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BY MAIL

February 12, 2003

Rick Stevens, News Editor/New York State
Associated Press
P.O. Box 11010
Albany, New York 12211

RE: Endorsing and Authorizing an Associated Press expose of
the New York State Senate Judiciary Committee

Dear Mr. Stevens:

Following up our phone conversation on January 23rd, I've been looking forward to your verifying, as you offered to do, which newspapers ran Joel Stashenko's *unexpurgated* AP January 22nd feed pertaining to the Senate Judiciary Committee's "hearing" to confirm Judge Susan Read to the Court of Appeals – especially if you cannot provide me with a copy of the feed itself.

More importantly, I have been looking forward to your favorable response to the request, presented by my January 25th letter, for your endorsement and authorization of an AP expose of the State Senate Judiciary Committee as "a case study in legislative dysfunction and corruption". For such case study, I have offered, "on a silver platter", *readily-verifiable* documentation pertaining to areas of the Committee's jurisdiction immediately recognizable to New Yorkers: judicial selection and discipline.

As stated by my letter,

"Unless and until the legislative press corps does its job to meaningfully report on how dysfunctional and corrupted the committees of the New York Legislature are – the Senate Judiciary Committee among them – there will be no "check" on

the Executive and Judicial branches of our State government. Rather, the Legislature will continue its collusive "politics as usual" to the detriment of the People of this State." (at p. 4).

Meanwhile, there have been two editorials of particular relevance. The first, "*A Flawed Process: Judicial nominees should be subject to more public scrutiny*" (Post-Standard, 2/27/03), was the direct result Erik Kriss' article, "*DeFrancisco Quiets a Critic*" (Post-Standard, 1/23/03). This was what my letter to you alluded to in stating that Mr. Kriss' article had prompted editorial inquiry. It is perhaps the FIRST editorial in the 27 years of "merit selection" to our State's highest Court to expose the Senate Judiciary Committee's disregard of its constitutionally-mandated "advice and consent" function.

The second, "*The New York Process: How Not to Get Heard at a Legislative Hearing*" (The New York Times (2/7/03), under a logo "FIXING ALBANY", I believe to have been prompted by my January 29th correspondence with Times Editorial Page Editor, Gail Collins, and its Albany Bureau Chief James McKinley. Such correspondence not only enclosed the Post-Standard's groundbreaking January 27th editorial, but expressly stated,

"consistent with the [Times] 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."

As I do not have a fax number for you, I will mail you "hard copies" of these powerful two editorials, together with this letter. They are, in any event, available to you *via* your nexis capabilities.

Please let me hear from you before too long – as there is much significant news to report, which, if reported, have the potential to generate essential reform. Apart from Chairman DeFrancisco's outrageous affirmative misrepresentation, in procuring a unanimous Senate vote on Judge Read's confirmation, that:

"All speakers [at the hearing] who spoke on her qualifications gave her glowing recommendations and glowing review",

reflected by the now-available Senate transcript [1/22/03, p. 239, lns. 20-22],

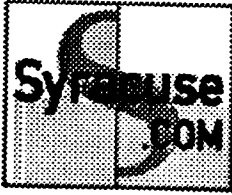
I have a pending written request to Chairman DeFrancisco for a meeting to discuss the serious and substantial issues presented by my January 22nd statement – the issues he purported were not relevant to the “hearing” on Judge Read’s confirmation.

Yours for a quality judiciary and
for “FIXING ALBANY”,

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

Enclosures

cc: Joel Stashenko, AP Capitol Editor
[by e-mail: jstashenko@ap.org and
by fax: 518-426-2286: 6 pages]



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.

The New York Times

Founded in 1851

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Editorial Observer/ELEANOR RANDOLPH

The New York Process: How Not to Get Heard at a Legislative Hearing

ALBANY
 In a cubby-like conference room in the New York State Capitol's legislative office complex here, Kevin Parker of Brooklyn made history this week. As a freshman Democrat in the Republican-controlled State Senate, Mr. Parker recognized that he was at a disadvantage. Still, he saw himself as a real senator — a sort of state-level version of Ted Kennedy or Richard Shelby — a guy who asks good, solid questions at hearings.

So at his first meeting of the Senate's Energy and Telecommunications Committee, he asked a few fairly straightforward questions of Gov. George Pataki's nominee to head the Public Service Commission.

Mr. Parker — the only senator who had more than one query, and in fact one of only two to ask anything at all — caused the committee hearing on the nominee, William Flynn, to go on for a full 40 minutes. At the end of the exchange the Energy Committee's

chairman, James Wright of Watertown, noted, "You have just made this the longest committee meeting we've had."

