

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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DATE: May 24, 2004

TO: Gerry Mulaney, Deputy Metro Editor for Politics/The New York Times

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

RE: Proposal to You and ALL Relevant Times Editors Involved in Election Coverage for a Critical Examination of the Record of Senator Charles Schumer on Judicial Selection, Discipline, and Constituent Services Relating Thereto

On May 18th, The Times' metro section ran a (front-page) article by Raymond Hernandez entitled, "\$21 Million Schumer War Chest: What Campaign Will It Pay For?". The article was based -- explicitly -- on "speculation" that Senator Schumer might be interested in running for governor and might divert his excessive funds for such purpose. As for the fact of Senator Schumer's huge campaign resources, The Times had already reported this, including in two front-page metro articles by Mr. Hernandez himself, "Against the Risks of a Risky Business, Schumer Amasses Money" (5/11/03) and "For Schumer, A War Chest That Reflects Wall Street" (10/8/03)¹. The article contained but a single quote from Senator Schumer, "The only thing on my radar screen is being a good senator" -- which was gratuitous free publicity².

Please be advised that three weeks earlier, on April 29th, I phoned Mr. Hernandez with a proposal that he "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". Thereafter, I left three follow-up voice mail messages for Mr. Hernandez -- none of which he returned. This is

¹ See also, "Schumer Is Leader In Raising Money" (7/19/03).

² During the past week in which the Democrats held their convention nominating Senator Schumer for re-election and the Republicans nominated the "little known and not well-financed" Assemblyman Howard Mills ("Many State Republican Stars Are No-Shows at Convention", 5/20/04), The Times has conferred upon Senator Schumer considerable free publicity relating to his activities as Senator: "Calls to Ease Gasoline Prices by Taking Oil From Reserve" (5/18/04); "Democrats Urge Bush to Act on Gas Prices" (5/19/04); "Deal Ends Impasse Over Judicial Nominees" (5/19/04); "Screening of Prison Officials Is Faulted by Lawmakers" (5/21/04).

recounted by my May 11th letter to Mr. Hernandez, which reiterated the proposal I had discussed with him on April 29th. To this May 11th letter, he has also not responded³. Likewise, he has not responded to my follow-up May 17th e-mail to him – or to my May 20th voice mail message that if I did not hear from him by the next day, I would turn to his editors.

I, therefore, enclose for your review a copy of this May 11th written proposal – with a request that you provide it to ALL relevant editors involved in the comprehensive election coverage touted by The Times' February 2, 2004 supplement. To refresh your recollection, this was the supplement whose front page announced, in big type capital letters above The Times' motto, "expect the world":

**"EVERYTHING YOU NEED TO KNOW ABOUT THE 2004 ELECTIONS
EVERY CANDIDATE.
EVERY ANGLE.
EVERY DEFINING MOMENT.
EVERY DAY."**

The second page similarly continued,

**"ALL THE
CRUCIAL DECISIONS,
INSIDE SCOOPS,
OPEN CONFLICTS,
BEHIND-THE-SCENES DRAMAS,
RACE-ALTERING
DEVELOPMENTS."**

The third page then stated:

"Throughout this important election year, you can rely on The New York Times for in-depth reporting and analysis of the key candidates and issues in all the nation's important elections.

With our team of award-winning journalists reporting from campaign trails across the country, you'll get smart, unconventional takes on the conventional wisdom – and you'll

³ Mr. Hernandez did acknowledge receipt of the e-mailed May 11th letter, stating "thank you. i will read this over soon."

know today what the other media will be talking about tomorrow.

Our editorial writers and columnists will provide **critical context, lively commentary and opinions** that will keep you informed and engaged and will help you make the **best decisions** on Election Day." (emphases in the original)

Based on the May 11th written proposal, I request that Times editors responsible for election coverage immediately authorize an objective, critical examination of Senator Schumer's record on judicial selection, discipline, and constituent services relating thereto. Such is plainly warranted by the most cursory review of the substantiating primary source materials posted on the homepage of CJA's website, www.judgewatch.org, under the heading, "Paper Trail Documenting the Corruption of Federal Judicial Selection/Confirmation and the 'Disruption of Congress' Case it Spawned."⁴ Indeed, from Mr. Hernandez' own review following our April 29th phone conversation, he may be presumed to have recognized that a journalistic investigation into Senator Schumer's conduct with respect to these documents would not only "rightfully derail [his] re-election campaign"⁵ – but such gubernatorial aspirations as he may or may not have.

I look forward to discussing with you and/or other editors the May 11th proposal and the powerful primary source documents that substantiate it. Should you or they wish "hard copies" of these documents to facilitate review, I will furnish them expeditiously. In any event, please let me hear from you no later than midday, Thursday, May 27th so that I may be guided accordingly.

