S. HRG. 107–463

THE JUDICIAL NOMINATION AND CONFIRMATION PROCESS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

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Exhibit A

Statement of Elena Ruth Sassower, Coordinator, Center for Judicial Accountability, Inc.

Dear Chairman Schumer:

As you know, the Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens' organization, based in New York. Our purpose is to safeguard the public interest in meaningful and effective processes of judicial selection and discipline. On the federal level, as likewise on state and local levels, these essential processes take place almost exclusively behind closed-doors. For your convenience, a copy of CJA's informational brochure is enclosed—similar to one I gave you, in hand, on March 20, 1998, when you were seeking election as a Senator from New York.

In the twelve years since our founding in 1989, CJA has had substantial first-had experience with the Senate Judiciary Committee under both Democratic and Republican chairmen. Reflecting this is the enclosed copy of CJA's May 27, 1996 letter to then Judiciary Committee Chairman Orrin Hatch, as printed in the record of the Committee's May 21, 1996 hearing on "The Role of the American Bar Association in the Judicial Selection Process" (Exhibit "A–1"). The subject of that hearing was whether the ABA should continue to occupy a privileged, semi-official role. This, because the ratings of the ABA's Standing Committee on Federal Judiciary were allegedly tainted by ideological considerations and by ABA "liberal" policy positions.

Inasmuch as CJA received no notice from the Senate Judiciary Committee of the June 26, 2001 hearing, "Should Ideology Matter?: Judicial Nominations 2001", held by the Subcommittee on Administrative Oversight and the Courts, which you now chair, I draw your attention to the final paragraph of CJA's May 27, 1996 letter to Chairman Hatch "A–I", p. 127):

> "Finally, we ask that this letter serve as CJA's standing to be placed on a 'notifications' list so that, in the future, we are immediately contacted when matters bearing specifically on judicial selection, discipline, and judicial performance are being considered by the Senate Judiciary Committee or any of its subcommittees." [1]

We did not learn of your June 26, 2001 Subcommittee hearing until June 25, 2001—and this, from a front-page item in the *New York Law Journal*, identifying it as "a hearing to debate the criteria senators should use when voting on President Bush's judicial nominees". I immediately called your office. After verifying that the hearing was focused on ideology, rather than more broadly on "criteria"—as to which CJA would have requested to testify—I advised that CJA would be submitting a statement for the record of the Subcommittee's hearing. Please consider this letter, including the annexed substantiating exhibits, as CJA's statement for inclusion in the printed record of the June 26th hearing.

In your Op-Ed article in the June 26th *The New York Times*, "Judging By Ideology"—as likewise in your prefatory statement at the June 26th hearing—you confess that Senators privately consider a nominee's ideology, but that because of the taboo surrounding its consideration, they conceal their ideological objections to nominees by finding "nonideological factors, like small financial improprieties from

[1] This identical request was made in a May 22, 1996 letter to Kolan Davis, then Chief Counsel to the Subcommittee on Administrative Oversight and the Courts—with copies sent to Winston Lett, the Subcommittee's then minority counsel, and John Yoo, then General Counsel to the full Committee and his then minority counterpart, Demetra Lambros (Exhibit "A–2"). Indeed, CJA's May 22, 1996 letter is largely identical to CJA's May 27, 1996 letter to Chairman Hatch, except that it does not particularize "CJA's more recent contacts with the ABA's Standing Committee on Federal Judiciary, this year and last. . . ."

long ago". You state, 'got-cha' politics has warped the confirmation process and harmed the Senate's reputation."

While CJA agrees with this assessment and applauds, as long overdue, you readiness to explore the ideological views of judicial nominees—many of whom were, and are presumably chosen by Presidents precisely for their ideological views—we must point out that there is a more fundamental reason why the confirmation process is "warped". It it "warped" because—except when the Senate Judiciary Committee is searching for some non-ideological "hook" on which to hang an ideologically-objectionable nominee—the Committee cares little, if at all, about scrutinizing the qualifications of the judicial nominees it is confirming. Indeed, the Committee willfully disregards incontrovertible proof of a nominee's unfitness, as likewise, of the gross deficiencies of the pre-nomination federal judicial screening process that produced him.

