

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY HAND

TO: Senator Orrin G. Hatch, Chairman, U.S. Senate Judiciary Committee
Senator Patrick J. Leahy, Ranking Member, U.S. Senate Judiciary Committee

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

RE: Calling Upon the American Bar Association and the Association of the Bar of the City of New York to Reconcile their Barebones Ratings of the Qualifications of New York Court of Appeals Judge Richard C. Wesley, Nominated to the Second Circuit Court of Appeals and P. Kevin Castel, Nominated to the District Court of the Southern District of New York – With CJA's 28-Page Document-Supported March 26, 2003 Written Statement

DATE: May 5, 2003

As you know, the Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit, citizens' organization, whose mission is to safeguard the public interest in meaningful and effective processes of judicial selection and discipline. Since our founding in 1989, we have had substantial interaction with the U.S. Senate Judiciary Committee. This is most comprehensively reflected by our July 3, 2001 letter to Senator Charles Schumer, then Chairman of the Senate Judiciary Committee's Subcommittee on Judicial Administration and the Courts -- copies of which were sent to every Committee member.

CJA's July 3, 2001 letter was reprinted, albeit *without* substantiating exhibits, in the appendix of the Subcommittee's June 26, 2001 and September 4, 2001 hearings on "The Judicial Nomination and Confirmation Process". A copy is annexed for your convenience¹, as is a copy of the first substantiating exhibit thereto, CJA's May 27, 1996

¹ Because of the importance of that July 3, 2001 letter, a duplicate, *with* exhibits, is being deposited at the Senate Judiciary Committee office, along with duplicates of CJA's transmittal coverletters to the indicated recipients thereof: (1) CJA's July 11, 2001 coverletter to the Senate Judiciary Committee members; (2) CJA's July 11, 2001 coverletter to Senate Majority Leader Trent Lott and Senate Minority Leader Thomas Daschle; (3) CJA's July 14, 2001 coverletter to President George W. Bush; (4) CJA's July 14, 2001 coverletter to Senator Hillary Rodham Clinton; (5) CJA's July 9, 2001 coverletters to House Judiciary Committee counsel. Also transmitted is the only response CJA received: a July 17, 2001 letter from President Bush's counsel, Alberto R. Gonzalez.

letter to Chairman Hatch, as reprinted in the record of the Committee's May 21, 1996 hearing on "The Role of the American Bar Association in the Judicial Selection Process".

Among the serious and substantial issues presented by CJA's July 3, 2001 letter were our repeated efforts, beginning in May 1992, to get the Senate Judiciary Committee to confront documentary evidence that the American Bar Association's barebones ratings of judicial nominees, as likewise those of the Association of the Bar of the City of New York, were the product of inadequate and dishonest "investigations". This, in the context of our document-supported opposition to Senate confirmation of three separate nominees to the federal bench – two of whom the Senate confirmed.

Now again, in the context of CJA's opposition to Senate confirmation of New York Court of Appeals Judge Richard C. Wesley, nominated to the Second Circuit Court of Appeals, and of P. Kevin Castel, nominated to the District Court of the Southern District of New York, we are furnishing the Committee with documentary evidence establishing the fraudulence of the ABA and City Bar ratings. According to nominations clerk Swen Prior, the ABA's Standing Committee on Federal Judiciary unanimously conferred its highest rating of "well qualified" upon Judge Wesley and Mr. Castel. The City Bar's Committee on the Judiciary, whose ratings are limited to "approved" and "not approved", rated both Judge Wesley and Mr. Castel as "approved"².

The documentary evidence herein transmitted to establish the fraudulence of these ABA and City Bar ratings is the SAME as we transmitted to the ABA and City Bar to establish the unfitness of Judge Wesley and Mr. Castel, arising from their lack of integrity. Summarizing this evidence is CJA's 28-page March 26, 2003 written statement to the ABA and City Bar -- separate copies of which are being furnished to you, along with separate copies of the documents focally presented therein:

- (1) my October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief and my October 24, 2002 motion for leave to appeal in *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* -- with the New York Court of Appeals' two December 17, 2002 decisions thereon;

² CJA requests a copy of the ABA and City Bar letters transmitting these ratings.

