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May 11, 2004

Raymond Hernandez
The New York Times
Washington Bureau

RE: Critically Examining the Record of New York Senator Charles Schumer on Judicial Selection, Discipline, and Constituent Services Relating Thereto

Dear Mr. Hernandez,

This follows up our Thursday, April 29th phone conversation, itself following upon my initial attempt to speak with you on Monday, April 26th. Please advise as to the status of my proposal that you critically examine Senator Schumer's record – such as has not been done by The New York Times, either as part of its regular or electoral coverage.

My proposal is not about Senator Schumer's well-publicized role as an advocate for vigorous scrutiny of ideologically-objectionable federal judicial nominees, as featured by your front-page metro story, "*An Infuriating Success: Schumer Draw Fire for Tactics Blocking Judicial Nominees*" (11/1/03). Rather, it is about the altogether different fashion in which Senator Schumer operates with respect to ideologically "moderate", "consensus" nominees, who are the product of political deals. This includes his own deals with President Bush and Governor Pataki over Second Circuit judgeships – unreported by your front-page metro story, "*Pataki Choice For Judgeship Is Assailed*" (10/2/03), about the Senate Judiciary Committee's hearing to confirm Dora Irizzary's nomination for a district court judgeship in the Southern District of New York. Such glaring omission was pointed out by footnote 28 of my October 13, 2003 letter to Bill Keller, to which you were an indicated recipient and to which I referred when we spoke[1].

As a case study, I proposed examination of Senator Schumer's "agreement" with President Bush for the nomination to the Second Circuit Court of Appeals of Govenor Pataki's first

[1] The letter is posted on CJA's website – including on the homepage as part of the "Paper Trail Documenting the Corruption of Federal Judicial Selection/Confirmation and the 'Disruption of Congress' Case it Spawned"

appointee to the New York Court of Appeals, Richard C. Wesley. Such examination would expose Senator Schumer's wilful disregard for documentary proof of Judge Wesley's on-the-bench corruption in two enormously important public interest cases affecting the rights and welfare of the People of New York – one of which involved the corruption of the New York State Commission on Judicial Conduct and criminally implicated the Governor. Likewise, it would expose Senator Schumer's wilful disregard of documentary proof of the corruption of other "safeguards" in the federal judicial confirmation process – bar association ratings and Senate Judiciary Committte review. Indeed, such examination would demonstrate why two years earlier, when Senator Schumer was chairman of the Senate Judiciary Committee's Courts Subcommittee, he ignored CJA's fact-specific, document-supported July 3, 2001 letter to him, submitted for the record of his June 26, 2001 hearing on the role of ideology in judicial selection. That letter not only alerted him to the long-ago made, but largely unimplemented, non-partisan recommendations of The Ralph Nader Congress Project, Common Cause, and the Twentieth Century Fund to reform the federal judicial confirmation process, but called for his leadership to repair a process that appeared to be nothing but a façade for cynical wheeling and dealing in judgeships. Quite simply, Senator Schumer ignored the letter because such façade satisfied his personal and political interests – and those of his Senate colleagues. The same is true of the façade that passes for federal judicial discipline, also summarized by the July 3, 2001 letter (at pp. 16-18).

In our conversation, you told me to call you back at 12:30 p.m. the next day, April 30th , by which time you would have reviewed, as least preliminarily, the substantiating documents for the examination I was proposing. These, I stated were posted on the homepage of CJA's website, www.judgewatch.org, under the heading, "Paper Trail Documenting the Corruption of Federal Judicial Selection/Confirmation & the 'Disruption of Congress' Case it Spawned".

At the appointed time on April 30th, I did call you back – but got your voice mail, on which I left a message[2]. I left further messages for you on Wednesday, May 5th, and Friday, May 7th.

To avoid further expense on long-distance phone messages which you do not return, kindly advise as to what you have determined based on review of the primary source materials posted on CJA's website. These materials now include -- as part of the "Paper Trail" -- CJA's May 4th research proposal to scholars, entitled "Beyond Statistics to Documentary Evidence: The

[2] As part of this message, I mentioned that inasmuch as your front-page metro story in that day's paper ("*U.S.Is Seeking Return of Funds From Schools*") had included a comment from Senator Schumer about the federal audit which was the subject of your story, the Senator should be willing to comment to you about the compliance audit that New York State Comptroller Ed Regan had attempted to do in 1989 with respect to the New York State Commission on Judicial Conduct – and whose results were summed up by the title of the Comptroller's report, "*Not Accountable to the Public*". For your convenience, we posted that 1989 report on our website, accessible by the sidebar panel, "CJA's Library" – a fact of which I apprised you in at least one of my two subsequent messages.