The Senate Judiciary Committee's failure to discharge its duty to investigate the qualifications of judicial nominees—notwithstanding its self-promoting pretense to the contrary—has been chronicled in the 1986 Common Cause study, *Assembly-Line Approval*—which made a list of salutary recommendations, most of which appear to be unimplemented today. Other studies, also with unimplemented salutary recommendations, have included the 1988 Report of the Twentieth Century Task Force on Judicial Selection, entitled *Judicial Roulette*, with a chapter entitled "*Senate confirmation: a Rubber Stamp?*", *as well as the 1975 book by Ralph Nader's Congress Project, The Judiciary Committees*, with a chapter entitled "Judicial Nominations: Whither 'Advice and Consent'?". These are important resources for the further hearings that your prefatory statement announced would be "examin[ing] in detail several other important issues related to the judicial nominating process".[2]

CJA's own direct, first-hand experience with the Senate Judiciary committee provides additional—and more recent—evidence of the Committee's outright contempt for its "advise and consent" constitutional responsibilities and for the public welfare. CJA's experience with the Committee is also unique in that it involves more than opposition to specific nominees. It involves meticulously-documented evidentiary presentations establishing critical deficiencies in the pre-nomination screening process, particularly relating to the American Bar Association. Specifically, CJA demonstrated, as to one federal District Court nominee, Westchester County Executive Andrew O'Rourke, appointed in 1991 by President George Bush, the gross inadequacy of the ABA's Standing Committee on Federal Judiciary's supposedly "thorough" investigation of his qualifications. As to another federal District Court nominee, New York State Supreme Court Lawrence Kahn, appointed in 1996 by President Bill Clinton, CJA showed that the ABA Standing Committee on Federal Judiciary had actually "screened out" information adverse to his fitness. In other words, CJA's contacts with the Senate Judiciary Committee have concerned not just judicial nominees, but a more transcending dimension of the adequacy and integrity of the judicial screening process, with particular focus on the ABA.

CJA regards it as a positive step that President George W. Bush has removed a wholly unworthy ABA from its preeminent, semi-official pre-nomination role in rating judicial candidates. Indeed, by letter to the President, dated March 21, 2001 (Exhibit "A–3"), CJA expressed support for such prospective decision, enclosing for his review a copy of our May 27, 1996 letter to Chairman Hatch (Exhibit "A–1") to illustrate the "good and sufficient reason" for removing the ABA from the pre-nomination screening process. Needless to say, inasmuch as the Senate Judiciary Committee—or at least the Democratic Senators—are now going to be utilizing the ABA to fulfill a post-nomination screening function, the readily verifiable evidence of the inadequacy and dishonesty of ABA investigations of judicial candidates—and of its dishonest refusal to in any way confront that evidence—are thresholds issues for the Committee in assessing whether, and under what circumstances, it can rely on ABA ratings.

We do not know the state of the Senate Judiciary Committee's record-keeping. However, we respectfully suggest that you make it a priority to find out what has become of the voluminous correspondence and documentary materials that the Committee received from CJA. Most voluminous is CJA's 50-page investigative Critique on the qualifications and judicial screening of Andrew O'Rourke, substantiated by

[2] In particular, your upcoming, as yet unscheduled, two hearings on: "(1) The proper role of the Senate in the judicial process. What does the Constitution mean by 'advise and consent' and historically how assertive has the Senate's role been?", and "(2) What affirmative burdens should nominees bear in the confirmation process to qualify themselves for life-time judicial appointments? The Senate process is criticized for being a search for disqualifications. We should examine whether the burden should be shifted to the nominees to explain their qualifications and views to justify why they would be valuable additions to the bench."

a Compendium of over 60 documentary exhibits, which we initially presented to the Senate Judiciary Committee as our "Law Day" public service contribution in May 1992. As reflected by CJA's May 27, 1996 letter to Chairman Hatch (Exhibit "A–1"), we transmitted a duplicate copy of the Critique and Compendium to him under that letter, along with three Compendia of Correspondence relating thereto. The most voluminous of these, Compendium I, collected CJA's correspondence with the Senate Judiciary Committee and Senate leadership following presentment of CJA's Critique. Compendium II collected CJA's correspondence with the American Bar Association about the Critique—copies of which had been previously provided to the Senate Judiciary Committee.