It was still early in the year, of course. But Senator Parker's behavior was definitely out of the ordinary. Asking public questions at hearings is something close to a revolutionary act in New York's State Legislature. It slows down the well-oiled slide from nomination to appointment, dragging the people's elected officials into a lot of messy democratic give and take.

In fact, the entire committee system in Albany is notoriously fraudulent — not just in the Republican Senate but also in the Democratic-controlled Assembly. Committees are window dressing. Public debate among the 212 legislators is a waste of breath. The only thing that really matters in New York State government is what the governor and the



FIXING ALBANY

leaders of the two houses want. That's the Albany way.

Perhaps a few members were feeling particularly frisky at the start of the session, however, because the next day, at a larger committee hearing of the Senate Finance Committee, Thomas Duane of Manhattan, another Democrat, decided to ask Mr. Flynn a few more questions. This time there were no jokes, only visible irritation from the Senate regulars.

That was especially true when Senator Duane wanted to know Mr. Flynn's role in the dropping of manslaughter charges against the Kennedy Valve Company in connection with the grisly on-the-job death of an employee in 1995. At the time, Mr. Flynn was the chief political aide for Attorney General Dennis Vacco, who soft-pedaled the charges. As detailed in a recent New York Times article,

Mr. Flynn was the direct connection to the company's lobbyist and helped maneuver the case away from tough federal prosecutors in favor of a cozier plea-bargain deal with the state.

Mr. Duane did not get an answer to his question. Instead the face of Senator Owen Johnson of Long Island, the G.O.P. chairman of the committee, took on a reddish hue as he ruled that such queries into Mr. Flynn's record were not relevant.

And before Mr. Duane or anybody else could ask about Mr. Flynn's having failed the state bar exam (seven times), or how independent he would be from a governor who has been his political guardian, Mr. Johnson decided the hearing had gone on long enough. The Suffolk County Republican tapped his ring regally on the glass table and called the vote. Approved overwhelmingly, Mr. Flynn was swept through a crowd of smiling lobbyists and onto the Senate floor.

The nomination came up for a vote

there after a debate of less than 15 minutes — still a long time by Albany standards. Mr. Duane took up most of that time re-registering his complaint about the lack of public process, and inspiring a few Republicans to tell him he was simply wrong. "Nonsense," Senator Thomas Libous of Binghamton whispered loudly to reporters nearby. "[Mr. Flynn] said he would meet privately and spend time with any of us. That stuff about process is just nonsense."

The senators from both parties either agreed or were too worn down for further protests, and Mr. Flynn was voted onto the commission, where it has apparently already been agreed that he will just as swiftly be elevated to chairman. The people's state senators had just installed the governor's appointee in one of the most powerful positions in the state with almost no public discussion.

The Public Service Commission sets the rates for our electricity and some of our telephones. It might have

to determine whether the definition of "renewable energy" like solar and wind power could be expanded to include the highly combustible idea of burning trash for energy. As chairman, Mr. Flynn will be one of the key players in the state's efforts to reduce its high energy costs and make sure there are no power shortages in the future. The commission also has a lot to do with deciding where power plants will be built.

It's quite a portfolio for someone the public has never heard of, an anonymity that apparently suits most of those in power in Albany. In reality, the burden of bringing the public into state politics falls to those without power — the minority senators like Mr. Parker and Mr. Duane or the Republicans in the Assembly. Their duty is not to cede their voices to the committee leadership but to use every public forum to expand the public record. Otherwise any efforts to open the process are, to quote Senator Libous, just nonsense.

1 Messages from the Governor.

2 Reports of standing committees.

3 The Secretary will read.

4 THE SECRETARY: Senator

5 DeFrancisco, from the Committee on Judiciary,
6 reports the following nomination:

7 As Associate Judge of the Court of
8 Appeals, Susan Phillips Read, of West Sand
9 Lake.

10 THE PRESIDENT: Senator

11 DeFrancisco.

12 SENATOR DeFRANCISCO: I rise to
13 move the nomination of Judge Susan Phillips
14 Read to become an associate judge of the Court
15 of Appeals, the highest court of this state.

16 We had a Judiciary Committee
17 hearing this morning; we received information
18 from the New York State Bar Association that
19 indicated that she was well qualified, its
20 highest rating. All speakers who spoke on her
21 qualifications gave her glowing
22 recommendations and glowing review. And the
23 Judiciary Committee of the State Senate
24 unanimously passed her nomination over to the
25 full Senate.