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Elena Ruth Sassower, Coordinator

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TO: Editorial Board, The New York Times
ATT: Gail Collins, Editorial Page Editor
Dorothy Samuels

FROM: Elena Ruth Sassower, Coordinator

RE: Essential News & Editorial Coverage: The Corruption of "Merit Selection"
to the New York Court of Appeals – The Senate Judiciary Committee's Role

DATE: January 29, 2003

Enclosed is my letter of today's date to James McKinley – to which you are indicated recipients.

In view of your today's editorial, "*An Unacceptable Nominee*", reiterating that "Senators have a constitutional duty to weigh the qualifications of nominees for the federal judiciary", and your January 6, 2003 editorial, "*New York's Permanent Legislature*", about the importance of "keeping a close eye on what happens in Albany", it's time you turned your attention to what's been going on with state judicial appointments – including "merit selection" to our Court of Appeals.

The situation is far, far worse than that described by the Syracuse Post Standard's transmitted editorial, "*A Flawed Process: Judicial nominees should be the subject of more scrutiny*" (1/27/03), and the news article on which it was based, "*DeFrancisco quiets a critic*" (1/23/03). You may verify this by reading EXACTLY what I was saying when I was "cut off" by Senator DeFrancisco at the January 22nd Senate Judiciary Committee's hearing to confirm Judge Susan read to the Court of Appeals. As may be confirmed from James McKinley, an eyewitness to the events, I had gotten no further than the beginning of the third paragraph of my enclosed written statement, when Chairman DeFrancisco halted my presentation with threats that I would be removed by officers (at least one of whom actually approached me) and refused my entreaties to at least be allowed to discuss Judge Read's official misconduct as Governor Pataki's Deputy Counsel (*see pages 7-9*), which I had already identified in my statement's second paragraph.

cc: James McKinley [by fax & e-mail]

Elena Ruth Sassower

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January 29, 2003

James C. McKinley, Jr., Albany Bureau Chief
The New York Times

RE: Essential News & Editorial Coverage: The Corruption of
"Merit Selection" to the New York Court of Appeals –
The Senate Judiciary Committee's Role

Dear Mr. McKinley:

As discussed, enclosed is the groundbreaking editorial, "*A Flawed Process: Judicial nominees should be the subject to more scrutiny*", from Monday's Syracuse Post-Standard. This is perhaps the FIRST editorial in the 27 years of "merit selection" to our State's highest Court to expose the State Senate Judiciary Committee's disregard of its constitutionally-mandated "advice and consent" function.

Also enclosed, for your convenience, is Erik Kriss' news article, "*DeFrancisco quiets a critic*", which – even without identifying the serious and substantial nature of what I was saying when I was "cut off"¹ – sufficed to cause the Post-

¹ As you know, Chairman DeFrancisco aborted my oral presentation at the beginning of the third paragraph of my written statement – which could not possibly have taken me more than 2-1/2 to 3 minutes to reach. Mr. Kriss' reference to "six minutes" – a time figure also in Mr. Stashenko's AP feed -- is erroneous. Until our yesterday's phone conversation, I had assumed that, because you mentioned "six minutes" while speaking to me after the "hearing", in the presence of other reporters, they had gotten it from you. However, since you now told me that you got the "six-minute" figure from Mr. Stashenko, please be advised that Mr. Stashenko has conceded that he may have started the clock when Chairman DeFrancisco called my name. As you will recall, at that point I had yet to get up from my seat and wheel three cartons of substantiating documents to the witness table, arrange the materials from one of the boxes on the table, pour myself a glass of water, and take a sip. Only then did I begin reading my

Standard's editorial board to immediately contact Mr. Kriss, culminating in its Monday's editorial.

Presumably, the Times editorial board also looks to the news coverage of its own Albany Bureau to alert it to matters worthy of editorial attention. Yet, there was NO Times news article about the Senate Judiciary Committee's "hearing" to confirm Judge Read -- only an announcement of her confirmation in the "Metro Briefing", tagged with an AP attribution. Only you know why and how this happened -- and to the extent you don't know, you should find out.