CJA's May 27, 1996 letter (Exhibit "A–1", p. 125) highlights the evidentiary significance of the Critique in establishing

> "not the publicly-perceived partisan issue of whether the ratings of the ABA's Standing Committee on Federal Judiciary are contaminated by a 'liberal' agenda. Rather, . . . the issue that must concern all Americans: the gross deficiency of the ABA's judicial screening in failing to make proper threshold determinations of 'competence', 'integrity' and 'temperament'." (emphasis in the original)

Further described by our May 27, 1996 letter (Exhibit "A–1") is that, based on our Critique, CJA had called for a Senate moratorium on the confirmations of all judicial nominations pending official investigation of the deficiencies of the federal judicial screening process. Copies of our May 18, 1992 letter-request for the moratorium, addressed to the Senate Majority Leader George Mitchell (Exhibit "B–1"). Such letter-request, which we had sent to every member of the Senate Judiciary Committee, stated:

> "To the extent that the Senate Judiciary Committee relies on the accuracy and thoroughness of screening by the ABA and the Justice Department to report nominations out of Committee—with the Senate thereafter functioning as a 'rubber stamp' by confirming judicial nominees without Senate debate—a real and present danger to the public currently exists.
> It is not the philosophical or political views of the judicial nominees which are here at issue. Rather, the issue concerns whether present screening is making appropriate threshold determinations of fundamental judicial qualifications—i.e. competence, integrity, and temperament. Our critique of Andrew O'Rourke's nomination leaves no doubt that it is no." (emphases in the original)

Thereafter, on July 17, 1992, *The New York Times*, published our Letter to the Editor, which it entitled "Untrustworthy Ratings?", about our Critique's findings—and about our request for a moratorium "[b]ecause of the danger of Senate confirmation of unfit nominees to lifetime Federal judgeships (Exhibit "B–2").

The Senate Judiciary Committee's response to CJA's fact-specific, documented Critique was to refuse to discuss with us any aspect of our evidentiary findings—and to call police officers to have me arrested[3] when, after months of Committee inaction and foot dragging, ignoring my many attempts to arrange an appointment with counsel, I traveled down to Washington in September 1992 to discuss the serious issues presented by the Critique and by the ABA's refusal to take corrective steps—while, meantime, the Senate was proceeding with confirmations of federal judicial nominees.

Likewise, the Senate Judiciary Committee's response to CJA's May 27, 1996 letter (Exhibit "A–1")—copies of which CJA also sent to every member of the Committee—was to refuse to discuss the serious issues it presented with substantiating proof, to wit, "that the problem with the ABA goes beyond incompetent screening. The problem is that the ABA is knowingly and deliberately screening out information adverse to the judicial candidate whose qualifications it purports to review." Summarized by the May 27, 1996 letter (Exhibit "A–1", p. 126) were facts showing that the Second Circuit representative of the ABA's Standing Committee on Federal Judiciary had willfully failed to investigate case file evidence, transmitted by an October 31, 1995 letter (Exhibit "C"), of the on-the-bench misconduct of New York Supreme Court Justice Kahn,[4] then seeking appointment to the U.S. District Court for

[3] See CJA's October 13, 1992 letter to then Senate Judiciary Committee Chairman Joseph Biden, annexed as Exhibit "Z" to CJA's Correspondence Compendium I.

ERR14[4] That Second Circuit representative to the ABA Standing Committee on Federal Judiciary, Patricia M. Hynes, has since become—and currently is—the Committee's Chairwoman. This because ABA "leadership;; has refused to address the evidence of Ms. Hynes misconduct in connection with her "investigation of Justice Kahn's qualifications.

the Northern District of New York, that the Chairwoman of the ABA's Standing Committee on Federal Judiciary was arrogantly disinterested in this willful failure to investigate—and that President Clinton subsequently appointed Justice Kahn to the U.S. District Court, presumably based on an ABA rating that Justice Kahn was "qualified".

