his false attribution to me.

Paragraph 7, Sentences 1 & 2:

"Unseemly as officials may have found this behavior, it is rare that even cacophonous outbursts result in charges, let alone jail terms. In May, when protesters disrupted a House Armed Services Committee session by unfurling a banner and shouting at Defense Secretary Donald H. Rumsfeld to resign, they were ushered out – but not charged or arrested."

Having materially mischaracterized what had taken place at the confirmation hearing, Mr. Fuchs slips in a further mischaracterization, laced with speculation, *to wit*, that "officials may have found [my] behavior" "unseemly".

Yet, had Mr. Fuchs revealed that what I did – as verifiable from the Senate videotape – was to respectfully request to testify with "citizen opposition" to Judge Wesley's confirmation – and then, only because – as verifiable from the "PAPER TRAIL" – our "elected officials who approve nominations" in the Senate had ALL ignored, *without findings of fact and conclusions of law*, CJA's fully-documented March 26, 2003 written statement and the bar associations' demonstrably fraudulent bare-bones approval ratings, it would have been clear that there was nothing "unseemly" in what I had done. Rather, what I had done was brave and patriotic – and

all the more so in light of Capitol Police's unwarranted threat that I would be arrested – also verifiable from the "PAPER TRAIL".

As for Mr. Fuchs' speculation about the view of "officials", he does not identify who such "officials" might be. Is he referring to Capitol Police—who I had contended had no authority to arrest me for respectfully requesting to testify and against whom, in 1996, I had filed a police misconduct complaint? Is he referring to U.S. Senate Judiciary Committee officials or to New York's Home-State Senators Schumer and Clinton? Nor does Mr. Fuchs identify any attempt to obtain substantiation from such "officials", either as to the view to which he has speculated or for an explanation as to the disparate fashion in which I was treated, as compared with the "cacophonous" protesters at the May 2004 Senate Armed Services hearing who were "not charged or arrested".

Paragraph 8, Sentence 1:

"Ms. Sassower, however, was charged with disorderly conduct (and by the way, Mr. Wesley's nomination was confirmed)."

I was not charged under the "disorderly conduct" statute, but under the "disruption of Congress" statute. This attempt to diminish the stature of my offense and conceal its national reach is then combined with a juxtaposition meant to further discredit what I had done. That is the inference of Mr. Fuchs' parenthesized "(and by the way, Mr. Wesley's nomination was confirmed)" – since readers would reasonably assume that had there been any legitimacy to what I had done, confirmation would not have occurred. Thereby further concealed is how utterly sham and rubber-stamp the confirmation process is – as further verifiable from my post-arrest correspondence on the "PAPER TRAIL".

Paragraph 8, Sentences 2 & 3:

"Court transcripts reveal that her trial, which took place in April, was a production, with Ms. Sassower, who has no law degree, conducting her own defense. She charmed neither jury nor judge, but when she was found guilty, the prosecution recommended only a five-day suspended sentence."

Mr. Fuchs does not identify the "court transcripts" he reviewed to support his inference that because I conducted my "own defense" and had "no law degree", the trial was "a production". This is not surprising as the trial transcripts and underlying pretrial record resoundingly establish that Judge Holeman made a mockery of my right to a fair trial and that no attorney could have done a more admirable and professional

job than I.[9] Tellingly, Mr. Fuchs provides not a single particular as to what about the trial was a "production".

Mr. Fuchs' further characterization that I had "charmed neither the jury nor judge", as if trials are supposed to be won on "charm", is wholly gratuitous – and is apparently intended to reinforce that I am an adversarial, "difficult" person.

As to the prosecution's recommendation of a "five-day suspended sentence", Mr. Fuchs furnishes no explanation for it – and fails to identify any inquiry of the prosecution for an answer. Indeed, one could read Mr. Fuchs' column and reasonably believe that he never contacted so partisan a source as the prosecution for any information or comment.

