

DESCRIPTIVE CHRONOLOGY BASED ON ELENA RUTH SASSOWER'S CONTEMPORANEOUS NOTES AND AN ITEMIZED CJA PHONE BILL*

Monday, July 15, 1996

At 9:22 a.m., I telephoned Senate Majority Leader Lott's office (202-224-6253) to ascertain the status of CJA's moratorium request, set forth in our June 28, 1996 letter, as well as to apprise the Majority Leader of newly-discovered information further reinforcing the propriety of such request. This newly-discovered information concerned that the fact that on June 7, 1996 -- just five days before Chairman Hatch denied CJA's request to testify in opposition to Justice Kahn, opposition based on his politically-motivated decision in an explosive Election Law case against the two major parties -- two good government activists, unconnected to CJA, had separately notified the Committee of their opposition to Justice Kahn based on his politically-motivated decision-making in a case involving local corruption in Dutchess County. Nonetheless, the Committee had not contacted these citizens for an interview and for documentation, just as it had not contacted us for an interview or for documentation.

My call to Senate Majority Leader Lott's office (202-224-2321) was directed to Steven Seale, his legislative assistant. To my astonishment, Mr. Seale informed me that Justice Kahn was going to be confirmed the following day -- "an agreement" to that effect having been reached by the Republican and Democratic leadership. I spent more than three quarters of an hour on the telephone reviewing the content of our June 28, 1996 letter as to why Justice Kahn's confirmation and, indeed, all confirmations had to be halted [50:01 min = \$14.31]. Mr. Seale told me that he had the copy of CJA's June 28, 1996 letter which we had mailed to the Majority Leader, along with CJA's informational brochure. From the brochure, which listed four board members, Mr. Seale noted that I was not a lawyer. From this he attempted to diminish the significance of my direct, first-hand experience with the ABA and Senate Judiciary Committee by arguing that as a non-lawyer, I hence could not be expected to know anything. Mr. Seale continued this

* As other phone lines were sometimes also used for outgoing calls, not all of CJA's phone calls are reflected.

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insulting line of argument until I pointed out that Exhibit "F" to our June 28, 1996 letter was our May 27, 1996 letter to Chairman Hatch, to which was appended our October 31, 1995 letter detailing Justice Kahn's on-the-bench misconduct in the Election Law case, had been signed by the lawyer who, *pro bono*, had represented the petitioners in that case. She was Doris Sassower, whose extensive credentials I pointed out were on the reverse side of The New York Times' Op-Ed ad, "*Where Do You Go When Judges Break the Law?*", annexed to the October 31, 1995 letter.

As part of the "grilling" I received from Mr. Seale, I was asked by him about CJA's previous experience before the New York State Senate Judiciary Committee. Because such experience related to Justice Kahn's on-the-bench misconduct in the Election Law case and answered Mr. Seale's question as to whether Justice Kahn's decision had been appealed, I offered to fax him a copy of our testimony before the New York State Senate – and did so.

I further emphasized to Mr. Seale, who told me that "we work through the committee" that, if the thoroughness and professionalism of CJA's efforts were not abundantly evident to him from our June 28, 1996 letter, he should obtain from the Senate Judiciary Committee our 1992 Critique of the federal judicial screening process and our three Correspondence Compendia related thereto, which we had transmitted to the Senate Judiciary Committee with our May 27, 1996 letter to Chairman Hatch. These I urged him to review in any event. I told Mr. Seale that I would make arrangements with the Senate Judiciary Committee – notwithstanding he assured me that he would make such arrangements on his own.

Immediately thereafter (10:15 a.m.), I called the Senate Judiciary Committee for such purpose (202-224-5225). I asked to speak with Committee counsel, but was told that none was available. I recounted to the Senate staffer who answered the phone what Mr. Seale had told me about an "agreement" having been reached for Senate confirmation the next day and requested that all materials relating to CJA's opposition to Justice Kahn be transmitted to Mr. Seale immediately. I also requested that all other opposition to Justice Kahn be transmitted to Mr. Seale – specifically that of Mr. Van Allen and Ms. Rabenda from June 7, 1996 [4 min = \$1.15].

I then sent a fax to the Senate Judiciary Committee confirming my conversation – a copy of which I sent to Mr. Seale, as well as to his democratic counterpart, Caroline Frederickson, Legislative Assistant to Senate Minority Leader Daschle, with whom I had then spoken (202-224-2321; 12:18 min = \$3.52). Ms. Frederickson – unlike Mr. Seale – claimed to be unfamiliar with our June 28th letter. A copy of that letter was, therefore, faxed to her.

At 2:08 p.m., I telephoned the Senate Judiciary Committee (202-224-5225) to ascertain the status of our request that the materials relating to the opposition be transmitted to the Senate Majority Leader. The staffer with whom I spoke was unable to provide this information and refused even to verify that CJA's faxed memo with that request had been given to Committee counsel, whose name the staffer also refused to identify. Indeed, the staffer's response to my concern that this matter be handled expeditiously – in view of the confirmation scheduled for the next day – was to tell me if it was really important to us we would get it over to the Majority Leader's office ourselves. He then hung up on me when I protested that this was hardly feasible, considering the confirmation was scheduled for the next day [6:28 min = \$1.85].