CJA's May 27, 1996 letter expressly stated:

> "Based upon what is herein set forth, we expect you will want to afford us an opportunity to personally present the within documentary proof—which we would have presented at the [May 21, 1996] hearing on "The Role of the American Bar Association in the Judicial Selection Process"—as to how the ABA fails the public, which is utterly disserved and endangered by its behind-closed-doors role in the judicial screening process." (Exhibit "A–1", p. 127)

I daresay most people reading the May 27, 1996 letter would have had a similar expectation—and especially, if they had before them the substantiating documentary proof it transmitted. Conspicuously, the "Editor's Note", added to the end of the letter, as printed in the record of the Committee's May 21, 1996 hearing on the ABA's role, states: "Above mentioned materials were not available at press time." (Exhibit "A–1", p. 127). This is most strange as all those materials were express mailed to the Committee together with the "hard copy" of the letter.

The only response we received to our May 27, 1996 letter (Exhibit "A–1") was a June 13, 1996 acknowledgement from Senator Strom Thurmond (Exhibit "D–1"), whose form-letter text repeated, verbatim, the Senator's statement at the May 21, including that Congress has "adequate resources to properly investigate the background of individuals nominated to the federal judiciary" and that the Senate "carefully review[s]" these nominees, giving "due consideration to the ABA's Standing Committee on Federal Judiciary, prior to a vote on confirmation"

The only other response CJA received—a June 12, 1996 letter (Exhibit "F")—was, ostensibly, to CJA's April 26, 1996 letter to the Committee (Exhibit "E"), requesting to testify in opposition to Justice Kahn's confirmation, as well as answers to various procedural questions. One of these procedural questions, as highlighted in CJA's May 27, 1966 letter (Exhibit "A–1", pp. 126–7), concerned the change in Committee policy to preserve the confidentiality of ABA ratings of judicial nominees until the confirmation hearing.

By this June 12, 1996 letter, (Exhibit "F") Chairman Hatch denied, without explanation, CJA's written request to testify in opposition to Justice Kahn's Confirmation. Although confirming the Committee's "practice" of not publicly releasing the ABA ratings in advance of the confirmation hearing, Chairman Hatch did not identify how long such "practice" had been in effect and the reason therefor, which is what CJA expressly requested to know. He did however, admit, in response to another question in CJA's April 26, 1996 letter (Exhibit "E"), that "[T]he Judiciary Committee has no written guidelines in evaluating judicial nominees. Each candidate is reviewed on an individual basis by each Senator."

CJA responded with a June 18, 1996 letter (Exhibit "G–1"), requesting that Chairman Hatch explain his peremptory and precipitous denial of our request to testify and that he reconsider his denial based on facts therein set forth. We pointed out that he had not provided us with information as to "what the criterion is for presenting testimony at judicial confirmation hearings". Additionally, we pointed out that no one from the Committee had ever contacted us as to the basis of our opposition to Justice Kahn, which had not been identified by our April 26, 1996 letter (Exhibit "E"), and that although such identification did appear in CJA's May 27, 1996 letter (Exhibit "A–1", p. 126), to wit, that Justice Kahn as a New York Supreme Court Justice had

> "used his judicial office to advance himself politically. Specifically,. . .[he] had perverted elementary legal standards and falsified the factual record to 'dump' a public interest Election Law case which challenged the manipulation of judicial nominations in New York State by the two major political parties" (emphases in the original),

no one had ever requested that we furnish the Committee with a copy of the substantiating case file for review.

Chairman Hatch never responded to this June 18, 1996 letter (Exhibit "G–1"). Rather, on June 25, 1996 at 9:45 a.m., a Committee staffer telephoned us to advise that the Committee's confirmation hearing on Justice Kahn's nomination—whose date we had repeatedly sought to obtain from the Committee, without success—would take place at 2:00 p.m. that afternoon.

Such last-minute notice gave us just over four hours to get from Westchester, New York to Washington, D.C.—a logistical impossibility by surface transportation.

Throwing expense to the winds, we arranged with a car service to speed me to the airport for a noon flight. At the same time, we sought to clarify from the Committee whether, in making this expensive trip down to Washington, I would be permitted to testify. No clarification was forthcoming (Exhibit "G–2").

