

[Appellant's Appendix: 106-109]
**Petitioner's May 21, 2003 memo to New York Home-
State Senator Charles Schumer (enclosure to
petitioner's May 21, 2003 fax to Capitol Police)**

**EMERGENCY PERSONAL ATTENTION
REQUIRED:**

BY FAX: 202-228-4562 [13 pages]
BY E-MAIL: michael_tobman@schumer.senate.gov

May 21, 2003

Home-State Senator Charles E. Schumer
Washington, D.C.

ATT: Michael D. Tobman,
Director of Intergovernmental Affairs
Telephone #: 202-224-6542; 212-486-1842/
212-486-4430

RE: (1) Endorsement of CJA's requests in its
May 19, 2003 memorandum to Senate Judiciary
Committee Chairman Hatch and Ranking
Member Leahy and, in particular, of CJA's request
to be permitted to testify in opposition at the May
22, 2003 hearing on Judge Wesley's confirmation;
(2) Withdrawal of the Senator's "blue slips"
approving Senate confirmation of Judge Wesley
and of P. Kevin Castel, Esq.

Dear Mr. Tobman:

Following up your phone call to me at about 11:45 a.m,
enclosed is CJA's May 19, 2003 memorandum to Senator
Schumer, to which we received NO response and which
you stated you were not aware of.

Please make sure that it is brought to Senator Schumer's immediate attention so that he may finally take action, consistent with his rhetoric about the importance of scrutinizing federal judicial nominees and his criterion of "excellence"¹.

[p. 2] In addition, since Senator Clinton's office has seen fit to contact Capitol Police (202-224-1495), who at approximately noon today, telephoned and threatened that I would be arrested at tomorrow's confirmation² hearing, should I rise to request to testify in opposition² and the presiding chairman bang his gavel (even if the presiding chairman does NOT ask that I be arrested³) – I

¹ See, *inter alia*, the current May 20, 2003 issue of The New Yorker, "Advise and Dissent: The fight over the President's judicial nominations" by Jeffrey Toobin, quoting Senator Schumer.

² In truth, there is NO REASON why the burden should be on me to request to testify at the Senate Judiciary Committee's public hearing to confirm judicial nominees. Indeed, there used to be a time when the Committee's presiding chairman asked "if anyone in the room wished to speak on behalf of or against the nominee". This is reflected by footnote 5 to CJA's July 3, 2001 letter to Senator Schumer, the Chair of the Subcommittee on Administrative Oversight and the Courts – reprinted, *albeit without exhibits*, in the record of the Subcommittee's June 25 and September 4, 2001 hearings on "The Judicial Nomination and Confirmation Process". CJA's May 5, 2003 memorandum to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy annexes a copy of that reprinted letter as Exhibit "A". I not only personally provided you with a copy of that May 5, 2003 memorandum during our May 14th meeting, but a full copy of the original July 3, 2001 letter, with exhibits.

³ As I told Capitol Police Detective Zimmerman, this would deviate from the precedent at the July 25, 1996 Senate Judiciary Committee hearing to confirm President Clinton's nomination of New York Supreme Court Justice Lawrence Kahn to the District Court for the Northern District of New York – when I was NOT arrested by Capitol Police for rising, at the conclusion of the hearing, with a request to testify with "citizen opposition to Judge Kahn's nomination". That fact is recounted in the body of CJA's July 3, 2001 letter to Senator Schumer. (*see* fn. 1, *supra*). The pertinent extract from the July 25, 1996 hearing transcript is not only Exhibit "H" to the July 3, 2001 letter, but reproduced in the letter itself. (ltr, pp. 10-11;

expressly ask that Senator Schumer endorse my request to be permitted to testify – or at least take steps to ensure that I not be arrested for publicly raising such request at tomorrow’s hearing.

According to Capitol Police Detective Zimmerman (badge #2943), Senator Clinton’s office contacted Capitol Police to “get involved” because “they did not understand why I continued to contact that office”. He identified this as behavior “bordering on harrassment”. Please be advised that my “continued contact” with Senator Clinton’s office, interpreted as “bordering on harassment” by Capitol Police, consisted of two phone messages left for the Senator’s Chief of Staff, Tamara Luzzatto (202-224-4451), the first one at 4:27 p.m. yesterday and the second at 9:43 this morning. In these readily understood messages, I clearly and distinctly requested Ms. Luzzatto’s supervisory oversight over the Senator’s counsel, Leecia Eva, and legislative correspondence, Josh Albert, with whom I had a 35-minute phone conference yesterday afternoon, ending at about 2:40 p.m. During such phone conference, Ms. Eve and Mr. Albert -- two lawyers, advising a U.S. Senator -- REFUSED my request that they themselves READ CJA’s March 26, 2003 written statement, whose contents they [p. 3] insisted I summarize to them – and which, during most of our conference, I did summarize -- because, quite evidently, they had NOT read the statement themselves. In any event, by their own admission, they had NOT reviewed ANY of the substantiating documentary evidence, including the two final motions from my public interest lawsuit against the New York State Commission on Judicial Conduct, *focally-discussed in the statement as decisive, in and of themselves, of Judge Wesley’s unfitness*. Nonetheless, and entirely ignoring my summary of the statement’s recitation of these motion in establishing Judge Wesley’s on-the-bench judicial misconduct in TWO public interest cases, whose consequence has been on-

