COUNTY COURT

ONONDAGA COUNTY

REPORT OF THE ONONDAGA COUNTY GRAND JURY EMPANELED ON AUGUST 16, 1993 REGARDING AN INVESTIGATION INVOLVING POLITICAL CAUCUS PRACTICES IN ONONDAGA COUNTY

Submitted:

October 8, 1993

REPORT OF THE GRAND JURY OF ONONDAGA COUNTY EMPANELED ON AUGUST 16, 1993, REGARDING AN INVESTIGATION INVOLVING POLITICAL CAUCUS PRACTICES IN ONONDAGA COUNTY, SUBMITTED PURSUANT TO CRIMINAL PROCEDURE LAW, SECTION 190.85(1)(c)

I. STATED FINDINGS:

1. That for the past eight weeks, the August 16, 1993 Onondaga County Grand Jury has conducted an investigation into an allegation of criminal fraud, under the Election Law of New York State, regarding a caucus conducted on May 6, 1993, by a major political party in a town in Onondaga County.

2. That during the course of the investigation, the Grand Jury has received testimony from twenty-four witnesses and has received ten exhibits. These witnesses have included a county chairman of a major political party, election commissioners of both major political parties, an attorney familiar with the law of the case in issue and many eyewitnesses to the events of May 6, 1993, from both sides of a political battle within the town.

3. That the Grand Jury finds as a result of hearing these witnesses by the preponderance of the credible evidence as follows:

a. That a caucus is a means of designation of party candidates for elected town office by which all enrolled members of that political party are eligible to vote for town wide candidates by appearing at the caucus and establishing their eligibility as to enrollment and residence[1]

b. That a caucus may be held at any time prior to the date for certifying designated nominees for the November election and that certification need not be made prior to that date even when the caucus is held months prior to that date.

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[1]Enrolled voters residing in a subdivision of the town, e.g., a "ward", must reside in the ward to vote for ward nominees.

c. That the notice requirements for holding a caucus include publishing in a newspaper not less than one nor more than two weeks prior to the caucus or by posting in ten public places not less than ten days before a caucus.

d. That the local party committee is free to set the date of the caucus.

e. That in the town in question, the town committee called unanimously for the caucus to be held on May 20, 1993. It was also voted unanimously that a "Meet the Candidates" night, wherein individuals desiring nomination might speak to eligible voters would be held on either May 6, or May 13, 1993.

f. That it was later determined because of availability of a meeting place that May 6, 1993 would be "Meet the Candidates" night.

g. That prior to May 6, 1993, there was a publication of May 20, 1993 as the date for the caucus.

h. That prior to May 6, 1993, there may have been a posting in ten public places of a caucus being held on May 6, 1993.[2]

i. That had candidates known that a caucus would be held on May 6, 1993, they would have gathered supporters at the "Meet the Candidates" night, to support them at the caucus.

j. That on May 6, 1993, only those potential nominees who were supported by the Town party chairperson knew of the caucus planned for May 6th. The vast majority of potential voters and potential nominees, not having seen the postings and having received postcards from the committee to that effect, believed that May 6 would be solely a "Meet the Candidates" night, the function of which

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[2] A claim was made by the individual calling the caucus that he or she posted notice in required public bulletin boards within the town ten days prior to election. Oddly, they were seen only by candidates the person supported.

is clear by its title. Because of this, the potential nominees gathered no supporters for May 6th, rather asking them to appear on May 20th, the formerly agreed upon date of the caucus.

k. That as a result of the surprise caucus called on May 6th by the Town chairperson, despite publication of May 20th, as the caucus night, only those people who knew in advance of the plan to hold a caucus on May 6th, had their supporters present.

l. That even with no supporters lined up, the group surprised by the Town chairperson holding a caucus on "Meet the Candidates" night, still had enough votes to elect a temporary chairman of the caucus, a required official under the election law, whose function is to preside over the caucus. By means of disqualifying qualified voters, and qualifying non-qualified voters, however, the Town Party chairperson was able to declare that he or she was the elected temporary chairman of the caucus, whereas it appeared that another candidate for temporary chairman of the caucus had received more votes.

m. That during subsequent voting, the person with the most votes was not necessarily declared the winner in at least one contest and that some subsequent voting took place without the "surprised" group taking part as the building where the caucus was held was cleared by Sheriff's deputies when order could not be restored.

n. That among the irregularities which took place during the voting was a fourteen year old child voting, people voting twice during one contest, people voting out of their wards, non-qualified voters voting and no effort being made to check voters qualifications against current enrolled voter lists.

o. That the candidates selected by this caucus were certified by a Certificate of Election with the Onondaga County Board of Elections on April 11, 1993 and that the Board of Elections has no power to refuse to certify

a nominating petition which is valid on its face.

p. That the Election Law allows ten days from the filing of the petition for a challenge of its results to be brought in New York State Supreme Court. In order to properly seek redress within the ten day period:

> 1. An Order to Show Cause must be drafted and signed by a Supreme Court Justice. This Order, since it must put all parties on notice, can be cumbersome in nature, containing extensive affidavits from all interested petitioners.[3] In the instant case, it took seven of the ten days to draft the Order. This is not unusual for a case involving the number of petitioners and required affidavits as in this matter.
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> 2. All respondents must be served with the Order to Show Cause. In this case, only three days were left after the Order to Show Cause was obtained in which to serve process upon each and every one of the necessary parties. A necessary party is anyone whose rights could be affected by the relief sought by petitioners. If each of the parties is not served within the ten day period, of which three or so days would normally be remaining after the required papers are prepared and signed by the Supreme Court Judge, the action cannot commence and the results of the challenged proceeding would stand.

q. That in the instant case, there were ten such parties in an action brought by one set of six petitioners and twelve such respondents served in a similar action by another petitioner.

