

[Appellant's Appendix: 142-148]

Petitioner's May 28, 2003 memo to Senate Judiciary Committee Chairman Orrin Hatch & Ranking Member Patrick Leahy – referred-to in petitioner's April 16, 2004 trial motion for judgment of acquittal (at A-168-169 herein)

DATE: May 28, 2003

TO: Senator Orrin G. Hatch, Chairman,
U.S. Senate Judiciary Committee
By Fax: 202-224-6331 / 202-224-9102 [7 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 [7 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) Upholding the People's Rights by Halting Senate Confirmation of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals;
(2) Preserving Exculpatory Evidence;
(3) Directing that Judge Wesley Answer the Substantive Questions NOT Asked at the May 22, 2003 Confirmation "Hearing"

This is to put you on notice that it would be a further betrayal of the American public – and, specifically, a betrayal of the People of the State of New York and the Second Circuit -- for the Senate Judiciary Committee to approve the nomination of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of

Appeals – while the criminal case of *United States of America v. Elena Ruth Sassower* (Superior Court of the District of Columbia, No. M-4113-03) is pending. Especially is this so where, additionally, you have made NO FINDINGS as to the accuracy of CJA’s March 26, 2003 statement, particularizing the documentary evidence establishing that Judge Wesley knowingly and deliberately obliterated the most basic judicial and ethical standards to “protect” a corrupt New York State Commission on Judicial Conduct and a panoply of corrupt and complicitous public officers and agencies. Among these, Judge Wesley’s friend and political patron, New York’s Republican Governor George Pataki, who has rewarded him by this federal judgeship.

[p.2] It is unclear whether Senator Saxby Chambliss, Presiding Chairman at the May 22nd “hearing” on Judge Wesley’s confirmation, is the complainant in the trumped-up criminal case against me wherein I am charged with “disruption of Congress” because of my public statement at the “hearing’s” conclusion:

“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?”

He kept silent as Capitol Police dragged me from the “hearing” room, while I called out to him:

“Are you directing that I be arrested? Are you directing that I be arrested? Are you directing that I be arrested?”¹

¹ The foregoing should be reflected by the stenographic transcript of the May 22nd “hearing” – which the Miller Reporting Company, the official reporting service, will be delivering to the Senate Judiciary Committee tomorrow. I request a copy of the pertinent pages.

He kept silent, too, when, upon exiting the backdoor of the “hearing” room a few minutes later, he saw me in handcuffs and walked right passed me in the hallway, as I asked him:

“Are you directing that I be arrested? Do you wish me to be arrested?”

Senator Chambliss – the ONLY Committee member present at the “hearing” following the “recess” -- will be a necessary witness at my trial. Indeed, should he NOT be called by the prosecution, I will, *as is my right*, subpoena him as my witness. At that time, I will question him as to whether he is the complainant – and, if so, his knowledge of the exculpatory facts and circumstances which you were duty-bound to share with him, in advance of the “hearing” -- unless he was to be your dupe. Indeed, he will be interrogated as to his knowledge of CJA’s document-substantiated March 26, 2003 written statement², hand-delivered to the Committee under a May 5, 2003 memorandum addressed to each of you – as well as his knowledge of CJA’s faxed and e-mailed May 19, 2003 and May 22, 2003 memoranda, also addressed to each of you, requesting your immediate personal review of the March 26, 2003 written statement [p. 3] and supervisory oversight of Committee counsel, who, apparently, undertook NO INVESTIGATION of the statement and made NO FINDINGS with respect to its particularized recitation of Judge Wesley’s official misconduct. Obviously, too, Senator Chambliss will be interrogated as to his knowledge of CJA’s faxed and e-mailed May 21, 2003 memorandum, also addressed to each of you, concerning the unwarranted threat I received from Capitol Police that I would be arrested at the May 22nd “hearing”. Such memorandum, enclosing a copy of CJA’s May 21st letter to Home-State Senator Schumer,

² CJA’s March 26, 2003 written statement, as likewise ALL CJA’s subsequent related memoranda and correspondence referred to herein, are posted on CJA’s website: www.judgewatch.org.

expressly stated:

“I do NOT wish to be arrested tomorrow for simply exercising a citizen’s right in a democracy to peaceably and publicly request to testify in opposition – in the event the presiding chairman at tomorrow’s public hearing to confirm Judge Wesley to a ‘lifetime’ Circuit Court of Appeals judgeship does not himself inquire – as had previously been done – ‘if anyone in the room wish[es] to speak on behalf of or against the nominee’. [see fn. 1 of CJA’s enclosed letter].

Further, I request that Capitol Police be instructed NOT to arrest me for peaceably and publicly requesting to testify in opposition -- unless the presiding chairman publicly calls for them to arrest me in response [see fn. 2 of CJA’s enclosed letter and text on page 2].”

These – and my May 21, 2003 letter to Capitol Police, to which you were each indicated recipients and which I sent each of you – in and of themselves resoundingly establish that the criminal charge of “disruption of Congress” cannot be sustained – since essential to the charge is that I

“wilfully and knowingly engaged in disorderly conduct...with the intent to impede, disrupt, and disturb the orderly conduct...of a hearing before, and deliberations of, a committee or subcommittee of the Congress or either House thereof.” (emphases added)

These documents make clear that my “intent” was not to be “disorderly” or to “impede, disrupt, and disturb”. Rather, it was to respectfully ask whether I might be permitted to testify as to documentary proof of Judge Wesley’s unfitness – consistent with my responsibilities as a citizen in a democracy. This is precisely what I did

at an [p. 4] appropriate point at the conclusion of the “hearing” – as to which there is a videotape³, in addition to a stenographic transcript.

