

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Doris L. Sassower, Director
Elena Ruth Sassower, Coordinator

EMERGENCY ATTENTION REQUIRED:

May 22, 2003 Senate Judiciary Committee Hearing on the Confirmation of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals

DATE: May 19, 2003

TO: Senator Orrin G. Hatch, Chairman, U.S. Senate Judiciary Committee
By Fax: 202-224-6331 / 202-224-9102 [10 pages]
By E-Mail: senator_hatch@hatch.senate.gov
swen_prior@judiciary.senate.gov

Senator Patrick Leahy, Ranking Member, U.S. Senate Judiciary Committee
By Fax: 202-224-9516 / 202-224-9516 [10 pages]
By E-Mail: senator_leahy@leahy.senate.gov
rachel_arfa@judiciary.senate.gov

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

RE: (1) CJA's request to testify in opposition at the May 22, 2003 hearing on Judge Wesley's confirmation; (2) your personal review of CJA's document-substantiated March 26, 2003 written statement; (3) your requested verification of the adequacy of Committee counsel's review of CJA's document-substantiated March 26, 2003 statement – and release of counsel's FINDINGS thereon; (4) your requested cancellation of the May 22, 2003 hearing on Judge Wesley's confirmation; (5) your obtaining Judge Wesley's response to CJA's document-substantiated March 26, 2003 statement; (6) distribution to Committee members & inclusion in the record; (7) calling upon the ABA and City Bar to support their ratings with FINDINGS as to CJA's document-substantiated March 26, 2003 statement.

This follows up CJA's May 5, 2003 memorandum addressed to each of you, summarizing our hand-delivery of documentary evidence establishing BOTH the unfitness of Judge Richard C. Wesley and P. Kevin Castel, Esq. for the federal judgeships to which they were nominated and the fraudulence of the barebones ratings conferred on them by the American Bar Association (unanimously "Well Qualified") and by the Association of the Bar of the City of New York ("Approved"). We have received NO response to that memorandum which, in addition to requesting that you call upon the ABA and City Bar to substantiate their ratings, requested that we be permitted to testify at any confirmation hearing to be held on these nominations¹.

Inasmuch as the Committee has now scheduled a hearing on Judge Wesley's confirmation for this Thursday, May 22, 2003 (Exhibit "A"), please immediately advise as to whether we will be permitted to testify -- and, if not, why not.

Please also advise as to whether, in scheduling this hearing, you each personally read CJA's March 26, 2003 written statement addressed to the ABA and City Bar, detailing Judge Wesley's misconduct in the public interest lawsuit, *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* -- and personally reviewed the substantiating documents from the record therein, beginning with the focally-discussed two final motions and the Court of Appeals' decisions thereon. If not, CJA requests that you immediately do so as it appears that Committee counsel reviewing it is INCOMPETENT or OTHERWISE CONFLICTED -- at least if the comments of nominations clerk Swen Prior are to be taken as true.

At approximately 4:40 p.m. on Tuesday, May 13th, I had a telephone conversation with Mr. Prior² in which he claimed that Committee counsel was reviewing the materials

¹ As reflected by our May 5, 2003 memorandum (p. 5), we also made a March 14, 2003 written request to be permitted to testify.

² This May 13th conversation was my first with Mr. Prior since delivery of CJA's May 5, 2003 memorandum to the Committee office with its voluminous substantiating proof, as inventoried in the memorandum. Indeed, even in delivering these materials on Monday, May 5th, I had not spoken to Mr. Prior, as he was purportedly unavailable at that time. Nor had he been available in the intervening days, when I telephoned (202-224-5225): Tuesday, May 6th (2:05 p.m.); Thursday, May 8th (11:25 p.m.); Friday, May 9th (2:05 p.m.); Monday, May 12th (2:02 p.m.) -- leaving voice mail messages for him, all unreturned. I also called on or about noon on Tuesday, May 13th, stating that if I did not hear from him by the end of the day I would turn to someone having supervisory authority over him. Mr. Prior called at

delivered on May 5th, but didn't understand my "accusations" of misconduct and which documents would substantiate them. My response was that that was impossible, as both the "accusations" and substantiating documents were particularized by CJA's March 26, 2003 statement – and counsel would have to be "brain dead" not to understand what it said and which were the substantiating documents. Repeatedly, I asked for the names of the Committee's reviewing counsel, but Mr. Prior both refused to provide me their names and refused to give me the reason for this refusal. He did, however, agree to pass on my request that reviewing counsel call me so that we could speak directly.