The June 25, 1996 Committee "hearing" on Justice Kahn's confirmation—which was held simultaneously with the "hearing" for four other District Court nominees, and immediately following the confirmation "hearing" for a nominee to the Circuit Court of Appeals—fits the description of the Committee staffer quoted in the 1986 Common Cause study, "Assembly Line Approval", who termed confirmation "hearings" "as pro forma as pro forma can be. Apart from Senator Jon Kyl, who was chairing the "hearing" in Chairman Hatch's absence, Only one other Committee member, Senator Paul Simon, was present for the boiler-plate questioning of the five District Court nominees, who were called up en masse to respond, seriatim, in "assembly-line" fashion, once the questioning of the nominee for the circuit Court of Appeals had been completed. Chairman Kyl then commended all the nominees as "exceptionally well qualified" and prepared to conclude the "hearing". This, without inquiring whether anyone in the audience had come to testify[5] and without identifying whether the Committee had received opposition to any of the nominees and its disposition thereof.

It was then that I rose from my seat. The transcript of the June 25, 1996 Senate Judiciary Committee "hearing" reflects the following colloquy between me and Chairman Kyl (Exhibit "H", pp. 790–791):

> *Sassower:* "Senator, there is citizen opposition to Judge Kahn's nomination"
> *Sen. Kyle:* "Let me just conclude the hearing, if we could."
> *Sassower:* "We request the opportunity to testify."
> *Sen. Kyle:* "The committee will be in order."
> *Sassower:* "We requested the opportunity 3 months ago, over 3 months ago[6]—"
> *Sen. Kyle:* "The committee will stand in recess until the police can restore order."
> [Recess]
> *Sen. Kyle:* "As the chair was announcing, we will keep the record open for 3 days for anyone who wishes to submit testimony, and that includes anyone in the audience, or questions from the members of the committee to the panel. Should you have any additional questions, of course you are welcome to discuss with staff any other questions you have concerning the procedure.
> The full committee will take up the full slate of nominations both for the circuit court and for the district court at the earliest opportunity. I cannot tell you exactly when, but I will certainly recommend that it be done at the earliest opportunity and I do not see any reason for delay.
> Senator Simon, do you have anything else that you wish to add?"
> *Sen. Simon:* "No. I think we have excellent nominees before us and I hope we can move expeditiously."[7]
> *Sen. Kyle:* "I certainly reflect that same point of view. Thank you again for being here. We thank everyone in the audience, and I again would say there are 3 days for anyone in the audience to submit and additional statements if you have them. Thank you. The committee stands adjourned."

It must be noted that in the "recess" noted by the transcript (Exhibit "H", p. 791), which was truly momentary, at least one police officer rushed to me and threatened that I would be removed if I said another word. This officer was one of about five other police officers who were waiting at the side of the room, summoned, I believe, by the Committee's Documents Clerk for the purpose of intimidating me. This, be-

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[5] By contrast, page 234 of the Judiciary Committees describes the Committee's April 21, 1971 hearing to confirm seven judicial nominees. Senator Roman Hruska was presiding. "Hruska asked if anyone in the room wished to speak on behalf of or against the nominee. The subcommittee the moved on to the next nominee." (emphasis added).

[6] Out of nervousness, I erred. April 19, 1996—the date I had contacted the Committee regarding CJA's request to testify in opposition—was not more than three months earlier. It was more than two months earlier.

[7] This statement by Senator Simon should be viewed not only in the context of the opposition to Justice Kahn and request to testify, which I articulated in his presence only moments earlier, but in the context of his counsel's representation to CJA in a October 8, 1992 letter, returning the copy of the Critique we had hand delivered to his Senate office. "While the [ABA] rating does carry weight, I can assure you that information provided by individuals who know the nominee, who have practiced before him or her, or otherwise have and interest and contact us is given every consideration." (emphases added) See Exhibits "U" and "Y" to CJA's Correspondence Compendium I.

cause I had refused to be intimidated by the Clerk's inexplicable surveillance of me, which included his shadowing me about the Senate Judiciary Committee's hearing room, from the time I walked in bullying me and gratuitously warning he was going to have me removed.

As the audience dispersed and Chairman Kyl approached the judicial nominees to congratulate them, I tried to speak with him about the serious nature of CJA's opposition to Justice Kahn. Chairman Kyl just waved me off: By then, the Committee's Documents Clerk was again at my side, threatening to have me removed for harassing the Committee. I told him then—as I had previously—that I had no desire to harass anyone, but simply wished to discuss CJA's opposition with the appropriate individuals. Indeed, I searched in vain for Committee counsel to speak with about CJA's opposition and request to testify. This included approaching the fifteen or so persons who had sat in the chairs behind those reserved for the Senators at the dais. None would identify themselves as counsel or staff with whom I could speak. Nor could I find any counsel with whom I could speak in the Committee's adjoining office. Meantime, the Committee's Document Clerk, with three police officers in tow, was again trailing and bullying me.