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

These documents were identified by CJA's March 26, 2003 written statement (at pp. 19-22, 27-28) as sufficient in and of themselves in establishing the salient aspects of Judge Wesley's and Mr. Castel's unfitness. Nevertheless, we deposited additional substantiating documents with the City Bar, available for inspection by the ABA as well, *to wit*, the FULL record of *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*. These were:

- (1) FIVE cartons containing the ORIGINAL documents I had filed with the Court of Appeals on "Law Day", May 1, 2002, to substantiate my May 1, 2002 disqualification/disclosure motion and my May 1, 2002 jurisdictional statement in support of my appeal of right³;
- (2) ONE redweld file folder containing a COPY of the motion and appeal papers that were before the Court of Appeals

As identified by our March 26th statement (p. 19), it was the bar associations' obligation to examine the underlying substantiating record if, as to Judge Wesley, they had "any charitable doubt as to his unfitness for ANY judicial office or, indeed, for ANY office of public trust". The same held true for Mr. Castel.

Nevertheless, when I retrieved the FIVE cartons and one redweld from the City Bar – which was on "Law Day", May 1, 2003 – the underlying record appeared to be in the same "untouched by human hands" condition as when I had delivered it to the City Bar on March 26th⁴. You may assess its all-too-pristine condition for yourselves, as these same FIVE cartons and one redweld, collectively containing the FULL record in *Elena Ruth Sassower v. Commission*, are being delivered herewith to the Senate Judiciary Committee. In any event, since bar examination of this record would have enabled the

³ These FIVE cartons were themselves originals: being the SAME draped in the American flag cartons, topped by a ribbon as I had delivered to the New York Court of Appeals. This is reflected by the Court of Appeals' May 1, 2002 date stamp, and the attached yellow slips on which are handwritten "Motion 581" and "Return to E. Sassower" and the lengthier message on attached white paper strips, instructing not to fasten paper clips, fail to replace removed documents, etc.

⁴ The only real "wear" appeared to be to the large patriotic red, white, and blue stars and strips ribbon on the smallest box. It was crushed.

ABA and City Bar to verify the truth of our March 26, 2003 written statement, preventing any ratings other than that Judge Wesley and Mr. Castel were each “not qualified” and “not approved”, the Senate Judiciary Committee must call upon the ABA and City Bar to identify which documents they examined. Indeed, the Committee must call upon them to disgorge their findings with respect to our March 26, 2003 written statement, including as to the specifics particularized at pages 27-28 of the statement as requiring response by Judge Wesley and Mr. Castel⁵.

Of course, the threshold findings the ABA and City Bar were each required to have made pertained to their serious and substantial conflicts of interest, disqualifying them from any evaluation of these nominees. The City Bar’s conflicts are immediately evident from pages 21-25 of our March 26, 2003 written statement and the focally discussed documents therein. The ABA’s conflicts are immediately evident from the underlying substantiating record, including the cert petition in the federal action *Doris L. Sassower v. Hon. Guy Mangano, et al.*, expressly identified by our written statement (at pp. 17-18, 28), and even more directly from the additional documents which we simultaneously transmitted to the ABA on March 26^{th6}. From these, the bar associations knew they had flagrantly violated the SAME vital mandatory rules of professional responsibility as Judge Wesley and Mr. Castel and that findings adverse to these nominees would necessarily expose their own leading roles in covering up and perpetuating the very systemic governmental corruption which *Elena Ruth Sassower v. Commission* sought to redress.

