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DATE: 1/27/03 TIME: 10<sup>30</sup> am FAX #: 518 - 432 - 7068

TO: ERIK KRIS

RE: SENATOR DEFRANCESCO'S Chairmanship of

FROM: ELENA RUTH SASSOWER, Coordinator

*Senate Judiciary  
Committee*

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MESSAGE: As discussed

Questions at 3 prior  
confirmation hearings

Let me know if you want me  
to fax you the transcript  
pages.

CENTER for JUDICIAL ACCOUNTABILITY, INC. is a national, non-partisan, non-profit citizens' organization documenting how judges break the law and get away with it.

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*Elena Ruth Sassower, Coordinator*

## **QUESTIONS ASKED AT THE THREE PRIOR SENATE JUDICIARY COMMITTEE HEARINGS TO CONFIRM APPOINTEES TO THE COURT OF APPEALS, AT WHICH SENATOR DeFRANCISCO WAS PRESENT**

### **January 14, 1997: Appellate Division, Third Department Justice Richard Wesley**

#### **Senator Leichter:**

p. 12. "if you think that from your viewpoint this court has been subjected to unfair criticism and how you would deal with what you consider unfair criticism of the work of the court?"

p. 18. "Do you believe and feel that the state would be best served following the federal precedent and the federal procedures on search and seizure?"

p. 20. "...just discussing the general philosophy, there is this view that the fruit of the poison tree should not be eaten; that evidence which has been secured in violation of the constitutional prohibition should not be used. What is your view and what comments do you have on that principle?"

p. 21. "Do you support changing the way in which search and seizure is now applied by the courts of the state of New York?"

pp. 21-22. "Let me just ask one other line of questioning, if I may. This concerns Article XVII, Section 1, of the Constitution that the state will assume the responsibility of needy people...Is that a provision that you've given some thought to or maybe addressed in some of your opinions? I'd be interested in your comments on what you think the obligations of the state are under that constitutional provision."

Senator Marchi (comment-question)

pp. 25-27. state obligations “may” and “shall

Senator DeFrancisco

p. 30. *“Did they tell you they were used ties?”*

Senator Abate

p. 32. “How can we in the future bring a more responsible debate around evaluating the judiciary?”

p. 35. “...I think the price we pay in this free society is that criticism and it will always be there, and the day that we abate it is the day that we will give up something very precious...”

p. 38. On sentencing: “Do you have an opinion on whether we should be – the discretion given to be judiciary should be maintained? Should it be reformed? Can you comment on that?”

pp. 40-1. On the public’s inadequate knowledge of the effectiveness of alternative sentencing “What needs to be done to bridge that gap?”

Senator Dollinger

p. 45. “How do you handle that issue, that you have been a passionate advocate, that you had strong political views and what do you do when they’re presented to you as a judge where you’ve got to make the right legal decision? How do you handle that transition?”

pp. 47-8. “One of the issues that the Court of Appeals has to resolve is the question of the Legislature’s exercise of its power on behalf of the majority of the people and that power has a limitation in the Constitution.

My question is, does your legislative background affect how you view that legislative power vis-à-vis the institutional limitation as I understand it, and I always believed the people have to set a limitation on the power of the men on this table?”

p. 49. “...you made a decision in Rochester involving a man named

Richard Vahue... You were roundly criticized for that decision as were other members. My question is could you just tell us how that affected you and does it make you leery the next time you face that decision?"

*to witness:* pp. 73-74. "In your experience with Judge Wesley and your office's interaction with him when he was on the trial court bench, can you comment on how he dealt with issues involving indigent defendants, and particularly the issue of effective assistance of counsel? Do you have any experience with that or your staff?"

**December 17, 1998: Appellate Division, Second Department Justice Albert Rosenblatt [NO-NOTICE, BY-INVITATION-ONLY]**

**Senator Leichter:**

p. 28 "How would you describe your approach as a jurist, particularly as concerns your role on the court; what role would you expect to play as a member of the Court of Appeals?"

p. 28 "I want to ask you to give an opinion on a specific matter, if you would generally discuss whether you think that the state Constitution as it reads and as the Court of Appeals has held, offers more protection of the so-called 'bill of rights', that provision."

p. 29 "I was sort of interested in how you feel, what you think about the work of the Court of Appeals and how you might act differently."

p. 31 "How do you see the right of privacy under the state Constitution?"

p. 32 "...one of the things that we balance is this right of privacy in a political context, and do you agree that an action under the state constitution is a course that would be credible?"

**Senator DeFrancisco:**

p. 34 "Looking at the journal of publications, I really would like to know, April 2<sup>nd</sup>, 1991, 'Pleaded or Pled.' What was that about?"

**November 29, 2000: Appellate Division, Third Department Justice Victoria Graffeo [BY-INVITATION-ONLY]**

**Senator Dollinger:**

p. 16 "...I do have one question. One of the discouraging aspects of the Florida escapades is that there has been a suggestion that the courts of Florida have been influenced by political considerations in making determinations. And it's not out of the character of New York or other places where those of us who are in elected office in the legislative branch have been critical of the judiciary, and in doing so may have undercut the public's confidence in the judiciary.

I'd just like to hear from you. You will be on the Court of Appeals, and you join a list of really the greatest judges in America. And how can the courts help restore and increase or enhance the public's confidence in an impartial judiciary that may from time to time face difficult questions, whether as it existed in Florida, the issues involving the election, or as will probably no doubt happen, as happened before, our once-a-decade wrestling with the issue of fair reapportionment?

Is there something that the judiciary itself, in your position on the Court of Appeals, can do to make the public have the confidence that the judiciary is that impartial, law-driven body, the necessary third wheel of our government?"

**Senator DeFrancisco:**

pp. 20-1 "You know, in a hearing such as this sometimes various legislators have litmus tests for judicial positions. And recently I developed my own litmus test, and my vote will depend upon the clarity of your answer to this question.

*What is the difference between a dimpled and pregnant chad?"*

*(Laughter)*

*"This may come up."*

...

*"You don't need to answer that -"*

*(Laughter)*

*since no one else has the answer."*