As Mr. Prior is a clerk and also not an attorney, it was not troubling that he admitted that he himself had not read CJA's March 26, 2003 statement. However, it was profoundly troubling that he claimed to be unaware of CJA's May 5, 2003 memorandum to you. This, because the memorandum had been the TOP document under a rubberband binding together CJA's March 26, 2003 statement, the documents focally-discussed therein, AND the redweld folder containing a copy of the motion and appeal papers that were before the New York Court of Appeals in my lawsuit against the Commission.

Two days later and without receiving any phone call from reviewing counsel, I telephoned Mr. Prior. It was then approximately 4:20 p.m. on Thursday, May 15th – presumably late enough in the day for Mr. Prior to have been able to let me know that the Committee had scheduled a hearing on Judge Wesley's confirmation for the following Thursday, May 22nd. Yet, he did not disclose this critical information, which I did not learn of until nearly a full 24 hours later when I happened to see the Committee's May 15th "NOTICE OF HEARING" posted on its website (Exhibit "A").

In any event, during our May 15th conversation, Mr. Prior stated that reviewing counsel had told him I was a "disgruntled litigant" who saw conspiracies and corruption everywhere. Once again, I responded that NO competent counsel reviewing CJA's March 26, 2003 statement and making FINDINGS thereon based on the transmitted documentary evidence could disparage me as a "disgruntled litigant" or dispute that my allegations of corruption, including of the obliteration of ALL cognizable adjudicative standards at every court level of my lawsuit, were fact-specific, law-supported, and FULLY substantiated. Again, Mr. Prior steadfastly refused to identify the names of

approximately 4:40 p.m.

the counsel who had allegedly reviewed CJA's document-substantiated March 26, 2003 statement.

I thereupon phoned the Committee office (202-224-5225), requesting to speak with someone in a supervisory position, able to address Mr. Prior's refusal to give me the names of counsel and his disturbing report as to what they had told him, wholly inconsistent with what was before them. On the Republican Majority side, I spoke with Matt³, the receptionist who had received from me the May 5th delivery. He gave me the name of Rebecca Seidel, identifying her as a counsel at the Committee. I left a voice mail message for her at approximately 4:50 p.m. On the Democratic Minority side (202-224-7703), I was initially routed to Senator Schumer's office, where I got a recording. I then called the Democratic side again, and was routed to Helaine Greenfeld, who I was told was a nominations counsel. I left a voice mail message for her at approximately 4:55 p.m.

Each of these counsel presumably knew that the Committee had scheduled a May 22nd hearing on Judge Wesley's confirmation – thereby adding urgency to their return of my phone messages. Yet, the following day, Friday, May 16th, I received no return call from them. Finally, at about 3:30 p.m., shortly after my fortuitous discovery of the scheduled May 22nd hearing from the Committee's website, I telephoned the Committee. Upon requesting to speak with Ms. Seidel, I was allegedly routed to her extension, though, unlike the previous day, no answering machine came on to record a message. I then again called the Committee. Matt, who answered the phone, would not give me the names of any other counsel or of anyone else I could speak with, other than Mr. Prior – who, as I explained, was refusing to identify the names of counsel who had reviewed CJA's March 26, 2003 statement. As with Mr. Prior, Matt endeavored to get me to discuss the basis of CJA's opposition, which I protested as wasteful – such discussion being properly undertaken with counsel. Ultimately, I agreed to be routed to Mr. Prior, for whom I left a voice mail message, reiterating my request to speak directly with counsel and leaving an inquiry, as I had with Matt, as to whether CJA was going to be permitted to testify at the May 22nd hearing on Judge Wesley's confirmation.