The within transmittal, documentarily proving that the ABA and City Bar are utterly unworthy of the Senate Judiciary Committee’s trust and confidence -- and the critical importance of citizen participation -- must impel the Committee to finally implement the unimplemented salutary recommendations pertaining to the federal judicial confirmation process from the 1975 book, The Judiciary Committees, by Ralph Nader’s Congress Project, from the 1986 Common Cause report, Assembly-Line Approval, and from the 1988 book Judicial Roulette, by the Twentieth Century Fund’s Task Force on Judicial Selection – referred to in CJA’s July 3, 2001 letter (Exhibit “A”, p. 236). Among these is the recommendation pertaining to the ABA’s barebones ratings, but applicable to similar ratings by other bar associations, that basic substantiating information be supplied.

⁵ We sent Judge Wesley and Mr. Castel copies of our March 26, 2003 written statement under an April 2, 2003 coverletter – copies of which we furnished to the ABA and City Bar.

⁶ Copies will be hereinafter transmitted to you with a more particularized recitation

May 5, 2003

The discussion accompanying the 1986 Common Cause recommendation,

“The [Senate Judiciary] Committee should ask the ABA to provide information on the scope of its investigation, a summary of the basis for its evaluation, and a summary of the controversial issues, if any, discovered concerning the nominee”,

is especially compelling -- and is annexed (Exhibit “C”). Also annexed is the testimony of Professor Daniel Meador at this Committee’s own May 21, 1996 hearing on “The Role of the American Bar Association in the Judicial Selection Process”. Professor Meador, a member of the Miller Center Commission on the Selection of Federal Judges, testified as to that Commission’s recommendation in its 1996 report that the ABA give reasons for its ratings (Exhibit “D”). These reinforce CJA’s reasonable request herein that the Senate Judiciary Committee call upon the ABA and City Bar to reconcile their barebones ratings for Judge Wesley and Mr. Castel with CJA’s document-supported March 26, 2003 written statement.

We look forward to answering your questions, including under oath, as to any aspect of our March 26, 2003 written statement. In the event home state Senators Charles Schumer and Hillary Rodham Clinton do not use their “blue slip” senatorial prerogative to block Senate confirmation, as we have requested by letters to them dated April 23, 2003, and President Bush does not withdraw the nominations, as we have requested by letter of today’s date, we reiterate our March 14, 2003 written request to testify at any Senate Judiciary Committee hearing to be held on Judge Wesley’s and Mr. Castel’s confirmations.

Thank you.

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

Enclosures: See accompanying Inventory of Transmittal

INVENTORY OF TRANSMITTAL

- (1) CJA's informational brochure, with reprints, "*Appeal for Justice*", Metroland (Albany, NY), 4/25-5/1/02, and "*A Flawed Process: Judicial nominees should be subject to more public scrutiny*", The Post-Standard (Syracuse, NY), 1/27/03
- (2) CJA's March 14, 2003 fax/e-mail to U.S. Senate Judiciary Committee
- (3) CJA's March 26, 2003 written statement to the American Bar Association and Association of the Bar of the City of New York AND CJA's April 2, 2003 transmittal letter to New York Court of Appeals Judge Richard C. Wesley and P. Kevin Castel, Esq.:
 - 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 New York 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 (with two free-standing compendia of exhibits)
 - C. FULL record of *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* in five cartons and one redweld file folder
- (4) CJA's May 5, 2003 letter to President George W. Bush
- (5) April 23, 2003 letter to Senator Charles E. Schumer
(with CJA's December 9, 2002 letter to counsel Jeff Berman)
- (6) CJA's April 23, 2003 letter to Senator Hillary Rodham Clinton
- (7) CJA's July 3, 2001 letter to Senator Schumer with transmittal coverletters:
 - (a) CJA's July 11, 2001 coverletter to the Senate Judiciary Committee members;
 - (b) CJA's July 11, 2001 coverletter to Senate Majority Leader Trent Lott and Senate Minority Leader Thomas Daschle;
 - (c) CJA's July 14, 2001 coverletter to President George W. Bush -- with July 17, 2001 responding letter of Alberto R. Gonzalez;
 - (d) CJA's July 14, 2001 coverletter to Senator Hillary Rodham Clinton;
 - (e) CJA's July 9, 2001 coverletters to House Judiciary Committee counsel.