Paragraph 9:

"Judge Brian F. Holeman of Superior Court gave her a three-month sentence, but expressed a willingness to suspend it as long as Ms. Sassower agreed to meet some conditions: to take anger-management classes; stay away from the Capitol complex; sever all contact with members of the Senate Judiciary Committee; and apologize."

Mr. Fuchs presents Judge Holeman's three-month sentence matter-of-factly – with no explanation for its divergence from the prosecution's recommendation of a five-day suspended sentence. Judge Holeman is depicted as generous by his "willingness" to suspend the sentence upon my agreeing to probation terms. As to these terms, Mr. Fuchs also recites them matter-of-factly – as if there was nothing unfounded, inappropriate, or unconstitutional about them. Indeed, by the manner in which Mr. Fuchs has depicted me and what I did, these terms seem perfectly reasonable.

Altogether concealed is what I told Mr. Fuchs – and what is fully documented by CJA's "PAPER TRAIL": that D.C. Superior Court, as likewise the D.C. Court of Appeals, are directly funded by Congress and, at every stage, "protected" Congress in this politically-explosive case that exposes the corruption of federal judicial selection..

In no uncertain terms I told Mr. Fuchs that Judge Holeman's "protectionism" of the government was so extreme pretrial as to have compelled me to bring two formal motions to disqualify him for pervasive actual bias and, thereafter, to bring a mandamus/prohibition proceeding against him to remove him from the case– relief to which I was entitled. I summarized that Judge Holeman had denied me the discovery to which I was entitled, the witnesses to whom I was entitled, and that his misconduct

---

[9] IF Mr. Fuchs were competent to, and actually did, review the "court transcripts", he could have verified the utter perversion of the rule of law, which I summarized for him when we spoke. The particulars are now chronicled, with substantiating references to the "court transcripts" and record, by my appellant's brief and accompanying supplemental fact statement, which I filed with the D.C. Court of Appeals on June 28, 2005. These are posted on the "DISRUPTION OF CONGRESS" page of CJA's website.

continued at trial by insupportable evidentiary and other rulings, as well in the sentencing proceedings.

Mr. Fuchs' column never identifies my assertion, let alone any of the factual particulars, that my conviction was procured by judicial misconduct – or that Judge Holeman's three-month sentence and probation terms were a further manifestation of his pervasive actual bias, being unsupported by the record or precedent, with several of the probation terms being not merely inappropriate, but unconstitutional.

Paragraph 10, Sentences 1 & 2:

"The apology, according to court transcripts and an interview with Ms. Sassower from a jail pay phone, was the biggest sticking point. She absolutely refused to apologize."

Mr. Fuchs fails to identify any reason for why I "absolutely refused to apologize" – thereby reinforcing, including by the word "absolutely", that this is yet a further example of my wilful, relentless, obstinate personality. The "court transcripts" reflect reasons for my refusing the probation terms, including the apology, and I elaborated upon these during Mr. Fuchs' "interview" of me.

Paragraph 11:

"So Judge Holeman retracted his offer to suspend, then doubled her sentence."

By the word "offer", Mr. Fuchs again creates the illusion of Judge Holeman's generosity. He then presents Judge Holeman's doubling of my sentence as if this were something he was free to do – rather than, as Mr. Fuchs had been informed, an act both unlawful and unconstitutional.

Paragraph 12:

"Said he: Ms. Sassower, once again your pride has gotten in the way of what could have been a beneficial circumstance for you. This incarceration begins forthwith; step her back."

Mr. Fuchs uncritically quotes Judge Holeman from the sentencing transcript. There is no basis in the record that I acted out of "pride". Nor were the particulars of the probation terms proposed by Judge Holeman a "beneficial circumstance". Tellingly, Mr. Fuchs omits what I had to say about my conviction and sentence, be it in "court transcripts", during his telephone "interview" of me – or by the documents he had before him on the "PAPER TRAIL".