³ In a phone conversation at approximately 10:15 a.m. this morning, Matt stated that it was "policy" not to give out last names – but did not know the reason for such policy. He stated that the Chief of Staff would know the reason, but would not give me his name. By contrast, the staff assistant at Chairman Hatch's Senate office (202-224-5251) with whom I had spoken minutes earlier, provided me with her full name, Bethany Andreen.

Immediately thereafter, at approximately 3:45 p.m., I telephoned the Senate Judiciary Committee's Democratic Minority office. Although the staff assistant with whom I spoke refused to give me his name, stating that there was a "policy of not giving out names" because of "security"⁴, he confirmed that he was the individual who sits at the desk directly opposite the office door and to whom, on May 5th, I had hand-delivered CJA's May 5, 2003 memorandum and substantiating documents for Ranking Member Leahy. In seeking to obtain information as to which counsel -- on the Democratic side -- had reviewed this document-substantiated memorandum -- the unnamed staff assistant indicated that nominations clerk Rachel Arfa would have such information. Since Ms. Arfa is "hearing impaired", preventing her from communicating by phone -- or so I have been told -- I requested that the staff assistant e-mail her, on my behalf, for the names of reviewing counsel and the status of our written requests to testify at Judge Wesley's confirmation hearing.

The failure and refusal of Committee staff to disclose the names of counsel reviewing CJA's March 26, 2003 statement and substantiating documents -- as if there would be some need to shield their identities from me -- combined with the failure of any Committee counsel to interview me in connection with the alleged review, including to clarify anything not clear, or to otherwise speak to me -- only reinforces that there has been NO appropriate review. Indeed, an appropriate review required the making of FINDINGS -- and the only FINDINGS possible from CJA's March 26, 2003 statement, based on the transmitted documentary proof, would have been confirmatory of its accuracy as to the unfitness of Judge Wesley and Mr. Castel -- rendering hearings on their confirmations a complete waste of time and taxpayers' money.

⁴ I was told the same thing at approximately 9:35 this morning by a second staff assistant, who likewise stated that, as a matter of "policy", for reasons of "security", no names are given. My response was that it also affords anonymity to prevent accountability. Apparently, such "security" policy does not equally apply to Senate Leahy's Senate office (202-224-4242), where the staff assistant who answered my phone call at approximately 9:42 this morning, readily gave me her first name, Erica -- though, thereafter, declining to provide her last name. In now calling the Democratic Minority office a second time (10:25 a.m.), this same staff assistant, having given me the number of Senator Leahy's Senate office and, with knowledge I was preparing to send something, did provide me with the name of the Democratic Minority's Chief of Staff, Bruce Cohen, who he identified as actually its Chief Counsel. He now also told me that Helaine Greenfeld, as nominations counsel, would have reviewed our May 5th materials -- and put me through to her extension. I left a voice mail message, requesting her return call regarding her FINDINGS thereon, as well as our request to testify.

CJA, therefore, calls upon you to identify whether, in scheduling the hearing on Judge Wesley's confirmation, you are thereby representing that the Committee appropriately reviewed CJA's March 26, 2003 statement. If so, CJA requests that you substantiate same by furnishing the FINDINGS made in connection therewith. As to Judge Wesley, this would include the minimum FINDINGS identified by CJA's March 28, 2003 statement (pp. 19-20) as *readily-made* from the focally-discussed two final motions in my lawsuit against the Commission, *to wit*,