Corruption of Federal Judicial Selection/Cofirmation, as *Readily-Verifiable* from Case-Studies of So-Called 'Mainstream', 'Consensus' Nominations – Including those Engineered by Senator Charles Schumer."

If – notwithstanding your own past articles about Senator Schumer, this year's New York senatorial race, etc. – you are not The Times reporter who would be handling an objective, critical examination of the Senator's record on federal judicial selection, federal judicial discipline, and constituent services relating to the integrity of the judiciary, including of New York State judges, please identify the reporter(s) who would properly be responsible for such examination, particularly as part of The Times' electoral coverage.

Thank you.

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

P.S. In the event you have not seen my Letter to the Editor, "*Correcting the Record*", published in yesterday's Roll Call, which highlights the significance of the "Paper Trail" documents on CJA's homepage and suggests an important question to be asked of Senator Schumer, among others, a copy is enclosed.

Enclosure

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Correcting The Record

I was wrongfully convicted of "disruption of Congress," which you reported on April 21 ("Jury Convicts Judiciary Protester"). Contrary to your story, I never "argued" that "the right of citizens to testify at public hearings ... 'is not and must never be deemed to be a disruption of Congress.'" Indeed, your quotes were only around the second half of that supposed argument.

What I actually argued was that "a citizen's respectful request to testify at a Congressional committee's public hearing is not — and must never be deemed to be — 'disruption of Congress.'" This was obscured by the prosecution, which, without any basis in fact, painted me as someone who "did not follow the rules," further alleging that I "broke the law by loudly disrupting a U.S. Senate Judiciary hearing."

In fact, more than two months before the committee's May 22, 2003, hearing to confirm New York Court of Appeals Judge Richard Wesley to the 2nd U.S. Circuit Court of Appeals — and in conjunction with my request to testify in opposition, as coordinator of the national, nonpartisan, nonprofit citizens' organization Center for Judicial Accountability, Inc. — I asked the committee, in writing, for its rules, procedures and standards. None were supplied, just as the committee never sent a letter denying my request to testify. Nor did anyone in authority at the committee deny the request orally. More seriously, no committee counsel ever called me, let alone interviewed me, about the case-file documents I had hand-delivered to the committee two and a half weeks before the hearing to substantiate CJA's particularized written statement as to Wesley's readily verifiable corruption as a judge on New York's highest state court in two public-interest cases affecting the rights and welfare of the people of New York. Committee underlings refused to even give me the names of reviewing counsel — and my many, many phone messages to speak to such unidentified counsel and to others in authority at the committee and in the offices of Chairman Orrin Hatch (R-Utah) and ranking member Patrick Leahy (D-Vt.) were unreturned.

This scandalous state of affairs, where the Senate Judiciary Committee wilfully ignores evidence of nominee unfitness in order to consummate the political deals which Senators make over judgeships, is chronicled in fact-specific correspondence I sent to Hatch and Leahy, as well as to New York Sens. Charles Schumer (D) and Hillary Rodham Clinton (D) and the Capitol Police prior to the hearing. It is posted on the home page of CJA's Web site, www.judgewatch.org, under the heading, "Paper Trail Documenting the Corruption of Federal Judicial Selection/Confirmation and the 'Disruption of Congress' Case it Spawned."

As to what took place at the Judiciary Committee's May 22, 2003, hearing, the best evidence is the videotape. The second best evidence is the official transcript. Both are posted at the top of CJA's home page — with an analysis of each. Such analysis highlights — apart from my correspondence — the telltale signs, revealed by the video, that "the Committee's leadership 'set me up' to be arrested."

On June 1, I will be sentenced to jail for up to six months for my words at the hearing. These words, not uttered by me until after the presiding chairman, Sen. Saxby Chambliss (R-Ga.), had already adjourned the hearing, were: "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?"

Hatch and Leahy, Schumer and Clinton — and, of course, Chambliss — all of whom invoked their immunities under the Speech or Debate Clause to quash my subpoenas for their testimony at trial — should be asked how much jail time they deem appropriate for such a concocted "crime."

Elena Ruth Sassower
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