Paragraph 13, Sentence 1:

"Even those who have found Ms. Sassower difficult emphasize that she has never been even remotely threatening."

This sentence is the functional equivalent of Mr. Fuchs' "But even allowing for that, her defenders can't get past one little fact" (paragraph 2). Here, too, he falsely implies a contrast to what he has already presented. In fact, Mr. Fuchs' every prior depiction of me is that I am "difficult".

As for Mr. Fuchs' point that even those who find me "difficult" "emphasize" that I have "never been even remotely threatening", such substantiates the baselessness of Judge Holeman's probation terms recited by his paragraph 9. This is not apparent, however, because paragraph 9 so matter-of-factly recites these terms, because he has three intervening paragraphs, because his paragraph 13 does not refer to paragraph 9 in any way, and because both in this sentence and his subsequent sentences he reinforces that I am "difficult". The inference throughout is that the six-month jail sentence, as likewise the probation terms, could be justified because I am "difficult".

Paragraph 13, Sentences 2 & 3:

"Ralph M. Stein, a Pace University Law professor remembers her auditing his classes and attending talks he has given. She launched into 'polite but fulminating' assaults, said Mr. Stein, but she never crossed the line."

Mr. Fuchs does not identify why he has solicited comment about me from Professor Stein, rather than soliciting comment about the "disruption of Congress" case from those who know something about it or who can respond to its profound legal and constitutional issues, including as to the sentence. As for Professor Stein's quoted comment that I was "polite but fulminating", such is a characterization, devoid of any facts as to what I said that was "fulminating". Nor does Mr. Fuchs identify the basis for his framing my purportedly "polite but fulminating" words as my having "launched...assaults" on Professor Stein – a phraseology plainly echoing his description that CJA "specializes in frontal assaults", for which he had provided no particulars.

Paragraph 14, Sentences 1, 2 & 3:

"New York State Senator John A. DeFrancisco, who has served on the state judiciary committee for 12 years, said that just after he took over as chairman, Ms. Sassower came to testify at a public hearing 'wielding a dolly with her and three or four big boxes of materials.' She was impossible to keep on message, he said, and he eventually had to tell her that she could not continue. But in the end, she was harmless."

Here again, Mr. Fuchs does not identify why he is soliciting comment about me, rather than about the "disruption of Congress" case. He quotes and paraphrases Senator DeFrancisco, but without identifying anything about the nature of the "public hearing" to which I "came to testify", without identifying anything about the contents of the "three or four big boxes of materials" which I had brought with me, and without identifying anything I said that was not "on message" and that would constitute a basis for Senator DeFrancisco to "eventually" tell me I could "not continue".

Mr. Fuchs gives no reason as to why, instead of contacting the Chairman of the U.S. Senate Judiciary Committee for comment – or New York's Home-State Senators Schumer and Clinton, the latter being a Westchester resident – he has turned to Senator DeFrancisco, Chairman of the New York State Senate Judiciary Committee. However, Mr. Fuchs would have known that Senator DeFrancisco could be a source of derogatory comment about me if he had done a search of articles about the "disruption of Congress" case. Presumably, he would have read the New York Law Journal's July 8, 2004 news story about my incarceration, quoting Senator DeFrancisco, including with regard to "confirmation hearings": "'She came with boxes and boxes of material on a dolly,' he said. 'When she refused to stop talking on irrelevant, immaterial issues, I told her we would have to cut her off.'".

The unspecified "public hearing" to which Mr. Fuchs refers – and about which Senator DeFrancisco is quoted in the New York Law Journal – is the New York State Senate Judiciary Committee's January 22, 2003 hearing to confirm Governor Pataki's "merit selection" appointment of Susan Read to the New York Court of Appeals. There exists both an official Senate transcript of the hearing and the full written statement from which I was reading when Senator DeFrancisco cut me off, at the third paragraph. These prove the outright falsity of Senator DeFrancisco's comments. There was nothing remotely "off message", "irrelevant", or "immaterial" in the three paragraphs I sufficed to read – nor in the balance of my written statement. Rather, my testimony was explosive – and all the more so because the boxes I brought with me contained the documentary proof substantiating it. Thereby established was the two-fold basis of CJA's opposition to Judge Read's confirmation: (1) the corruption of "merit selection" to the New York Court of Appeals, such that her nomination was not even properly before the State Senate Judiciary Committee *as a matter of law*, and (2) Judge Read's official misconduct as Governor Pataki's deputy counsel.