going, irreparable injury to the People of New York – Ms. Eve purported that I was an “interested party in a lawsuit which had been decided by the courts, including the New York Court of Appeals”. Presumably, this was the basis upon which she then declared that Senator Clinton would take no action to stop the May 22nd hearing on Judge Wesley’s confirmation, such as by withdrawing her “blue slip” approval, and would not endorse my request to be permitted to testify in opposition at the hearing. Both Ms. Eve and Mr. Albert also REFUSED to agree to my request that they provide the March 26, 2003 written statement to Senator Clinton, for her own review, as likewise to provide her with CJA’s May 19th memorandum, addressed to her, requesting her personal review.

Suffice to say, in our today’s phone conversation together -- our first conversation since our 40-minute meeting on May 14th at Senator Schumer’s Manhattan office⁴ -- you have refused to answer my question as to whether Senator Schumer has personally reviewed CJA’s March 26, 2003 written statement, let alone examined the documentary evidence substantiating it, including the two boxes containing the lawsuit file, which I left with you during our May 14th meeting. Your steadfast REFUSAL to state ANY opinion as to whether the statement’s recitation of Judge Wesley’s on-the-bench judicial misconduct was disqualifying, notwithstanding you stated that you did read my October 15, 2002 motion to reargue, vacate for fraud, etc. – and your admission

⁴ Time pressures do not now permit me to list the continuum of urgent telephone messages I left for you since our May 14th meeting, which you chose to ignore as Judge Wesley’s nomination was being pushed forward to a hearing -- including by Senator Schumer himself. The further graphic particulars of how this serious and substantial matter was handled by you and Senator Schumer’s office – as likewise by Senator Clinton’s office – will be separately set forth. This, to advance REAL reform of the federal judicial nomination/confirmation process – and so that New York voters can know what was done to them by their home-state senators.

that you made NO FINDING with respect thereto -- only reinforce the necessity of Senator Schumer's personal review. Such personal review is what was expressly requested by CJA's May 19th memorandum -- the same as we sent to Senator [p. 4] Clinton.

Finally, so that Senator Schumer may be reminded of the consequences to his New York constituents of a corrupt New York State Commission on Judicial Conduct, as perpetuated by Judge Wesley's utterly self-interested, politically-motivated misconduct in my public interest lawsuit against it, enclosed is a December 22, 2002 letter from one of his constituents, Mrs. Edna May Schreiber, turning to him for help because of "the absolute corruption in Dutchess County Family Court", affecting her and "twenty-five plus families". Senator Schumer apparently did not see fit to respond in any way -- including by appropriate referral to the Commission. Perhaps this was just as well -- the Commission having already dismissed, without investigation, the *facially-meritorious* complaints filed with it on Mrs. Schreiber behalf.

A copy of this letter is being sent to Senator Clinton's office -- so that Senator Clinton can, among other things, take steps to at least ensure that when I rise at tomorrow's hearing, requesting to be heard in opposition, I am not arrested for peaceably exercising my most fundamental democratic rights. For that reason, I am enclosing the identical letter that Mrs. Edna May Schreiber sent to Senator Clinton, as well as her response thereto, wholly non-responsive to the judicial corruption issues being presented. I discussed this letter and the Senator's non-responsive response with both Ms. Eve and Mr. Albert -- I believe even before Ms. Eve unfairly tagged me as being an "interested party to a lawsuit, which has been decided by the courts -- including the Court of Appeals".

Mrs. Schreiber and the millions of New Yorkers whose welfare rest on a properly-functioning Commission on Judicial Conduct were just as "interested" in the lawsuit - one which they had a right to expect their Senators would not to betray. Thankfully, the election of Senators does not give them "lifetime" tenure.

s/ Elena Ruth Sassower

Enclosures

cc: President George W. Bush
Chairman Orrin G. Hatch,
U.S. Senate Judiciary Committee
Ranking Member Patrick J. Leahy,
U.S. Senate Judiciary Committee
Senator Hillary Rodham Clinton
Capitol Police Detective Zimmerman
New York Court of Appeals Judge
Richard C. Wesley & P. Kevin Castel, Esq.
The Press