In the end, I obtained from the Documents Clerk the until-then-withheld ABA's rating for Justice Kahn, showing that, of all the judicial nominees up for confirmation, Justice Kahn had received the lowest ABA rating: a mixed rating with a majority voting him "qualified" and a minority voting him "not qualified". However, no sooner did I leave the Committee's office, indeed, in the corridor directly outside the Committee's door, I was arrested by Capitol Hill police on a completely trumped up charge of "disorderly conduct"—and hauled off to jail.

The shocking particulars of the orchestrated intimidation and abuse to which I was subjected at the Senate Judiciary Committee's June 25, 1996 "hearing" on Justice Kahn's confirmation are chronicled in CJA's June 28, 1996 letter to Chairman Hatch (Exhibit "I–1"), which was submitted for "the record".[8] This letter, additionally, recites the no less shocking fact that on June 27, 1996, the Committee, without waiting the announced three days for "the record" to be closed and written submissions received, voted to approve Justice Kahn's Confirmation.[9] Thus, CJA's June 28, 1998 letter begins:

> "This letter is submitted to vehemently protest the fraudulent manner in which the Senate Judiciary Committee confirms presidential appointments on the federal bench and its abusive treatment of civic-minded representatives of the public who, without benefit of public funding give their services freely so as to assist the Committee in performing its duty to protect the public from unfit judicial nominees.
>
> This letter is further submitted in support of [CJA's] request for immediate reconsideration and reversal of the Committee's illegal vote yesterday, approving confirmation of Justice Lawrence Kahn's nomination as a district court judge for the Northern District of New York. . .such Committee vote was taken prior to the expiration of the announced deadline for closure of the record and without any investigation by the Senate Judiciary Committee into available documentary evidence of Justice Kahn's politically-motivated, on-the-bench misconduct as a New York state court judge, for which he has been rewarded by his political patrons with a nomination for a federal judgeship.

Because this Committee has deliberately refused to undertake essential post-nomination investigation, even where the evidence before it shows that appropriate pre-nomination investigation was not conducted, this letter is also submitted in support of [CJA's] request for an official inquiry by an independent commission to determine whether, when it comes to judicial confirmations, the Senate Judiciary Committee is anything more than a facade for behind-the-scenes political deal-making. In the interim, [CJA] reiterates its request for a moratorium on all Senate confirmation of judicial nominations. Such moratorium was first requested more than four years ago by letter dated May 18, 1992 to former Majority Leader George Mitchell []. Copies of that letter were sent to every member of the Senate Judiciary Committee—including yourself." (emphases in the original)

Once again, as with CJA's May 18, 1992 moratorium -request (Exhibit "B–1") and CJA's May 27, 1996 letter to Chairman Hatch (Exhibit "A–1"), CJA sent copies of

[8] CJA's June 28, 1996 letter is printed in the record of the Committee's June 25, 1996 "hearing" on Justice Kahn's confirmation (at pp. 1063–1074), but nit with its annexed exhibits. According to the "Editor's note" appearing at the end of the letter, "Exhibits A through I are retained in the Committee files" at p.1074).

[9] See Exhibit "J–7", p. containing a summary of the minutes of the Committee's June 27, 1996 meeting pertaining to the judicial nominees.

the June 28, 1996 letter (Exhibit "I-1") to every member of the Senate Judiciary Committee. Additionally, copies were sent, both my mail and fax,[10] to then Senate Majority Leader Trent Lott and then Senate Minority Leader Thomas Daschle (Exhibit "I–2").[11]