I am faxing a copy of this letter to the Times editorial board -- and will mail it a copy of my written statement, with documentary appendix -- identical to the one I provided you -- so that it may evaluate its responsibilities to its New York readers and the New York public, *independent* of what is not being reported by the Albany Bureau and what Times editors are cutting from your submitted copy or from AP feeds.²

Finally, and consistent with the editorial, "*New York's Permanent Legislature*", (1/6/03), that improving the Legislature requires "keeping a close eye on what happens in Albany", it is time for the Albany Bureau to begin to focus on the legislative committees, rather than making it appear as if they do not exist. The Senate Judiciary Committee is a case study in dysfunction and collusive politics -- and an investigative expose, based on the facts outlined by my written

written statement, prefaced by the words, "Chairman DeFrancisco, Committee members, Judge Read, good morning."

² In view of today's editorial, "*An Unacceptable Nominee*", reiterating that "Senators have a constitutional duty to weigh the qualifications of nominees for the federal judiciary", I will also enclose for the editorial board's review my never-printed proposed letters to the editor of December 19th and December 26th -- the latter of which included the preface,

"The Times regularly editorializes for 'more rigorous review' of the qualifications of federal judicial nominees by the U.S. Senate -- most recently this past Sunday, December 22nd ("*Judicial Selection After Trent Lott*"). Some equivalent attention must now be paid to what is happening here in New York, where the State Senate, under Senate Majority Leader Bruno, facilitated by Senate Judiciary Committee Chairman Lack, has REFUSED to undertake ANY 'review' of the qualifications of Governor Pataki's judicial nominees -- hundreds of whom have been confirmed in completely 'rubber stamp' confirmations at which NO opposition testimony has been permitted." (emphases in the original).

January 29, 2003

statement and its appended December 16, 2002 letter to Senate Majority Leader Bruno, *et al.* [A-12-33], has the potential to effect major, far-reaching reform. Such expose should include examining the basis for Senate Majority Leader Bruno's having elevated Senator DeFrancisco to the Committee's chairmanship less than three weeks ago. Certainly, the stenographic transcript of Senator DeFrancisco's frivolous questioning at the Committee's three previous confirmation "hearings" for Court of Appeals appointees does not suggest his suitability.

Please let me hear from you as to your intentions, including whether, if you are too busy to even read my written statement, you will be asking your editors to assign this meticulously-documented MAJOR story to an investigative reporter for the coverage it so clearly deserves.

Thank you.

Yours for a quality judiciary,



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

Enclosures

cc: New York Times Editorial Board

ATT: Gail Collins, Editorial Page Editor

Dorothy Samuels

BY FAX [212-556-3815]; E-MAIL [editorial@nytimes.com]; & MAIL

The Post-Standard

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Our opinion

A Flawed Process

Judicial nominees should be subject to more public scrutiny

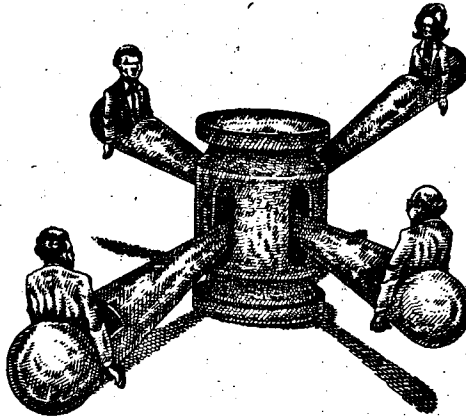
In his first appearance as chairman of the state Senate's Judiciary Committee last Tuesday, Sen. John DeFrancisco presided over a confirmation hearing on Gov. George Pataki's latest nominee to the state Court of Appeals. But the hearing revealed more about the flawed

process by which the Senate scrutinizes judicial candidates than it did about the nominee.

The hearing on Judge Susan Phillips Read lasted less than hour. Senators asked no questions. Three state judges each gushed 10 minutes of praise on behalf of the nominee. Read made just a brief statement, calling a seat on the Court of Appeals a "daunting and sobering job."

