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BY FAX: 518-486-6609 (8 pages)

January 28, 2003

James Gormley, Assistant Editor/Recruiter
The Legislative Gazette
Albany, New York

RE: Proposal for Professor Chartock's "Publisher's Corner", etc

Dear Mr. Gormley,

As discussed, faxed herewith is the groundbreaking editorial, "*A Flawed Process: Judicial nominees should be the subject to more scrutiny*", which appeared in yesterday'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.

For your convenience, also enclosed is the January 23rd article by Erik Kriss, "*DeFrancisco Quiets a Critic*", which – even without identifying the serious and substantial nature of what I was saying when I was "cut off" – sufficed to elicit immediate inquiry from the Post-Standard's editorial board to Mr. Kriss and yesterday's editorial.

I can only hope that William Devoe's article about the Senate Judiciary's Committee's "hearing" on Judge Read's confirmation, in The Legislative Gazette's current issue, will elicit from Professor Chartock similar revulsion – and recognition that this is an appropriate topic for his "Publisher's Corner". Please, therefore, pass this fax and its enclosures to him – and ask Mr. Devoe to provide him with my document-supported written testimony – from which, as Mr. Devoe's tape recording would show, I was "cut off" at the beginning of the third paragraph, which was no more than 2-1/2 – 3 minutes into my presentation.

Surely, Professor Chartock will want to hear the tape recording for himself because, quite obviously, it is the best evidence as to what occurred and how long it took. I am certain he would be in complete agreement with my request that if the Legislative Gazette will not allow me to purchase a copy of the tape, that it at least recognize the tape as an important historical record to be preserved in a sealed envelope for use at an investigative-legislative hearing or by writers and historians chronicling the stunning degradation of the "merit selection" process to the Court of Appeals.

Professor Chartock should be apprised of the fact that within hours of last week's "hearing", I was at the Legislative Gazette office, proposing a journalistic expose of the State Senate Judiciary Committee, focused on judicial selection and discipline. This, in addition to commending the Legislative Gazette for its article in its December 16, 2002 issue on the forum on the New York State Commission on Judicial Conduct, co-sponsored by the New York State Bar Association and the Fund for Modern Courts – an article dramatically superior to that of the Albany Times Union and New York Law Journal, as may be confirmed, *inter alia*, from my own tape recording of that event. For your convenience, a copy of the Legislative Gazette article, "*Judicial conduct panelists hear complaint*", is enclosed, along with my transcription of my public statement and the two-fold question I had asked.

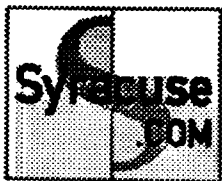
Thank you.

Yours for a quality judiciary,



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

Enclosures



The Post-Standard

A Flawed Process

Judicial nominees should be subject to more public scrutiny

Monday, January 27, 2003

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."

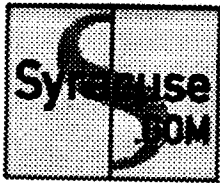
Only one witness, Elena Ruth Sassower, coordinator of the Center for Judicial Accountability, suggested anything negative about Read. But DeFrancisco cut off her testimony and ordered her out of the room when she began talking about the judicial selection process. "Pack your bags," DeFrancisco told her.

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 governor'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.



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DeFrancisco quiets a critic

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

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.

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"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."

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P.O. BOX 7329, ALBANY, NY 12224

Judicial conduct panelists hear complaint

By CHARLES GREEN

Gazette staff writer

When four panelists met Wednesday to discuss The New York State Commission on Judicial Conduct, Elena Sassower, co-founder and coordinator of the Center for Judicial Accountability, was there to let them know she thought the commission was corrupt and unlawful.

The panelists, on the other hand, spoke about the good work of the commission.

Sassower questioned what the panel, made up of two members of the commission, one former member and one former member of California's equivalent, would have to say, except that they were doing a good job.

The commission, established in 1974, was set up to provide a forum for citizens who have complaints against judges, while assuring judges that complaints filed against them will be handled fairly. There is such a commission in each of the 50 states, California having set up the first in 1960.

In New York, the commission consists of 11 members, four judges, four attorneys and three lay people.

Since then, Stephen R. Coffey, one of the panelists and a member of the commission, said that deal making and corrupt practices by judges have seriously declined.

"Thank God for this commission," Coffey said. "You don't have the workings inside judge's chambers that we have seen and we saw historically."

Judge Juanita Bing Newton, a former member of the commission, agreed that it has done good work.

"It is one of the fairest organizations and agencies that

I've had the pleasure to deal with," Newton said.

The panelists also spoke of the tremendous workload that the commission has to deal with, saying that they receive thousands of complaints a year, each of which has to be examined.

