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DATE: June 16, 2003

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

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

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

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

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

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

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

Evident, too, is that little has changed at the Senate Judiciary Committee since the damning assessments in the Chapter, "*Judicial Nominations: Whither 'Advice and Consent'?*" by The Ralph Nader Congress Project in its 1975 book, The Judiciary Committees, and by Common Cause in its 1986 report, Assembly-Line Approval. If anything, the situation is worse – at least with respect to citizen participation. Where once the presiding chairman at the Senate Judiciary Committee's confirmation "hearings" asked "if anyone in the room wished to speak on behalf of or against the nominee"[1] – giving an aura of deference to citizen participation – he no longer asks that question. This, because the Senate Judiciary Committee long ago ceased to allow citizens to testify in opposition at confirmation "hearings" for lower court nominees. Little wonder, as allowing citizens to testify in opposition would expose to public view that the Committee is NOT investigating their opposition prior to the "hearings" -- even where, on its face, the opposition is dispositive of nominee unfitness, *by any cognizable standard.*

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[1] The Judiciary Committee, p. 234

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

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

> "...The Judiciary Committee should notify groups other than the ABA and the state bar associations concerning nominations. Until the committee can convince such groups that its nomination deliberations are not simply *pro forma* and sham, however, widespread participation by such groups will not be forthcoming.
>
> ...The Judiciary Committee must exploit independent sources of information about nominees if it is to perform its investigatory function...The committee should also encourage the formation of an investigative, research network of lawyers, law school professors, and journalists...It is essential that an adversary, independent, fact-finding capability and mechanism be built into the nomination process to replace the one the Founding Fathers relied upon, but which has atrophied from disuse." The Judiciary Committees, The Ralph Nader Congress Project (1975), pp. 240-241.
>
> "4. Relevant outside groups should be given adequate notice of nominations and invited to provide information.
>
> Currently, notice of nominations among private organizations is greatly dependent on the efforts of these organizations rather than the Committee's actions to stimulate the

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

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

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

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

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

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

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

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

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

Thank you.

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