Within the next days, CJA unexpectedly received information further underscoring the Committee's profound dysfunction and bad-faith. This information was from two New York citizens active in the fight for good government and constitutional reform, Bill Van Allen and Faye Rabenda. They advised me that on June 7, 1996—which was just five days before Chairman Hatch's June 12, 1996 letter denying CJA's request to testify (Exhibit "F")—they had made a trip to Washington to apprise the Committee of their strong opposition to Justice Kahn's confirmation. This, based on his politically-motivated decision-making in a public interest case involving local corruption in Duchess County. Although such opposition, coming from individuals who were separate and unrelated to CJA, should have had the effect of reinforcing CJA's opposition, likewise based on Justice Kahn's politically-motivated decision-making in a public interest case, also involving corruption, the Committee did not react accordingly. Instead, just as the counsel for the Committee had never interviewed CJA and requested from us the substantiating case file evidence, so likewise, they had not interviewed these individual citizens and requested their substantiating case file evidence. Indeed, the Committee did not even notify Mr. Van Allen and Ms. Rabenda of the June 25, 1996 "hearing" on Justice Kahn's confirmation or invite them to submit written opposition.

As a result of this unexpected information, which I learned of on or about Friday, July 12th, I telephoned the Senate leadership on Monday morning July 15th. It was then that I learned from the office of then Senate Majority Leader Lott that an "agreement had been reached" between Republicans and Democrats for Senate confirmation the next day of judicial nominees—Justice Kahn, among them. This is reflected by fax CJA's July 15, 1996 memo to counsel to the Senate Judiciary Committee (Exhibit "J–1"), faxed to the Committee's office and the offices of the Senate Majority and Minority Leaders (Exhibits "J–2", "J–3"), as well as by CJA's July 15, 1996 letter to Senator Herbert Kohl, a Committee member, (Exhibit "J–4")—copies of which were faxed to the Senate Judiciary Committee and Senate Majority and Minority Leaders. Evident from CJA's July 15, 1996 letter to Senator Kohl is that no counsel at the Senate Judiciary Committee had seen fit to speak with me—and that I could not even obtain confirmation that, as requested by our memo-fax to counsel (Exhibit "J–1"), the evidentiary materials we had transmitted under our May 27, 1996 letter (Exhibit "A–1") would be immediately transmitted to the Majority Leader's office:

> "We do not know the status of our transmittal inasmuch as the Senate Judiciary Committee receptionists have refused to even verify that our fax has been given to its counsel—whose identity I was told is 'confidential'— and have refused to confirm that the materials will, as requested, be transmitted [to the Majority Leader's Office. . ."

CJA also phoned Mr. Van Allen and Ms. Rabenda, who then contacted the Committee, by phone and in writing (Exhibit "K"), requesting that it provide the Senate Majority Leader with any "documentation created by the Senate Judiciary Committee staff relating to [their] strong opposition" to Justice Kahn's confirmation, including relating to their June 7th visit to the Committee when they "spoke for approximately 5–10 minutes with a "staff member".

The upshot of CJA's vigorous efforts to prevent the Senate rubber-stamp confirmation of Justice Kahn's nomination, including a great many long distance phone calls, only partially reflected by the annexed phone bill (Exhibit "J–6"),[12] was that, upon information and belief, that nomination, as well as the others, were approved by the usual undebated vote on July 16, 1996 in Executive Session (Exhibit "L").

The flagrant misfeasance of the Senate Judiciary Committee and Senate leadership, chronicled by the annexed exhibits and further established by the voluminous correspondence and other materials that should be stored somewhere in the Senate Judiciary Committee, serves no purpose but to enable Senators to continue to

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[10] The July 1, 1996 fax cover sheets to CJA's June 28, 1996 letter read "Formal Request for Senate moratorium on all judicial confirmations and, in particular, opposition to confirmation of Lawrence Kahn (for N. District—NY)."

[11] Although CJA never got around to sending a copy of the June 28, 1996 letter to its first indicated recipient, President Bill Clinton (Exhibit "I–1", p. 12), we would certainly be pleased if Senator Hillary Clinton, and indicated recipient of this letter, shared it with the former President.

[12] I made contemporaneous notes of some of my July 15–16, 1996 phone conversations. These are retyped and annexed as Exhibit "J–7".

"wheel and deal" judicial nominations, cavalierly using them for patronage or for trading with their congressional colleagues and the President for other valuable consideration or promises thereof.

Obviously, a Senate Judiciary Committee which so shamelessly spurns the evidence-based presentations of a non-partisan, non-profit citizens' organization, whose advocacy meets the highest standards of professionalism, is not treating with greater respect and decency the average citizen who comes forward to oppose confirmation of individual judicial nominees. This certainly is reflected in the way the Committee treated good government activists Bill Van Allen and Faye Rabenda (Exhibit "K"), whose opposition to Justice Kahn should have been viewed as reinforcing CJA's own.