"When I got this appointment I called Sen. Bruno and I said, 'thank you for this job with no money and a lot of work and probably a lot of agony in between,'" Coffey said.

Judge John Racanelli, former chairman of the California Commission on Judicial Performance, said that though the budget in California is about 50 percent higher than it is here, New York deals with about twice the case volume.

When the panelists moved to a question and answer period, Sassower took her chance to allege that the commission is corrupt and that it purposely ignores cases for judges. Sassower said that there has been no legislative oversight of the commission in more than 15 years and that when then-Comptroller Edward Regan had filed a report in 1989, he had found problems.

Sassower also slammed two large boxes onto her table and said the boxes contained court documents which verified the commission's corruption.

Robert Tembeckjian, deputy administrator and deputy counsel for the commission said that Regan's 1989 report on the commission dealt mostly with its finances, which he found to be satisfactory. Tembeckjian said that Regan's only problem was that he wanted to see cases that had been dismissed, but that by law the commission is allowed to withhold such information.

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Elena Ruth Sassower, Coordinator

"Judging the Judges: The New York State Commission on Judicial Conduct"

Sponsored by the New York State Bar Association and the Fund for Modern Courts

Wednesday, December 11, 2002

NYSBA headquarters, Albany, New York

Moderated by NYSBA President Lorraine Power Tharp

[Transcribed by Elena Sassower from an audiotape]

"My name is Elena Sassower and I am the coordinator and cofounder of the Center for Judicial Accountability, which is a non-partisan, non-profit citizens organization which for the past ten years has been collecting evidence to document the corruption of the New York State Commission on Judicial Conduct.

In 1989, State Comptroller Ed Regan came out with a report on the Commission on Judicial Conduct, entitled "*Not Accountable to the Public*", and said that the Commission on Judicial Conduct was operating without appropriate oversight. The reason was State Comptroller Regan recognized at that time that unless he could examine how the Commission on Judicial Conduct was handling complaints that it received, whether its dismissals of complaints were proper, whether it was being documented with reasons, he could not verify that the Commission on Judicial Conduct was acting in conformity with the law and so he suggested, he recommended, in 1989, that there be legislative change made so that the Commission could be held accountable to the public.

Now there has not been a legislative oversight hearing of the Commission on Judicial Conduct in over 15 years. There was a routine oversight hearing in 1981. There was a routine oversight hearing in 1987. And there has been no oversight hearing of the Commission on Judicial Conduct since that time, notwithstanding the 1989 report of Comptroller Regan.

Now, our non-profit, non-partisan citizens organization has been doing what Ed Regan couldn't do. We have been collecting duplicate copies of judicial misconduct complaints filed with the Commission. We have been shadowing the Commission, as well as ourselves filing complaints with the Commission on Judicial Conduct. And we have been able to verify and document the Commission's corrupt, unlawful dismissal of judicial misconduct complaints, which is now the subject of a lawsuit pending in the Court of Appeals as we speak.

My question is two-fold:

One, whether the Commission on Judicial Conduct, and the Fund for Modern Courts, and the New York State Bar Association would endorse, would lobby, would press for a legislative oversight hearing of the Commission at which evidence can be presented as to what has been going on over all these years.

And number two, whether, independent of that effort to obtain legislative oversight hearings, the New York State Bar Association and the Fund for Modern Courts would address the evidence of the Commission on Judicial Conduct's corruption, which is embodied in this lawsuit, such as they have refused to do over these many, many years. The Commission's corruption is not 'he said-she said', it is not a matter of opinion, it is verifiable from court documents and I would like to know whether, over and apart from legislative oversight hearings, the Fund for Modern Courts and the New York State Bar Association will review these files and deny and dispute what they show: that the Commission is corrupt, that it has corrupted the judicial process, and it has been the beneficiary of a series of fraudulent judicial decisions without which it would not have survived several court challenges.

...

By the way, here is all the correspondence with the State Bar Association in the past year to get them to act, and with the Fund for Modern Courts trying to get them to act -- to discharge their duties to the public in some meaningful way, rather than a sham forum at which all insiders, other than Mr. Racanelli, have been presenting. Sure, you have the Deputy Administrator, you have a former Commissioner, you have a present Commissioner. What else are they going to say, but that the Commission "walks on water"?

[inaudible comment by Robert Tembeckjian, Deputy Administrator of the New York State Commission on Judicial Conduct]

Yes because the [Commission] is protected by judges under its disciplinary jurisdiction. Those decisions are frauds as readily verifiable from comparison of the decisions with the record and with fundamental law and legal principles.

...

Will the State Bar and the Fund examine this court file, encompassing two other legal challenges to the Commission, establishing its corruption and its corrupting of the judicial process? Will you do it?"

* * *

Upon conclusion of the program, Elena Sassower left two cartons containing a copy of the file of *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on*