

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 202-228-4562 (6 pages)

BY HAND - NY OFFICE

April 23, 2003

Senator Charles E. Schumer
757 Third Avenue, Suite 17-02
New York, New York 10017

RE: Citizen Opposition to Senate Confirmation of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals and P. Kevin Castel to the District Court of the Southern District of New York

Dear Senator Schumer:

This follows up my March 19, 2003 telephone conversation with your counsel, Jeff Berman – memorialized by my e-mail message to you of that date.

Copies of that e-mail message and the acknowledgement of Robert Paxton, your administrative director, are enclosed. As I have received no subsequent response, I respectfully reiterate CJA's requests therein for:

- (1) information as to the membership of your judicial screening committee and its screening procedures; and
- (2) information as to the basis upon which you made an "agreement" with the White House endorsing the prospective nominations of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals and of P. Kevin Castel to a District Court judgeship for the Southern District of New York.

Additionally, I reiterate CJA's two further requests, also identified by that e-mail message as having been raised with Mr. Berman. These are: (1) for a meeting with you to discuss the unfitness of Judge Wesley and Mr. Castel for the federal judgeships to which they have been nominated; and (2) that you use your "blue slip" prerogative to defeat Senate confirmation of these nominations. In support thereof, I will hand-deliver to your New York office later today a copy of CJA's March 26, 2003 written statement to the American Bar Association and the Association of the Bar of the City of New York, summarizing the documentary evidence we provided them in connection with their ratings of these nominees – evidence requiring that both nominees be found "NOT QUALIFIED" based on their lack of integrity, arising from their wilful violation of mandatory rules of professional responsibility designed to safeguard the integrity of the judicial process and the rule of law. The portions of this documentary evidence most focally discussed by CJA's March 26, 2003 written statement are itemized below, as I will be hand-delivering copies to your New York office to enable you to verify its dispositive nature. Also to be delivered is a copy of CJA's April 2, 2003 letter to Judge Wesley and Mr. Castel, transmitting to them a copy of CJA's March 26, 2003 written statement and inviting their response. None has been forthcoming.

Inasmuch as I was informed yesterday by the Senate Judiciary Committee's nominations clerk, Swen Prior, that on or about April 16, 2003 the Committee received an ABA rating for Mr. Castel, unanimously conferring upon him its highest "well qualified" rating – unaccompanied by the slightest elaborative comment – it is appropriate that I bring to your attention – much as I previously brought to Mr. Berman's attention -- that we received no response from you to CJA's July 3, 2001 letter, addressed to you in your capacity as chairman of the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts. Such letter recited CJA's experience with the ABA and City Bar, documenting their grotesquely inadequate, where not outrightly fraudulent, judicial ratings – and our unsuccessful attempts to get the Senate Judiciary Committee to address the documentary proof we repeatedly provided it of the bar associations' misconduct in rendering and adhering to insupportable, deceitful ratings, endangering the public.

Twice during this past year I offered Mr. Berman a copy of this profoundly disturbing July 3, 2001 letter. The first time was on June 17, 2002, following his participation in a panel discussion on "Judicial Selection and Ideology", sponsored by the New York Chapter of the Federalist Society – at which, from the audience and based on the letter,

I had made a comment and raised a question. The second time was on December 9, 2002, following Mr. Berman's participation in a panel discussion at the City Bar on "The Confirmation Crisis: Politics and Ideology in the Appointment of Federal Judges" – in which I also participated from the audience. At the conclusion of each program, I approached Mr. Berman, entreating him to accept the copy of the July 3, 2001 letter I had brought with me. Each time, he refused. Indeed, on December 9, 2002, Mr. Berman even refused to accept a two-page letter of that date, which I had addressed to him, requesting a meeting, preliminarily with him and his republican counsel counterpart and then with you and Senator Hatch to discuss the serious issues presented by CJA's July 3, 2001 letter, as well as "subsequent related events".