The criminal charge against me is a vicious assault on citizen rights and responsibilities, in addition to an affront to the most fundamental standards of decency. You may be sure I will wage a vigorous defense. Indeed, I hereby put you on notice that ALL documents which I furnished you in connection with CJA’s citizen opposition to Judge Wesley, whether by hand, by fax, or by e-mail, whether through the Committee or *via* your Senate offices, are EXCULPATORY – and I will demand that they be produced for my criminal trial as dispositive of my “intent”. They are to be safeguarded in the interim – as, likewise, any notes, memoranda, written messages generated by your staff, whether at the Committee or in your Senate offices with respect thereto.

I further put you on notice that I plan to subpoena each of you to testify as to the EXCULPATORY documents which I furnished you – so that you may explain what actions you took, consistent therewith, to ensure that I would not

³ The videotape was made by, and is in the possession of, the Senate Recording Studio (202-224-4977). Although immediately upon my May 22nd arrest, I repeatedly requested Capitol Police to take steps to secure the videotape’s preservation, as of today, no one has informed the Senate Recording Studio, which destroys tapes after 30 days, that the videotape of the May 22nd “hearing” is evidence in a criminal case and must be preserved. This is even though the U.S. Attorney’s own May 23, 2003 “Discovery” statement lists the videotape as “Tangible Evidence”, which “At trial, the government may seek to introduce”.

As I have been informed that members of the public are allowed to view the Studio’s videotapes and may obtain duplicates, so long as their requests are made through a Senate office, I ask that the Senate Judiciary Committee – either collectively or by any of its 19 individual Senators – request the Studio to duplicate the videotape of the May 22nd “hearing” and send it to me so that I may view it with such counsel as I may engage in the criminal case. I will pay whatever costs the Studio customarily charges for duplication and mailing.

be arrested for simply requesting to testify⁴. Indeed, from CJA's March 26, 2003 written statement and the substantiating record of *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of [p. 5] the State of New York*, contained in FIVE CARTONS AND ONE REDWELD FOLDER, in the Committee's possession since May 5th, you knew that such request was not only legitimate, but that any testimony I would offer as to Judge Wesley's "documented corruption as a New York Court of Appeals judge" would be TRUE and DISPOSITIVE of his unfitness.

Suffice to say, I will also subpoena New York Home-State Senators Schumer and Clinton, indicated recipients of all CJA's memoranda to you – and who, with you, would not respond with FINDINGS, or even comment, with regard to CJA's document-substantiated March 26, 2003 written statement.

Conspicuously, Senator Schumer – a member of the Senate Judiciary Committee – did not return after the "recess" at the May 22nd "hearing" to question Judge Wesley – leaving it to Senator Chambliss to ask Judge Wesley three insignificant questions, more for show than anything else.

That Senator Schumer knew there were substantive questions to be asked Judge Wesley at the May 22nd "hearing" is evident from CJA's May 19th memorandum to you, which I sent him⁵. As stated therein (p. 7) –

⁴ As there was nothing about my request at the May 22nd "hearing" that warranted my arrest -- or even my removal from the "hearing" room -- Senator Chambliss' refusal to respond by either "yes" or "no" to my question as to whether he was directing that I be arrested, combined with the draconian and unprecedented position of Capitol Police, as reflected by my May 21st correspondence, suggests that there was an agreed-upon plan for my arrest.

⁵ The May 19th memorandum was TWICE transmitted to

referring to Judge Wesley's non-response to my two final motions in my lawsuit against the New York State Commission on Judicial Conduct⁶ – and quoting from CJA's March 26, 2003 written statement:

“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 [p. 6] 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-

Senator Schumer: first, by fax and e-mail on May 19th under a transmitting memorandum addressed to him and Senator Clinton; and second by fax and e-mail on May 21st under a transmitting letter to the attention of his Director of Intergovernmental Affairs, Michael Tobman, to whom I had spoken about it by phone earlier that day.

⁶ These two final motions, focally-discussed in CJA's March 26, 2003 statement, are: (1) my October 15, 2002 motion to reargue, vacate for fraud, lack of jurisdiction, disclosure & other relief; and (2) my October 24, 2002 motion for leave to appeal. In addition to the FOUR copies of each, which should be in your possession, the motions are also posted on CJA's website: www.judgewatch.org.

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 in May 19, 2003 memorandum).

Shortly before I rose to ask to be permitted to testify at the May 22nd “hearing”, Senator Chambliss stated that the members of the Senate Judiciary Committee would have until 5:00 p.m. today to submit questions for the nominees. I recalled this fact at about 2:30 a.m. on May 23rd as I shivered in a cold, bare, claustrophobic jail cell at the Metropolitan Police Station in downtown Washington, D.C. – when I yet had another ten hours of incarceration to endure before I would be brought before a judge for arraignment.

Based on CJA’s March 26, 2003 written statement, it is the Senate Judiciary Committee’s absolute duty to require Judge Wesley’s response to these two motions, as above-indicated. Indeed, it is the special duty of Ranking Member Leahy and Senator Schumer, whose Vermont and New York constituents are in the Second Circuit, to insist that Judge Wesley respond, thereby sparing their constituents so corrupt a judge.

CJA requests that copies of this memorandum be distributed to each and every Committee member so that they may individually determine what is appropriate – and be held accountable by their constituents. Further, we request that this memorandum be included in the written record of the Committee’s proceedings on Judge Wesley’s nomination.

[p. 7]

s/ Elena Ruth Sassower

cc: President George W. Bush
Senator Saxby Chambliss, Presiding Chairman,
May 22nd "hearing"
Home-State Senator Charles E. Schumer
Home-State Senator Hillary Rodham Clinton
New York Court of Appeals Judge
Richard C. Wesley
P. Kevin Castel, Esq.
United States Attorney/District of Columbia
Capitol Police
The Press