I then immediately called back the Senate Judiciary Committee (2:15 p.m.; 7:20 min = \$2.10). I spoke to Christopher Morley, who likewise told me that he could not give me counsel's name. He told me that to obtain information about the scheduling of the next day's confirmation of Justice Kahn I should call "Legislative Information and Status" (202-225-1772). I did this (2.04 = \$.59), but was told that they don't have anything to do with nominations matters and that I needed to call the office of the Senate Whip, Don Nichols (202-224-2708). I did this, but was told that I needed to call his personal office (202-224-5754). After calling this number, I was directed to call the Cloak Room (202-224-6191). At 2:47 p.m., I telephoned the Cloak Room and spoke to Mike. He told me that he had no information about confirmations and would only know 30 minutes or an hour before they happened. He also told me that judicial nominations are generally not debated, but part of the "wrap up" before the Senate went out of session. He indicated that this might be anywhere from 4 p.m. to 9 p.m., with no recorded vote. He also told me that it might not be on the calendar. When I asked

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about coming to the Senate to witness the vote, he told me that there was no guarantee we'd get a place in the spectator's gallery and would have to first obtain a pass and then wait on line (3:50 min.= \$1.09).

Thereafter, I got a return call from Jon Liebowitz, the Chief Counsel to Senator Kohl, for whom I had left phone messages (202-224-4933) at 5:06 p.m. on July 9th [3.39 min = \$.75] and at 9:07 a.m. that day (48 sec = \$.22). Mr. Liebowitz stated he had not seen our June 28, 1996 letter. This, notwithstanding copies had been sent for every Senate Judiciary Committee member. I discussed the letter with him and faxed him a copy - urging him to review the exhibits to it, as well as the documentary materials that had accompanied our May 27, 1996 letter. I told him that I had requested that such documentation be transmitted to the Senate Majority Leader. I urged him to review it and sent him a faxed letter to that effect.

Tuesday, July 16, 1996:

At 9:30 a.m., I called the Senate Majority Leader's office (202-224-6253), leaving a voice mail message for Mr. Seale as to the status of his review and whether the confirmation was going to proceed [2:21 min = \$.66]. I also called the Senate Minority Leader's office. Ms. Frederickson was not available so I left a message with an assistant in the office, Mark Ireland, to whom I faxed a copy of the signed return receipt for CJA's June 28, 1996 letter to facilitate his locating the hard copy I had sent to the Senate Minority Leader. I also called the Cloak-Room (202-224-6191) to ascertain if the confirmation was on the calendar and was told that no information was available on it.

At 11:03 a.m., I telephoned the Senate Judiciary Committee (202-224-5225) and spoke to Dave. He told me that the Committee's "investigative counsel" had the materials we supplied to the Committee and that they were "going to make a decision" [20:58 min. = \$6.00]. When I called back at 2:56 p.m. [11:34 min. = \$3.30], Dave told me that a decision had been made that the materials needed to remain at the Judiciary Committee.

At that time, I asked Dave which Senators had been present at the Committee's June 27th meeting approving Justice Kahn. He checked the transcript and reported to me that 16 Senators were present. In

addition to Senator Kyl, who had presided over the June 25th confirmation "hearing" and Senator Simon, who was also at the "hearing", the following Senators were at the June 27th Committee meeting: Chairman Hatch, Senators Simpson, Specter, Brown, Thompson, Kyle, Dewine, Abraham, Biden, Kennedy, Leahy, Heflin, Simon, Feinstein, and Feingold.

According to Dave, the committee meeting began at 10:05 a.m. and adjourned at 10:51 a.m. The meeting was a "closed session", most of which was completely unrelated to the judicial nominees. Indeed, only one page of the unedited transcript concerned the nominees. The extent of the discussion was announcement that there had been a hearing for one nominee for the Circuit Court of Appeals and five for the District Court. A question was then asked as to whether there was any objection to reporting the nominees out of committee - to which there was no response.

Neither Senator Kyle nor Senator Simon advised that approval of the nominations was premature in that he had stated "the record" would remain open for three days and there was "citizen opposition" to Justice Kahn, voiced at the "hearing", which he had not permitted to be presented at that time.

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I had C-span on all day, but didn't see any judicial confirmations. That night, I went to bed joyous in the belief that the People had prevailed and that "leadership" from some quarter had emerged.

I was, of course, mistaken. The next morning, July 17th, I called the Cloak Room (202-224-6191) and, in response to my query, was told that the Senate had confirmed Justice Kahn. A recorded message then ran through the numeric listings of individuals confirmed in the previous day's Executive Session. Number 678 was identified as being Justice Kahn. [9:11 a.m.: 2:33 min. = \$.73; 9:21 a.m.: 30 sec. = \$.14; 9:21 a.m.: 7.02 min. = \$2.01]. The Congressional Record - faxed to me by Senator Kohl's office at my request - explains why, if I blinked, I missed it.