

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

By Fax: 202-721-5659 (11 pages)  
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September 10, 2003

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

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

Dear Ms. Reed:

This follows up the four phone messages I left on your voice mail: on August 12<sup>th</sup>, August 18<sup>th</sup>, August 21<sup>st</sup>, September 2<sup>nd</sup> – to which I have received no return call. These messages requested that you immediately transmit the appellate papers in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* -- which I sent you more than two years ago<sup>1</sup> -- to the Justice at Stake Campaign. Such requested transmittal was for purposes of providing the Justice at Stake Campaign with further evidence – beyond what is posted on our website, [www.judgewatch.org](http://www.judgewatch.org) – of the meticulous, fully-documented nature of CJA's work on the twin issues of judicial

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

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

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

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

On another subject, I take the opportunity of this letter to request that The Constitution Project build on its 1999 Task Force report, "*Justice Held Hostage: Politics and Selecting Federal Judges*" in Uncertain Justice. Identifying that "The nomination and confirmation of federal judges requires careful, on-the-merits deliberation by the executive and legislative branches" (at p. 13), the report made NO assessment of evidence that "careful, on-the-merits deliberation" for lower federal court nominees was NOT taking place. Specifically, I request that the Courts Initiative examine CJA's latest primary source materials on federal judicial selection/confirmation, posted on our www.judgewatch.org homepage<sup>2</sup>, so as to *independently* verify the corruption which The Constitution Project REFUSED to verify five years ago when, in its incarnation as Citizens for Independent Courts, we provided it with earlier primary source materials. Such earlier primary source materials confirmed and reinforced a state of affairs described in 1975 by The Ralph Nader Congress Project in the chapter "*Judicial Nominations: Whither 'Advice and Consent'*" of its book The Judiciary Committees, described in 1986 by Common Cause in its study Assembly-Line Approval: ... Senate Confirmation of Federal Judges, and described in 1988 by the Twentieth Century Fund Task Force on Judicial Selection in its report Judicial Roulette – three important works

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

which "*Justice Held Hostage*" did not even cite in footnotes<sup>3</sup>.

The need for *independent* verification of CJA's latest primary source materials is exigent. The corruption of federal judicial selection/confirmation means that now, as five years ago, unfit judicial nominees are being seated for "lifetime" federal judgeships – with the potential to cause vast and irreparable injury to litigants and the public, unrestrained by safeguards<sup>4</sup>. 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 22<sup>nd</sup> "hearing" to confirm judicial nominees, I respectfully requested to testify in opposition to one nominee, based on documentary evidence of his corruption as a New York Court of Appeals judge. As the primary source materials posted on CJA's homepage reflect, the nominee's demonstrated on-the-bench corruption was covered-up by barebones bar association ratings, whose fraudulence the Senate Judiciary Committee refused to investigate.

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

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

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

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

(1) "Alan B. Morrison, Esq., Co-Founder, Senior Attorney, and Former Director, Public Citizen Litigation Group", an express recipient of the June 16<sup>th</sup> memo<sup>5</sup>;

(2) "Elliot M. Minberg, Esq., Vice President, General Counsel, and Legal Director, People for the American Way", to whom I sent the June 16<sup>th</sup> memo under a separate June 18<sup>th</sup> coverletter<sup>6</sup> -- and who was a member of the Citizens for Independent Courts Task Force on Judicial Selection that produced the 1999 report, *"Justice Held Hostage: Politics and Selecting Federal Judges"*; and

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

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

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

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

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

I would also be particularly pleased to meet with yet another Washington-based member of The Constitution Project's Courts Initiative: Morton Halperin -- and all the more so since he is a member of your Board of Directors with whom I tried to make contact five years ago<sup>8</sup>. As Dr. Halperin was formerly Senior Vice-President of The Century Foundation, renamed from the Twentieth Century Fund, he should be particularly interested in the dramatic unimplemented recommendation of its Task Force on Judicial Selection, quoted in the June 16<sup>th</sup> memo (at p. 4). In any event, I would surely expect the Open Society Institute -- whose D.C. Office Mr. Halperin now directs -- to be interested in that recommendation, as it not only furthers "democratic processes", but a fit federal judiciary, rendering fair and impartial justice. Such describes what George Soros -- also a listed Courts Initiative member -- hoped to achieve by his Open Society Institute and its "Judicial Independence grantmaking program".

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

A copy of this letter is also being sent to Geri Palast, Executive Director of the Justice at Stake Campaign. She, too, should attend our meeting. The salutary purpose for which the Campaign has been funded by Mr. Soros -- and the reason CJA seeks to be a "Campaign Partner" -- is because the Campaign "provides strategic coordination and brings unique organizational, communications and opinion resources to the work of its partners and allies at the national, state, and local levels". We sorely need this -- since the ONLY response we have ever gotten from the American Bar Association, American Judicature Society, Brennan Center for Justice, Common Cause, The Constitution Project, and Fund for Modern Courts, to whom, time and again, we have reached out with primary-source materials documenting the corruption of judicial selection and discipline -- is a cold shoulder refusal to even discuss the materials.

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

Maybe Ms. Palast's presence would encourage Ed Davis, who is Common Cause's Vice President for State and Field Operations – and an express recipient of the June 16<sup>th</sup> memo -- to attend the meeting and do what he has refused to do over these past several months<sup>9</sup>: discuss it.

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



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

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

American Judicature Society  
 Brennan Center for Justice  
 Fund for Modern Courts

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

TRANSMISSION VERIFICATION REPORT

*Barbara Reed  
Director, CTS  
Initiative  
Continuation Project*

TIME : 09/10/2003 09:19

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