Mr. Fuchs had only to examine CJA's website to see that that there was a sidebar panel called "*Testimony*" – from which my January 22, 2003 written statement was accessible.

What took place at the January 22, 2003 State Senate Judiciary Committee confirmation hearing – where Judge Read was not asked a single question and I, the only speaker in opposition, was prevented from setting forth my fully-documented opposition testimony – was the subject of news coverage, including a January 23, 2003 article in the Syracuse Post-Standard, "*DeFrancisco quiets a critic – State senator cuts off speaker's attack on state judicial nominating system*"– which was deemed so shocking by the Syracuse Post-Standard editorial board as to generate a January 27, 2003 editorial entitled "*A Flawed Process: Judicial nominees should be subject to more public scrutiny*". I provided copies of both this article and editorial to The Times – as likewise my written statement – under January 29, 2003 coverletters to James McKinley, The Times' Albany bureau chief, who had been present at the January 22, 2003 hearing[10], and to the The Times editorial board.[11] Nonetheless, and notwithstanding my subsequent efforts as well, there was no coverage by The Times, consistent with its pattern and practice of suppressing any report of the corruption of "merit selection" to the New York Court of Appeals, as likewise the corruption of the judicial appointments process to New York's lower state courts.

The pertinent particulars of this Times pattern and practice – indeed, a summary of what took place at the January 22, 2003 hearing – is set forth in CJA's October 13, 2003 letter to Times Executive Editor Bill Keller (at pp. 27-28), which is part of the "PAPER TRAIL". Mr. Fuchs would not have had to read more than the "RE:" clause on the first page of that letter to see its express request for an investigative examination of "the corruption of merit selection to the New York Court of Appeals".

As for my being "harmless", this is an aspect of the "gadfly" – a nuisance and annoyance, but nothing more. That this is an inaccurate, denigrating depiction of me would have been evident from Mr. Fuchs' review of the "PAPER TRIAL" and the other primary source materials posted on CJA's website. From these, Mr. Fuchs could see that I was formidable – and deserved to be so-credited for having documented the corruption of ALL safeguards for ensuring the integrity of judicial selection and discipline – including the safeguard of The New York Times. No one complicit in that corruption and aware of the meticulousness with which I have documented its

---

[10] In advance of the hearing, I had discussed my written statement with Mr. McKinley and e-mailed it to him. I also gave him a hard copy, *in hand*, either at the hearing or upon speaking with him following the hearing's conclusion. [*See* my January 22, 2003 e-mail and January 29, 2003 coverletter to him, posted on the "*Press Suppression–New York Times*" page of our website].

[11] My January 29, 2003 coverletter to the editorial board is posted on the "*Press Suppression-New York Times*" page of our website.

component parts could see me as "harmless".

Paragraphs 15 & 16:

"Nathan Lewin, a well-known Washington lawyer, evidently agrees with that assessment: he is working pro bono to free Ms. Sassower, who is 48.

'Elena makes things more difficult for herself than the ordinary person,' Mr. Lewin said, 'but judges are not supposed to lose their temper or be vindictive.'"

As the description of me in the preceding paragraph is that I am "impossible to keep on message... [b]ut in the end harmless", Mr. Fuchs creates the false impression that this is the "assessment" with which Mr. Lewin agrees. This is preposterous. Obviously, the "well-known" Mr. Lewin is giving his *pro bono* services because of the significant legal and constitutional issues in the case – all of which Mr. Fuchs has concealed.

