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BY FAX (6 pages), E-MAIL, & MAIL

TO: Senator Malcolm A. Smith
Ranking Member, Senate Judiciary Committee

Assemblywoman Helene E. Weinstein
Chair, Assembly Judiciary Committee

Assemblyman Fred W. Thiele, Jr.
Ranking Member, Assembly Judiciary Committee

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

RE: Meeting with Senate Judiciary Committee Chairman
John A. Francisco, Monday, March 17th, 10:30 a.m.

DATE: March 5, 2003

This follows up my telephone calls to your office staff on Friday, February 28th, advising that Senate Judiciary Committee Chairman John DeFrancisco would be meeting with me for at least half an hour on Monday, March 17th, at 10:30 a.m. and requesting that you be present.

The topic of the meeting is the need for the Senate and Assembly Judiciary Committees to hold a joint oversight hearing of the New York State Commission on Judicial Conduct -- much as was done in 1981, but not since. Such joint hearing is especially warranted because, at issue, is NOT routine oversight as it was in 1981¹ and then again in 1987², when the Assembly

¹ Senate Judiciary Committee Chairman H. Douglas Barclay, 12/18/81 hearing transcript, pp. 3-4: "The work of the Commission on Judicial Conduct requires periodic legislative review

Judiciary Committee held its one and only oversight hearing of the Commission. Rather, this oversight hearing is necessitated by incontrovertible documentary proof of the Commission's corruption. Indeed, it is **PRECISELY** because the Senate and Assembly Judiciary Committees failed to hold any hearing, either jointly or separately, in response to the 1989 report of then State Comptroller Edward Regan, "*Not Accountable to the Public*", which asserted that the Commission "operates without appropriate independent oversight of its activities"³ (p. 4), that now, nearly 14 years later, the Commission's corruption is so profound and far-reaching.

The March 17th meeting will be devoted to discussing the documentary proof of the Commission's corruption – and the necessarily corrupting effect of this corruption on the judicial appointments process, whether to the lower state courts or to our Court of Appeals, as likewise on the judicial elections process.

Protecting the People of this State from the corruption that has eviscerated judicial discipline and our judicial selection processes, both appointive and elective, will require bipartisanship and a working together of the two legislative

of its charter. The Commission's authority and procedures have been subject of litigation in both state and federal courts, and the Commission itself has requested some modification of its powers. The purpose of this hearing is to gather information to assist the Judiciary Committees in developing proposals for legislative action.”;

Assembly Judiciary Committee Chairman Saul Weprin, 12/18/81 hearing transcript, p. 4: “Senator Barclay has pretty much stated what the purpose of the hearing is. We felt, after discussing this, that it was time that the Commission – the permanent commission has been in existence for four years – that we looked into its operation and saw what legislation would be necessary, if any, in order to continue the functions of the Commission or decide where we go from here...”.

² Assembly Judiciary Committee Chairman G. Oliver Koppell, 9/22/87 hearing transcript, pp. 5-6 “...the only reason that the hearing is being held is that we think it is appropriate to inquire into the operation of all governmental agencies and bodies under the jurisdiction of this committee... This is a very important commission. It performs an essential function of government, and it has been the subject of a considerable amount of commentary this year and other years, and as a result of that it seems to me appropriate to take a look, especially since I'm the new chairman of the committee and have not had this degree of responsibility in this area before... There is absolutely no other reason for this hearing being held”

³ State Comptroller Regan's 1989 Report, "*Not Accountable to the Public*", is available from the Legislative Library. Nonetheless, a copy is enclosed for your convenience, as likewise his December 8, 1989 press release, "*Commission on Judicial Conduct Needs Oversight*".

chambers. This becomes more possible when the majority and minority leadership of the Senate and Assembly Judiciary Committees share in the SAME evidentiary presentation, from the outset.

As indicated in my February 28th phone conversations with your office staff, although Chairman DeFrancisco prefers to meet with me separately, I believe it appropriate that you request that his March 17th meeting with me be expanded to include you, the Judiciary Committees' leadership. At very least, Ranking Minority Member Smith should be there on behalf of the Senate Judiciary Committee's Democratic minority. If not, I respectfully request that you collectively meet with me later that same day so that I may provide you with a documentary presentation as nearly identical to that which I will have provided Chairman DeFrancisco. Should that not be feasible, I request the opportunity to meet with each of you individually.