Finally, inasmuch as the May 11th proposal refers to my October 13, 2003 letter to Bill Keller, review of that letter, posted as part of the "Paper Trail", will disclose the profound and multitudinous conflicts of interest confronting The Times with respect to this proposal⁶. Should Times editors responsible for election coverage not rise above these conflicts – as is their journalistic duty to do -- I will assume that such is after consultation with, and under the

⁴ CJA's July 3, 2001 letter to Senator Schumer, focally discussed by the proposal, is also accessible *via* the sidepanel "Testimony", where it is posted with some of the most important underlying documents to which it refers.

⁵ See, my published Letter to the Editor, "Portrayal in News Item Found 'Denigrating'" (New York Law Journal, 5/19/04) – posted at the top of CJA's homepage. For your convenience, a copy is enclosed herewith.

⁶ Mr. Hernandez' own direct conflicts, arising from his misconduct in 2000 when he was in The Times' Albany Bureau, are reflected by the recitation at pages 9-11 of the October 13, 2003 letter. This, in addition to what is set forth at footnote 28, pertaining to his cover-up reporting last year from the Washington Bureau with respect to Senator Schumer and Dora Irizarry's nomination to the District Court for the Southern District of New York.

influence of, the implicated-highest echelons of The Times, who are also their friends and colleagues. In addition to Mr. Keller, this would include Arthur Sulzberger, Jr., Jill Abramson, Allan Siegal, Philip Taubman, Jonathan Landman, and The Times Editorial Board. Under such circumstances, I will file a complaint against all concerned with The Times' public editor/ombudsman, Daniel Okrent. I hope this will not be necessary.

I await your response.

Thank you.

A handwritten signature in black ink, appearing to read "Elena Lu". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Enclosures:

- (1) CJA's May 11, 2004 letter/proposal, with published Letter to the Editor, "Correcting the Record", Roll Call, May 10, 2004
- (2) CJA's published Letter to the Editor, "Portrayal in News Item Found 'Denigrating'", New York Law Journal, May 19, 2004

cc: Raymond Hernandez/Washington Bureau
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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 spoke¹.

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 Governor 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 Committee 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 message². 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

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 doc-

uments 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 tell-tale 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
Coordinator
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Accountability Inc.

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LETTERS

To the Editor

Portrayal in News Item Found 'Denigrating'

Last month, an important case in which I was the criminal defendant went to trial in Washington, D.C. At issue was what took place at the U.S. Senate Judiciary Committee's May 22, 2003, public hearing to confirm President George Bush's nomination of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals.

Although a lengthy front-page article appeared in *Legal Times*, owned by American Lawyer Media, the same parent company as owns the *New York Law Journal*, the *Law Journal* did not run it. Instead, it ran a scurrilous front-page "News in Brief" item, "Sassower Faces Charges of Disrupting Congress" (April 12), whose most false and defamatory assertion is directly refuted by the *Legal Times* article.

According to the *Law Journal* item, I both "spoke out" and "was arrested for attempting to speak during the confirmation hearing without being invited to do so." It then continues "She contends she simply wanted to speak her mind..."

No sane professional would "contend[] she simply wanted to speak her mind" — a portrayal reinforcing the item's denigrating opening description that I have "made a career of challenging alleged corruption in New York Courts." The inference is that I am pursuing, in an individual capacity, "alleged" corruption that may be only "in my mind."

Conspicuously omitted — as likewise from the front-page "News in Brief" item, "Sassower Found Guilty of Disrupting Congress" (April 21) — are my professional title and organizational affiliation. No editorializing was needed for the *Law Journal* to plainly state that I am coordinator and co-founder of the Center for Judicial Accountability Inc. (CJA) — a national, non-partisan, non-profit citizens' organization.

For more than a decade, CJA has been documenting the dysfunction, politicization and corruption of the closed-door processes of judicial selection and discipline by advocacy that is scrupulously evidence-based. Indeed, upon Mr. Bush's nomination of Judge Wesley, I personally prepared a fact-specific March 26, 2003, written statement particularizing the case-file evidence establishing Judge Wesley's corruption on the New York Court of Appeals in two major public interest cases, resulting in vast, irreparable injury to the People of New York. I then hand-delivered this statement — including the substantiating case-file documents — to the American Bar Association and Association of the Bar of the City of New York, to Senators Schumer and Clinton, and to the Senate Judiciary Committee. None made any findings of fact and conclusions of law with respect thereto. Nor did they — or Judge Wesley, to whom I sent a copy of the statement — ever deny or dispute its accuracy in any respect.

As to what I "contend" I said and did at the Senate Judiciary Committee hearing, the *Legal Times* got it right:

"According to Sassower, she read from a prepared statement: '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?'"

Judge Wesley's "documented corruption:" — covered up by the bar associations, Senators Schumer, Clinton, and the Senate Judiciary Committee, among others — is a major political scandal, yet to be reported. Its explosive ramifications would rightfully derail Senator Schumer's re-election campaign and Senator Clinton's talked-about future candidacy for president. Fortunately, readers do not have to rely on the *Law Journal*, but can verify this for themselves. The substantiating primary source documents — including the unrefuted and irrefutable March 26, 2003, statement — are posted on the homepage 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."

Elena Ruth Sassower,
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Accountability, Inc. (CJA)