As for Mr. Fuchs' selective quote of Mr. Lewin, it is unlikely that Mr. Lewin meant the word "difficult" to be understood in the way Mr. Fuchs places it in his column. More likely, the context of Mr. Lewin's quoted comment was that because I stick to principle, I don't take the easy way out. This would reflect what Mr. Lewin had stated in his motion to Judge Holeman to secure my release from incarceration, filed less than two weeks earlier.[12]

The implication of Mr. Fuchs' continuation of Mr. Lewin's quote that "judges are not supposed to lose their temper or be vindictive" is that it was on account of my being "difficult" that Judge Holeman lost his "temper" or was "vindictive". Mr. Fuchs does not identify the aspect of my being "difficult" to which Mr. Lewin was referring or the aspect of Judge Holeman's conduct reflecting a loss of "temper" or "vindictive[ness]". I believe what Mr. Lewin was saying related to my exercising my right to decline Judge Holeman's probation terms, following which he doubled the suspended three-month sentence to a six-month sentence, beginning immediately. Such clarity, however, would have exposed the falsity of Mr. Fuchs' second paragraph that my "relentless words" in "speaking out of turn at a Senate hearing in 2003" were the cause of my incarceration.

Within the context of Mr. Fuchs' column, the inference created by Mr. Lewin's quote is that if Judge Holeman lost his "temper" and was "vindictive", it is understandable since my "difficult", overbearing manner irritates, or at least is noted by, everyone.

---

[12] Discussion of the motion appears at pages 155-6 of my supplemental fact statement and page 117 of my appellate brief, filed on June 28, 2005 with the D.C. Court of Appeals [posted on the "DISRUPTION OF CONGRESS" page].

Paragraph 17:

"And Ms. Sassower, expressing few illusions about her relatively friendless state, put it this way: 'It's not a matter of who is on my side. But why are they not questioning what happened? I shouldn't be in jail. I'm just here because everyone is standing idly by.'"

Having transformed me into something I'm not -- a "difficult", in-your-face person whose "staunchest defenders", "most earnest listener[s]", and own *pro bono* attorney all seemingly have nothing positive to say about me – Mr. Fuchs now has me comment upon my "relatively friendless state". This is an obscene deceit.

As Mr. Fuchs knew, I was not "friendless". Prominent on CJA's website – indeed, on our homepage -- was a petition about my arrest, conviction, and sentence for "disruption of Congress", which had been signed by hundreds of people, many of whom had added comments expressing heartfelt support, respect and admiration[13]. A sampling of these comments, distilled to pages 1-5 was attached to the hard copy of the petition my mother had express mailed him. Among these comments:

> James R. Davidson – Oklahoma "...Ms. Sassower's incarceration should be of concern to all Americans..."
>
> Lee Williams – Indiana "The founding fathers would be BURSTING WITH PRIDE for Elena"
>
> Anne Farrell – New York "This is an American Disgrace – Is our Judicial System becoming a 'bully system' and dictatorship? When similar behavior happens in other lands, we cringe and say how wonderful our system is. I came to the US a few years after dear Rosa Park[s] refused to go to the back of the bus. Elena Sassower will have many beside her. We refuse to go [to] the 'back of the bus of justice'."
>
> Barbara Young Settle – Texas "A few courageous patriots always pay a price for liberty under law. Elena is one of those....Thank you Elena."
>
> Eric M. Ross, Ph.D – New York "...Elena did so much fighting judicial corruption on behalf of every decent citizen, she deserves to be addressed as 'Your Honor.'..."

---

[13] These pages are now posted on the "DISRUPTION OF CONGRESS" page of CJA's website. [*See* "Reactions of WE, THE PEOPLE to Elena's incarceration"]

Ed Nitzke – D.C. "Why is this innocent woman in prison?!? This is an utter outrage…Here, a US citizen asks a question after the [hearing] was adjourned gets locked up for six months? SIX MONTHS? Free that innocent woman."