Our upcoming meetings – and the Senate and Assembly Judiciary Committee hearings that must thereafter ensue based on the dispositive documentary proof I will be providing you of the corruption of this state's processes of judicial discipline and selection – will powerfully answer The New York Times' "FIXING ALBANY" editorial series. The very first of its editorials to bear the "FIXING ALBANY" logo declared "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." (*The New York Process: How Not To Get Heard at a Legislative Hearing*, 2/7/03). Two weeks later, The Times reiterated its prescriptive with "*Why Albany Doesn't Mend the Courts*" (2/21/03). Such identified, by name, that what was needed was for Senate Judiciary Committee Chairman DeFrancisco and Assembly Judiciary Committee Chairwoman Weinstein to hold "public committee hearings" so that problems in the state court system "can be worked out in the daylight".

It was on the very day that "*Why Albany Doesn't Mend the Courts*" appeared that Chairman DeFrancisco's Chief of Staff, Carole Luther, phoned me to schedule the meeting with him I had long before requested. In so doing, she acknowledged, in response to my question, that she had seen the editorial.

March 5, 2003

I choose to see the upcoming March 17th meeting with Chairman DeFrancisco as a promising and constructive first step to "FIXING ALBANY". I hope you will see it in the same light and actively participate in making government work, as it should, to protect and benefit the People of this State.



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

- Enclosures:
- (1) State Comptroller Edward Regan 1989 report on the State Commission on Judicial Conduct, "*Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy*", with his 12/7/89 press release
 - (2) "*The New York Process: How Not to Get Heard at a Legislative Hearing*", New York Times, "FIXING ALBANY" editorial, 2/7/03
 - (3) "*Why Albany Doesn't Mend the Courts*", New York Times, "FIXING ALBANY" editorial, 2/21/03

cc: Senate Judiciary Committee Chairman DeFrancisco

The New York Times

Editorial Board, Eleanor Randolph, James C. McKinley, Jr.

New York Press

Senator Suzie Oppenheimer, 36th Senatorial District

Assemblyman Adam T. Bradley, 89th Assembly District

The New York Times

Founded in 1851

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ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*
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Why Albany Doesn't Mend the Courts

For more than five years New York State's chief judge, Judith Kaye, has been pushing to overhaul a state court system widely recognized as the most convoluted, expensive and ridiculous in the country. Her sensible plan would compress nine trial courts into three. It would save an estimated \$130 million over five years. And it would stop the arcane overlapping that, as one example, can bring a single troubled family into as many as three separate courts. (One covers any domestic violence, a second child custody issues, and a third would deal with a divorce.)

Almost everybody with a shred of power in Albany agrees — publicly — that Judge Kaye's untangling of New York's legal quagmire is a great idea. Still, it doesn't get done. The reasons that are given are many, but the real stumbling block is patronage — the pure power to put people into jobs not because they are qualified but because they are loyal.

The court system doesn't work very well for the public, or for the people who find themselves entangled with the law. But politicians make sure it continues to operate very efficiently for them. In recent judicial elections in Brooklyn the Democratic Party leader, Clarence Norman, refused to support a judge who had declined to hire one of Mr. Norman's minions. It was a rare instance when the true nature of the court system surfaced, when everybody could see why Mr. Norman was backing certain judges for office.

Nobody really expects Mr. Norman, who is also a leader in the Assembly, to back Judge Kaye's reform. But what about Assemblywoman Helene Weinstein, chairman of the Assembly Judiciary

Committee and his neighbor in Brooklyn? Ms. Weinstein says she supports reforming the courts, but not ahead of this year's priority, which is boosting fees for lawyers assigned to the poor. Unless it's simply a way to avoid the issue, that argument makes no sense. Boosting these fees is a good thing, and it would be easier to pay for if it was married to Judge Kaye's money-saving reforms.

State Senator John DeFrancisco, chairman of the Senate Judiciary Committee, also says he supports revamping the courts, but that Judge Kaye's plan does not get rid of enough of those

overlapping jobs. He is right technically — to get anywhere at all Judge Kaye had to promise not to use consolidation as a way to get rid of people. But by holding out for the perfect, Senator DeFrancisco is creating another cover for killing a very good plan.

Assemblywoman Weinstein and Senator DeFrancisco should start bringing these and any other problems into the public committee hearings so they can be worked out in the daylight. If they don't, any genuine reform stays stuck in the back rooms — which serves the political leaders just fine.

The State Senate leader, Joseph Bruno; the Assembly leader, Sheldon Silver; and Gov. George Pataki have all publicly decried the byzantine courts of New York. That's a start. But there is even more reason to pass Judge Kaye's plan in this lean year since it would save the state money. Even with the political will, however, reform will not be an easy process. The Kaye package must be approved in two successive legislative sessions, then adopted by the voters. Governor Pataki and the Legislature have not even made it through the first round.



FIXING ALBANY

The New York Times

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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 cozy 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.