Hopefully, with your chairmanship of the Subcommittee on Administrative Oversight and the Courts—and your vision of this and the upcoming three hearings "at least" as an "important dialogue" on the Senate's role in judicial nominations—essential reforms will be made in how the Senate Judiciary Committee—and the Senate—discharges its "advise and consent" function. Certainly, the absolute necessity that the Committee and Senate scrutinize the competence, integrity, and temperament of judicial nominees is reinforced by the fact that the mechanisms for disciplining and removing incompetent, dishonest, and abusive federal judges from the bench are verifiably sham and dysfunctional.

On this vital subject, I would note that when I handed you a copy of CJA's informational brochure on March 20, 1998—following your lecture at Ansche Chesed Synagogue on New York's Upper West Side—I also gave you a copy of CJA's published article, "Without Merit: The Empty Promise of Judicial Discipline" (The Long Term View, Massachusetts School of Law, Vol. 4, No. 1 (Summer 1997)). It exposes the facade that passes for the federal judicial complaint mechanism under 28 U.S.C. § 372(c) and the House Judiciary Committee's non-existent capacity and willingness to investigate judicial impeachment complaints (Exhibit "M–1"). A copy of this important article had been sent to the House Judiciary Committee—of which you were a member—under a March 10, 1998 memorandum addressed to the House Judiciary Committee's Chairman and members, a copy of which I also handed you (Exhibit "M–2").

In the event you harbor the unwarranted belief that the House Judiciary Committee is any different from the Senate Judiciary Committee in its flagrant disrespect for fully-documented presentations, enclosed is CJA's statement for the record of the House Judiciary Committee's June 11, 1998 "Oversight Hearing of the Administration and Operation of the Federal Judiciary", held by the Courts Subcommittee (Exhibit "N–1"). Its opening sentence expressly identifies that it is presented

> "so that members of Congress and the interested public are not otherwise misled into believing that the House Judiciary Committee or its Subcommittee is meaningfully discharging its duty to oversee the federal judiciary. It is not."

Described therein is the refusal of the House Judiciary Committee to respond to CJA's March 10, 1998 memorandum (Exhibit "M–2/M–1"), as well as CJA's March 23, 1998 memorandum, which transmitted to the House Judiciary Committee readily-verifiable proof that the mechanisms for ensuring the impartiality of federal judges and, where necessary, for disciplining and removing, them have been reduced to "empty shells". This, in addition to describing the refusal of the Courts Subcommittee to permit CJA to testify at its June 11, 1998 "oversight hearing"—where the only witnesses allowed to testify were representatives of the judiciary. The House Judiciary Committee's response to this written statement was to exclude it from the printed record of its June 11, 1998 "oversight hearing"—which it did wholly without notice to CJA (Exhibit "N–2").

Since your Subcommittee on Administrative Oversight and the Courts, assumedly, has concurrent jurisdiction with the House Courts Subcommittee, CJA respectfully requests that while you are clarifying with the Senate Judiciary Committee as to the whereabouts of CJA's 1992 Critique and voluminous correspondence, you also clarify with the Courts Subcommittee of the House Judiciary Committee as to the whereabouts of CJA's voluminous document-supported correspondence, establishing that the federal judiciary has gutted the federal statutes relating to judicial discipline and refusal, and that the House Judiciary Committee has abandoned its oversight over federal judicial discipline, including its impeachment responsibilities. Needless to say, if these Committees are unable to locate this important documentation, CJA will furnish you with duplicate copies.

We look forward to testifying at upcoming hearings of your Subcommittee—which should be on issues of both federal judicial selection and federal judicial discipline.

As the situation currently exists, with the Senate Judiciary Committee willfully disregarding its duties to scrutinize qualifications of judicial nominees and the House Judiciary Committee willfully disregarding evidence of serious judicial misconduct, the lives and liberties of this nation's citizens are at the mercy of judges who should not be on the bench in the first place and who grossly abuse their judicial powers without the slightest fear of discipline, let alone removal.

We welcome your able leadership. Ensuring that the public is protected by properly functioning processes of federal judicial selection and discipline should be a top priority.