Morris – California "As a former judge, it is clear to me that there was and is obvious bias in the sentencing of Elena Ruth Sassower. In my 26 years on the bench before retiring six years ago, I never, once, saw, witnessed, or read any case the likes of this nature. I would have hailed Elena as a hero if the case had been brought before me, and I am thankful my friend in NY informed me of this very important document (this petition). May Elena be freed yesterday."

Mary Wikowski – New York "As a constitutional professor, after learning of this atrocity, I will find a way to work this into my teaching plan so that future generations will not forget how precious our freedom is, and how important it is that we stand up for what we believe in, despite this incredibly obvious abuse of power by a flawed judiciary. Free Elena Now!!!"

E.E., Ph.D. – New York "…Elena was a hero before she was wrongfully imprisoned; now she's a martyr for standing up to corruption. When[] Elena is release[d] from prison, I hope she has the strength, support, and resolve to continue the phenomenal work she has done over the past 15 years or so…."

CJA's homepage also prominently posted links to other websites and blogs which were heralding me, as well as a song that had been written, paying tribute to my patriotic sacrifice.[14]

In any event, during Mr. Fuchs' interview of me, I balked at his startling question, "who are your friends?", telling him that it was irrelevant because his story should be about documentary evidence. I stated that my friends were everyone who cares about such evidence. It was on this basis that I declared – and insisted – that he was my friend.

As for my quoted comment that "everyone is standing idly by", the "everyone" to whom I was referring were those in positions of leadership and power whose duty it was, and is, to respond to that documentary evidence. This pertinent "everyone" was featured on the "PAPER TRAIL" – our public officers in Congress

---

[14] These have since been moved to the "DISRUPTION OF CONGRESS" page. [*See* "Reactions of WE, THE PEOPLE to Elena's Incarceration" – "*Illustrative Outreach Efforts & Letters of Support of CJA Members & Supporters*"]

and the White House, the bar associations, Ralph Nader & a panoply of established/establishment organizations, academia, and the press. Response by any of them to the documentary evidence presented by the "PAPER TRAIL" – first and foremost, by *findings of fact and conclusions of law* with respect to CJA's March 26, 2003 written opposition statement -- could not only have secured my release, but would have prevented the scandalous train of events that included my arrest, prosecution, conviction, and incarceration.

I explained to Mr. Fuchs that an expose of this evidence would propel non-partisan, good-government reform of demonstrably corrupted processes of judicial selection and discipline. For this reason, I urged him to read, in particular, my June 16, 2003 letter to Ralph Nader, Public Citizen, and Common Cause, posted on the "PAPER TRAIL", as it highlighted the catalytic potential and opportunity presented by the "disruption of Congress" case against me. Mr. Fuchs included none of this in his truncated quote from me – the only quote from me that appears in his column.

* * *

Enclosures: Primary source documents substantiating analysis of paragraph 14, including as relates to pages 27-28 of CJA's October 13, 2003 letter to NYT Executive Editor Bill Keller

(1) Pages 28-35 of the transcript of New York State Senate Judiciary Committee's 1/22/03 hearing to confirm Governor Pataki's "merit selected" appointment of Susan P. Read to the New York Court of Appeals

(2) Elena Sassower's written statement of opposition testimony, 1/22/03 hearing

(3) CJA's 1/29/03 memo to NYT Editorial Board, with enclosed 1/29/03 letter to Albany Bureau Chief James McKinley, as well as Syracuse Post-Standard's editorial, "*A Flawed Process*" (1/27/03) and news article, "*DeFrancisco quiets a critic*" (1/23/03)

(4) CJA's 2/7/03 e-mail/memo to Eleanor Randolph, NYT Editorial Board [w/o enclosures]

(5) CJA's 2/11/03 proposed Letter to the Editor

(5) CJA's 3/6/03 e-mail/memo to Eleanor Randolph, NYT Editorial Board [w/o enclosures]