Fair to say, the nominations of Judge Wesley and Mr. Castel might not have been made had you appropriately responded to CJA's July 3, 2001 letter and substantial follow-up correspondence – or had Mr. Berman shown the slightest professionalism in connection therewith. At very least, some of the scandalous issues now arising from these nominations would have been resolved, if not eliminated. Among these, the exclusion of ordinary citizens – and of non-partisan organizations that speak for them – from the process of federal judicial selection; the lack of integrity of bar association ratings on which the Senate continues to rely as a "gold standard"; and the worthlessness of federal statutes for ensuring judicial integrity, *to wit*, 28 U.S.C. §§144 and 455, pertaining to judicial disqualification, and 28 U.S.C. §372(c), pertaining to judicial discipline. To enable you to see this for yourself, copies of CJA's July 3, 2001 letter and subsequent correspondence, as listed below, will also be hand-delivered to your office. This includes our July 26, 2001 letter to New York's congressional delegation, hand-delivered to your Washington office on that date.

As "Law Day", May 1, 2003, is just a week away, it would be especially meaningful if your office contacted us on or before then to schedule a meeting with you in the not-too-distant future.

Thank you.

Yours for a quality judiciary,

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

cc: President George W. Bush
Senator Orrin G. Hatch, Chairman, U.S. Senate Judiciary Committee
Senator Patrick Leahy, Ranking Member, U.S. Senate Judiciary Committee
Senator Hillary Rodham Clinton

Enclosures:

(1) CJA's March 26, 2003 written statement to the ABA and City Bar and CJA's April 2, 2003 transmittal letter to Judge Wesley and Mr. Castel:

A. October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief and October 24, 2002 motion for leave to appeal 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* -- with the Court of Appeals' two December 17, 2002 decisions thereon

B. CJA's September 18, 2000 letter to Mr. Castel, enclosing CJA's June 20, 2000 letter to City Bar President Evan Davis (w/o two free-standing compendia of exhibits)

(2) CJA's July 3, 2001 letter to you and related correspondence:

- A. CJA's July 11, 2001 letter to Senate Judiciary Committee members
- B. CJA's July 11, 2001 letter to Senate Majority/Minority leaders
- C. CJA's July 14, 2001 letter to Senator Hillary Clinton
- D. CJA's July 14, 2001 letter to President George Bush
- E. CJA's July 9, 2001 letters to House Judiciary Committee counsel
- F. CJA's July 19, 2001 transmittal letter

(3) CJA's July 26 2001 letter to New York congressional delegation

(4) CJA's December 9, 2002 letter to Jeff Berman

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BY E-MAIL Topic: "Judicial Nominations"

TO: Senator Charles Schumer

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

RE: Citizen Opposition to Senate confirmation of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals and P. Kevin Castel, Esq. to the District Court/Southern District of New York

DATE: March 19, 2003

I have just spoken with your counsel, Jeff Berman, who was unable to give me more than a minute's time.

Notwithstanding neither Judge Wesley nor Mr. Castel have indicated any pre-nomination screening by you in response to question #26 of their Senate Judiciary Committee questionnaires, Mr. Berman stated you do have a judicial screening committee. He declined, however, to give me any information about it – including about its membership – unless I made a written request. Please, therefore, consider this as CJA's written request for the names of the members of your judicial screening committee and for information regarding its screening procedures.

Please further provide any information about the "agreement" you made with the White House, endorsing the prospective nominations of Judge Wesley and Mr. Castel to federal judgeships -- as to which you issued a press release.

Please be advised that Mr. Berman did not ask me a single question about the basis for CJA's request, identified in my voice mail message to him on Friday, March 14th, that you use your "blue slip" prerogative to defeat Senate consideration of the nominations of Judge Wesley and Mr. Castel – and was unwilling to indicate when, and under what circumstances, I could meet with you – or even with him – to discuss the unfitness of these nominees. Please, therefore consider this as CJA's written request for a meeting.