- (1) that the Court of Appeals – with Judge Wesley participating – LIED in dismissing my May 1, 2002 disqualification motion as having been made on “nonstatutory grounds”;
- (2) that the Court of Appeals – with Judge Wesley participating – LIED in dismissing the August 17, 1998 disqualification motion made in *Schulz v. New York State Legislature* for having been made on “nonstatutory grounds”;
- (3) that the Court of Appeals – with Judge Wesley participating – CONCEALED the material fact that my May 1, 2002 appeal of right was predicated on the Court's own decision in *Valz v. Sheepshead Bay*, 249 N.Y. 122, 121-2 (1928);
- (4) that the Court of Appeals – with Judge Wesley participating – CONCEALED the material fact of the basis for my June 17, 2002 motion to strike and CONCEALED, as well, its request for disciplinary and criminal referrals pursuant to expressly-invoked mandatory rules;
- (5) that the RECORD before the Court of Appeals when -- with Judge Wesley participating -- it rejected review of my lawsuit against the Commission, both by right and by leave, and made no disciplinary, criminal, or other referrals, ESTABLISHED, *prima facie*, THAT THE COMMISSION WAS THE BENEFICIARY OF FIVE FRAUDULENT LOWER COURT DECISIONS IN THREE SEPARATE LAWSUITS – with four of those decisions, two appellate, contravening the Court of Appeals' own decision in *Matter of Nicholson*, as to the mandatory nature of Judiciary Law §44.1 for investigation of *facially-meritorious* judicial misconduct complaints, received from complainants.

Plainly, if, upon your supervisory intervention, you determine the obvious: that Committee counsel has NO FINDINGS confirmatory of appropriate review of CJA's document-substantiated March 26, 2003 statement, you must cancel the scheduled May 22nd hearing on Judge Wesley's confirmation as precipitous – and CJA so requests.

If, not, CJA calls upon you to ensure that the May 22nd hearing is meaningful. Apart from granting our request to testify in opposition, you must expect – indeed demand – that Judge Wesley respond to the particulars of his misconduct, as set forth in CJA's document-substantiated March 26, 2003 statement – of which he was sent a copy. As set forth at page 27 of the statement in connection with his non-response to my two final motions:

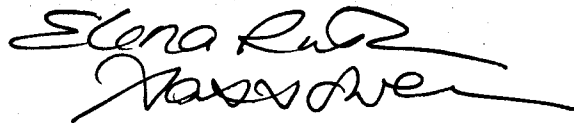
“As Judge Wesley did not see fit to respond to my 36-page October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief, except to deny it *without* reasons and *without* disclosure, he must do so now, addressing, if not each and every paragraph, th[e]n the facts and law presented by each and every section and subsection of the motion, for which a table of contents appears at pages 5-6. Likewise, since his response to the “Question Presented for Review” in my 22-page October 24, 2002 motion for leave to appeal, was to deny it, *without* reasons, and *without* making the requested disciplinary and criminal referrals, pursuant to the cited ethical rules, he should be expected to demonstrate that the five lower court decisions of which the Commission is the beneficiary are NOT frauds. Let him begin by just trying to explain how the mandatory statutory language of Judiciary Law §44.1 regarding investigation of judicial misconduct complaints not determined by the Commission to be facially lacking in merit, so recognized by the Court in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980), can be reconciled with the four decisions – two appellate -- which purport that the Commission has NO such mandatory duty. Certainly, Judge Wesley should be expected to confront my analyses of the decisions, annexed as Exhibits “H”, “I”, “K”, and “L” -- or, at least, their salient aspects, incorporated into the text of my motion. This would include pages 8-12, as to the hoaxes perpetrated by Justice Cahn and Justice Lehner.” (underlining added).

May 19, 2003

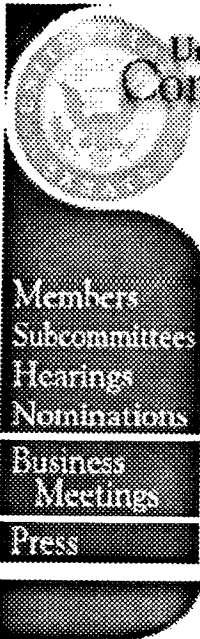
To enable the other Committee members to participate in the questioning of Judge Wesley – and to ensure that their votes on his confirmation are properly informed – CJA requests that you instruct Committee staff to replicate this memorandum, our May 5, 2003 memorandum, and our March 26, 2003 statement and distribute copies to each and every Committee member as soon as possible in advance of the hearing. CJA further requests that each of these documents, including their annexed exhibits -- as well as such related documents as our April 23, 2003 letters to home-state Senators Charles Schumer and Hillary Rodham Clinton -- be deemed submitted for printing in the record of the May 22nd hearing on Judge Wesley's confirmation.