Only one witness, Elena Ruth Sassower, coordinator of the Center for Judicial Accountability, suggested anything negative about Read. But DeFrancisco cut off her testimony and ordered her out of the room when she began talking about the judicial selection process. "Pack your bags," DeFrancisco told her.

With that, the committee unanimously approved Read. The next day, the full Senate confirmed Read, 55, as associate



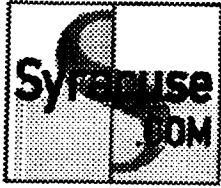
judge on the seven-member high court. Associate Court of Appeals judges serve 14-year terms and make \$151,200 a year.

DeFrancisco, R-Syracuse, acknowledged the Senate does not conduct independent inquiries of judicial nominees. He said the gover-

nor's office provides senators with state police reports on candidates and requires nominees to complete sworn questionnaires.

DeFrancisco and the other senators on the Judiciary Committee could have asked Read probing questions about her lack of experience in criminal law, either as a defense attorney or a criminal court judge. The Court of Appeals handles thousands of appeals, motions and other filings in criminal matters, including death penalty cases. Instead, senators did nothing.

Senators have a solemn obligation to independently and thoroughly examine judicial candidates who come before them, not just rubber-stamp names passed on by the governor. Otherwise, the confirmation process — spelled out in the state Constitution to check executive-branch power — is a sham.



The Post-Standard

DeFrancisco quiets a critic

State senator cuts off speaker's attack on state judicial nominating system.

Thursday, January 23, 2003

By Erik Kriss Albany bureau

State Sen. John DeFrancisco ordered marshals to remove a critic of the state's judicial nominating system from a public hearing Tuesday in the Capitol during his first appearance as Senate Judiciary Committee chairman.

Elena Ruth Sassower, coordinator of the Center for Judicial Accountability, was speaking against Gov. George Pataki's latest nominee to the Court of Appeals, presiding Court of Claims Judge Susan Phillips Read.

Sassower also spoke against the system by which judges are nominated by the governor and confirmed by the Senate.

DeFrancisco, R-Syracuse, who had warned Sassower before she began her testimony that the purpose of the hearing was to comment on Read's qualifications, accused her of straying from that issue.

When Sassower began to discuss how the system of judge selection was "corrupted," DeFrancisco asked her to address Read's qualifications.

She promised to do so, but when DeFrancisco perceived she had again strayed, he declared her remarks "closed."

"Please pack up your bags," he said.

Sassower, who was six minutes into her presentation, said it was "normal and customary" to afford people 10 minutes to speak.

"Your 10 minutes are up," DeFrancisco replied. "If you do not pack up your boxes, we will have you removed."

Then, DeFrancisco added, "This is an interesting start" to his chairmanship of the committee.

Sassower asked Read to voice her support of the public's right to be heard. But before Read could respond, Sen. Dean Skelos, R-Rockville Centre, moved to approve Read's nomination and the committee did so unanimously and without comment.

Read, a former deputy counsel to Pataki, is the fourth woman and fourth appointee of Pataki, a Republican, on the state's highest court.

While Sassower remained at the witness table trying to speak, DeFrancisco asked the marshals to remove her, but the hearing ended without incident.

"Congratulations on the way you handled that," Sen. Serphin Maltese, R-Queens, told DeFrancisco afterward. "It was very difficult."

Read had no comment afterward.

DeFrancisco noted Sassower has appeared before the Judiciary Committee before and prior leaders of the panel have accused her of disrupting meetings.

"We have to have some kind of process here," he said.

He said he learned how to handle similar situations as president of both the Syracuse school board and the city's Common Council.

Sassower said afterward of DeFrancisco, "He's a lawyer. Lawyers understand the importance of procedure. But the public has a right to hear and be heard as to her (Read's) fitness. What Senator DeFrancisco didn't want to have known was there has been no investigation of her qualifications."

Sassower has been a frequent critic of the selection process, which others have also described as secretive.

DeFrancisco said the governor's office provides state police Bureau of Criminal Investigation reports on judicial nominees and has the nominees complete questionnaires.

He acknowledged the Senate does not conduct independent inquiries of nominees, but he said the questionnaire is a "sworn document."