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[3] "Petitioner" is the name for parties bringing an action served against "respondents", who are the parties against whom relief is sought.

r. That because of the rigorous standards of the Election Law, designed to prevent confusion as to naming proper candidates during the short period between primary elections in September and the general election in November, neither of these suits survived Judicial review as to timeliness since neither of the parties achieved service within the strict ten day mandate of the Election Law. Both actions brought in the present situation were unsuccessful due to the present state of the law as applied by the New York State Supreme Court and the appellate division of the New York State Supreme Court.[4] In its interpretation of the mandatory service requirement of the Election Law, the appellate court refused to uphold the granting of additional time for service by the Supreme Court Justice, despite the fact that the intentional action of one of the respondents might have made service difficult or impossible in that three day curtain of opportunity already described. When this party was not served within the ten day period, even the lower court order extending the time in which to serve, could not properly extend the ten day time under the Election Law. Under the Civil Practice Law and Rules (CPLR), governing most civil procedures in the State of New York, such service would have been proper.

s. That as a result of the difficulties of service and the appellate rulings, each of the candidates nominated by the May 6, 1993 caucus, despite its obvious irregularities, is now the nominee of that party in the general election.

II. CONCLUSIONS

1. That it is a miscarriage of justice that those individuals selected at the "caucus" of May 6th are the selected nominees of this political party.

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[4] New York Supreme Court is the New York State Court of general jurisdiction where election law disputes are heard. Appeals of such disputes are heard by Appellate Division of the Supreme Court of the State of New York

2. That there is sound reasoning behind the appellate court's ruling dismissing the civil suits by the petitioners. Under the law, as it presently stands, to allow open ended service could create intolerable problems regarding the certification of candidates between September (primary dates) and November (general election).

3. That under the present state of the law, the situation presented in the instant case could be repeated in a caucus system where a small group of people could use subterfuge to play the system to their own advantage without regard to fair play and common decency.

4. That the caucus system itself is, in general, a good one and that with minor changes it could work well and resemble a democratic system rather than a "Banana Republic" coup as in the instant case.

5. That a "band-aid" approach, working on only one problem at a time will not work but that the problem must be approached in totality. For example, amending the Election Law service requirements to replicate the more liberal provisions of the CPLR might create more problems than it would solve as Election Day approaches without the electorate having certified candidates for whom to vote. The winner of such a late decided contest might have won a Pyrrhic victory with insufficient time to take on an opposing party's candidate.

Certainly the opportunity to seek redress of grievances would be easier if the mandatory rules of service upon all affected parties were waived, but this also would be contrary to fair standards of jurisprudence wherein all parties whose rights are at issue must have notice of the issue and a chance to respond.

If an earlier date were set for a caucus, but no change in the time in which to file the certificate of nomination, this too would not diminish the opportunity for fraud. Nor would a specific date for filing solve the problem if it did not present more of an opportunity to serve a potential respondent with process.

Clearly, notice to potential voters of a caucus is critical to both opening up the process and avoiding the possibility of cheating. It would probably suffice if the Board of Elections were mandated to send out notice of caucus dates to all enrolled party voters in the jurisdiction of the caucus, but here economic reality sets in. It can hardly be argued that it is sound fiscal policy to send out thousands of notices where less than a hundred voters would normally be expected.

With this in mind, the Grand Jury respectfully submits the following proposals for legislative change in the areas of notice of the caucus, time in which the caucus must be held, time in which a Certificate of Nomination must be filed and manner of process of service.

RECOMMENDATIONS

I. Notification of a caucus should include the following mandates:

a. Publication in an approved newspaper as is currently practiced or posting in ten public places within the time frames presently specified but with the following mandates:

1. In addition to the publication or posting;

i. Notice must be sent to the Board of Elections which must post it at their office at a place accessible to the general public.

ii. Notice must be sent to the Town or Village Clerk who must post it in the Town or Village Hall, at a place accessible to the general public.

II. The time of all caucuses shall be mandated to be within a specified time frame of two weeks and at a time far enough in advance of the election to allow for court action in a timely manner prior to the election. Therefore, it is recommended that the "window" for a caucus be set at a two week period in either May or June as specified by legislation. If the time frame is narrowed, so will be the opportunity for trickery.

III. Filing of Certification of Nomination shall be within ten days after the caucus. This should cause no problem for the Town committee, would allow for a challenge to a disputed result in May or June and would therefore allow for the liberalizing of service requirements without the problems which would be caused by a September filing. In addition to filing the results, by means of the certificate, the Committee should be mandated to file the sign in sheet used to determine eligibility of the caucus and the minutes of the caucus by the party secretary. It is obvious that such requirements will make cheating that much more difficult.

IV. PROCESS SERVICE REQUIREMENT SHOULD BE LIBERALIZED IN EITHER OF THE FOLLOWING WAYS:

1. Allow the provisions for service within the CPLR to control for caucuses. Primaries which will still be held in September, should remain under the strictures of the Election Law; or

2. Utilize the Election Law rules of service but amended as to a caucus wherein a Supreme Court Judge, for good cause shown, may allow for an extension of the time in which to serve a necessary party.