Finally, as to the foremost request in our May 5, 2003 memorandum that you call upon the ABA and City Bar to disgorge their FINDINGS with respect to CJA's March 26, 2003 statement, such is plainly warranted, as would be *readily revealed* by disclosure of the FINDINGS your Committee counsel would have been required to make with respect to that same statement.

We await your response – and thank you, in advance.

A handwritten signature in black ink, appearing to read "Elena Ruiz" followed by a stylized flourish.

cc: President George W. Bush
Senator Charles E. Schumer
Senator Hillary Rodham Clinton
New York Court of Appeals Judge Richard C. Wesley
P. Kevin Castel, Esq.
The Press



United States Senate
Committee on the Judiciary

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"Judicial Nominations"

Senate Judiciary Committee
Full Committee

DATE: May 22, 2003
TIME: 02:00 PM
ROOM: SD-226

OFFICIAL HEARING NOTICE / WITNESS LIST:

TESTIMONY

MEMBER STATEMENTS

May 15, 2003

NOTICE OF HEARING

The Senate Committee on the Judiciary will hold a hearing on Thursday, May 22, 2003, at 2:00 p.m. in Room 226 of the Senate Dirksen Building, on "Judicial Nominations."

By order of the Chairman

Tentative Agenda

Senate Judiciary Committee Hearing on Judicial Nominations

Thursday, May 22, 2003, at 2:00 p.m.

Dirksen 226

Panel I

[senators]

Panel II

Richard C. Wesley to be United States Circuit Judge

for the Second Circuit

1530 "A"

Panel III

J. Ronnie Greer to be United States District Judge
for the Eastern District of Tennessee

Thomas M. Hardiman to be United States District Judge
for the Western District of Pennsylvania

Mark R. Kravitz to be United States District Judge
for the District of Connecticut

John A. Woodcock to be United States District Judge
for the District of Maine

Memo to Hatch - Leahy

Chairman Hatch
Senate Judiciary
Committee

TRANSMISSION VERIFICATION REPORT

5/19/03
TIME : ~~01/14/1995~~ 01:30
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE, TIME	5/19/03 01/14 01:23
FAX NO. /NAME	12022249102
DURATION	00:07:08
PAGE(S)	10
RESULT	OK
MODE	STANDARD ECM

TRANSMISSION VERIFICATION REPORT

Ranking Member
Leahy
Senate Judiciary
Committee

TIME : 05/19/2003 11:37
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE, TIME	05/19 11:30
FAX NO. /NAME	12022249516
DURATION	00:06:34
PAGE(S)	10
RESULT	OK
MODE	STANDARD ECM

TRANSMISSION VERIFICATION REPORT

*Senator Hoch -
Senate office*

TIME : 05/19/2003 13:32
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE, TIME	05/19 13:23
FAX NO. /NAME	12022246331
DURATION	00:09:16
PAGE(S)	10
RESULT	OK
MODE	STANDARD ECM

Subj: **EMERGENCY ATTENTION: MAY 22, 2003 Confirmation Hearing on Wesley Nomination**
Date: 5/19/03 11:46:15 AM Eastern Daylight Time
From: Judgewatchers
To: senator_hatch@hatch.senate.gov, senator_leahy@leahy.senate.gov,
swen_prior@judiciary.senate.gov, rachel_arfa@judiciary.senate.gov
File: **5-19-03-SJC.doc** (45056 bytes) DL Time (TCP/IP): < 1 minute

Attached is CJA's memorandum of today's date addressed to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy. It is not only for their IMMEDIATE ATTENTION, but for their PERSONAL ATTENTION so that they may discharge their much-needed supervisory responsibilities over Senate Judiciary Committee staff.

Thank you.

Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)
(914) 421-1200