Thank you.

*Elena Ruth
Sassower*

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Subj: **RE: Judicial Nominations: Citizen Opposition to Wesley & Castel**
Date: 03/21/2003 8:11:36 AM Eastern Standard Time
From: Robert_Paxton@schumer.senate.gov
To: Judgewatchers@aol.com
Sent from the Internet (Details)

Ms. Sassower:

Just wanted to let you know that I have forwarded your message on to Jeff.

Thanks.

Robert Paxton
(202) 224-1148

-----Original Message-----

From: Judgewatchers@aol.com [mailto:Judgewatchers@aol.com]
Sent: Friday, March 21, 2003 12:58 AM
To: Paxton, Robert (Schumer)
Subject: Judicial Nominations: Citizen Opposition to Wesley & Castel

TO: Robert Paxton, Administrative Director
Office of Senator Charles Schumer

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

RE: Federal Judicial Nominations: Citizen Opposition to Senate Confirmation of
New York Court of Appeals Judge Richard C. Wesley to the Second Circuit
Court of Appeals and to P. Kevin Castel to the District Court of the Southern
District of New York

DATE: March 21, 2003

As discussed, attached is a transcribed copy of the e-mail, which I sent *via* the Senator's website on Wednesday, March 19th, at approximately 11 a.m.

I would greatly appreciate if you would pass it on to Senator Schumer and his counsel, Jeff Berman.

Thank you.

Senator Charles E. Schumer

TRANSMISSION VERIFICATION REPORT

TIME : 04/23/2003 12:10
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE, TIME	04/23 12:06
FAX NO. /NAME	12022284562
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Elena Ruth Sassower, Coordinator

BY HAND: Acceptance refused by Mr. Berman – including acceptance of only this two-page letter. No subsequent mailing

December 9, 2002

Jeff Berman, Chief Counsel
Senate Judiciary Committee's Subcommittee on
Administrative Oversight and the Courts

RE: Scheduling a Meeting to Discuss CJA's *unresponded-to* July 3, 2001 letter to Chairman Schumer

Dear Mr. Berman:

A propos of your participation in today's panel discussion, "The Confirmation Crisis: Politics & Ideology in the Appointment of Federal Judges", at the Association of the Bar of the City of New York, enclosed is a copy of CJA's July 3, 2001 letter to Chairman Schumer, which without its substantiating exhibits, is printed in the record of the Subcommittee's June 26, 2001 and September 4, 2001 hearings on "The Judicial Nomination and Confirmation Process" (at pp. 235-243).

I showed you a copy of this letter on June 17, 2002, at the conclusion of the program on "Judicial Selection and Ideology", sponsored by the Federalist Society's Lawyers Division of its New York Chapter. At that time, you stated you were unfamiliar with the letter and declined my request that you take the copy with you, with words to the effect that it was "too heavy".

Fortunately, your counterpart on the Republican side, Ed Hayden, also participating at the Federalist Society's Program, did not deem the letter "too heavy" and received from me the copy I had proffered you. I believe Mr. Hayden also stated he was unfamiliar with the letter.

I would appreciate your reviewing the letter – to which we have received NO response whatever from Chairman Schumer or from any of the other Senate Judiciary Committee members to whom copies were sent under a July 11, 2001 coverletter. Based on the serious and substantial nature of what is therein set forth, I trust you would agree that a meeting should be scheduled for me to make a presentation to you and Mr. Hayden – preliminary to a meeting with Senator Schumer and Senator Hatch.

Please advise as to when such meeting may be arranged, at which, additionally, I may discuss subsequent related events. Needless to say, I would be prepared to come to Washington for such important purpose.

Thank you.

Yours for a quality judiciary,



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

Enclosures: CJA's July 3, 2001 letter with July 11, 2001 coverletter

cc: Edward R. Hayden, Republican Chief Counsel
Subcommittee on Administrative Oversight and the Courts of
the U.S. Senate Judiciary Committee