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BY E-MAIL: ebenjamin@timesunion.com (9 pages)

February 21, 2007

Elizabeth Benjamin/Albany Times Union

RE: FACTUAL ERROR: REQUEST FOR CORRECTION
"Egan among Spitzer's selections", February 15, 2007

Dear Ms. Benjamin:

This follows up my telephone call to you at approximately 11:22 a.m. today – *via* your cellphone (518-424-0356)¹ – requesting that you correct the serious factual error in the above-entitled article, bearing your byline. A copy is enclosed for your convenience.

The article states, "The Senate did rapidly confirm Spitzer's reappointment of Chief Judge Judith Kaye to the Court of Appeals and his nomination of new Judge Theodore Jones, Jr."

I asked you where you had gotten your information that the Senate had confirmed Chief Judge Kaye's reappointment. You stated that it was from the Senate.

As discussed, I telephoned the Senate yesterday morning, February 20th, and was told there had been NO confirmation of Chief Judge Kaye's reappointment. My telephone conversations were with:

- (a) Dan Ruggles, who works in the Senate's Journal office (518-455-2245) (to which I had been directed, upon calling the Secretary of the Senate (518-455-2051). Mr. Ruggles told me that "100%", the Senate had NOT confirmed Chief Judge Kaye's reappointment;
- (b) Carole Luther, Chief of Staff for Senator DeFrancisco, Chairman of the Senate Judiciary Committee (518-455-3511), who acknowledged having seen your article –and stated that the Senate had NOT confirmed Chief Judge Kaye's reappointment.

¹ My prior voice mail messages to you – on Monday morning, February 19th; yesterday, February 20th; and moments before calling you today on your cell number – were left at the telephone number indicated in the article 518-454-5081. You stated that this is your office number, that you had not been in the office, and had not received these messages.

Upon your verification of the foregoing, I believe your correction should identify to Times Union readers how such error occurred – there having been NO Senate Judiciary Committee hearing on Chief Judge Kaye's reappointment.

It would appear that two misconceptions on your part paved the way for your credulous reporting.

Firstly, your stated belief that NO public hearing had preceded Judge Jones' confirmation, but only a "meeting" of the Senate Judiciary Committee. I replied that this was NOT so and related to you my efforts, on Monday, February 12th, to inform the Times Union of the background to that day's hearing on Judge Jones' confirmation and to ascertain which Times Union reporter had been present.

I will separately particularize what I only summarized to you as to my February 12th phone conversations with reporter James Odatto, State Editor Jay Jochnowitz, and Associate Editor Mark Spain in connection with that day's Senate Judiciary Committee hearing on Judge Jones' confirmation. For immediate purposes, suffice to say that I alerted you today to what I had alerted them last week, *to wit*, that there is serious and substantial citizen opposition to Chief Judge Kaye's confirmation – of which I had notified the Senate Judiciary Committee on February 9th, requesting to testify in opposition at its upcoming hearing on her confirmation, and which I had memorialized in a February 9th letter to the Committee. A copy of that letter is enclosed for your convenience.

Secondly, your expressed surprise that there would be any opposition to Chief Judge Kaye's confirmation – borne of your belief that her reputation conforms with reality. In fact, the reality is dramatically opposite to the Times Union's February 12th editorial "*Justice and Gov. Spitzer*", which used the word "exemplary" to describe Chief Judge Kaye's record – as likewise the Commission on Judicial Conduct's "record as a watchdog". A copy of that remarkable editorial, giving comparable high praise to Governor Spitzer, including as Attorney General, is enclosed for your convenience.

Reality rests on facts – and the verifiable facts pertaining to Chief Judge Kaye, the Commission on Judicial Conduct, and Attorney General Spitzer – are embodied in documentary evidence posted on CJA's website, www.judgewatch.org. This is most conveniently accessible *via* the top panel "Latest News", which – under a heading entitled "The Corruption of 'Merit Selection' to New York's Highest State Court" – links to a webpage for "Judith S. Kaye-2007", with further links to "Correspondence-Kaye" and to the "Commission Case". Such documentary evidence establishes Chief Judge Kaye's corruption in office, both administratively and judicially, covering up for the corruption of the Commission and Mr. Spitzer, embodied in casefile proof before her. It is so dispositive of her unfitness that the ONLY WAY she can be confirmed is IF the Senate Judiciary Committee dispenses with a hearing entirely or conducts an even more sham hearing than it customarily does.

Needless to say, the sentence in your February 15th article on Senate confirmation of Chief Judge Kaye is all-too-consistent with this scenario. That is why I yesterday called Senate Majority Leader Bruno's office to notify it of the substantial citizen opposition to Chief Judge Kaye's confirmation

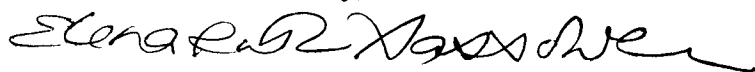
that is before the Senate Judiciary Committee.

Since you stated that Michele Morgan Bolton would be the Times Union reporter covering Chief Judge Kaye's confirmation, I have already left a voice message for her (518-434-2403) to discuss the opposition.

I look forward to your response – and hers.

Thank you.

Yours for a quality judiciary,





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

Enclosures: "*Egan among Spitzer's selections*", article, Times Union, February 15, 2007
CJA's February 9, 2007 letter to the Senate Judiciary Committee
"*Justice and Gov. Spitzer*", editorial, Times Union, February 12, 2007

cc: Mark Spain, Associate Editor
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Egan among Spitzer's selections

Former OGS chief is governor's choice to return to that job; seven other administration picks named

By ELIZABETH BENJAMIN, Capitol bureau
Click byline for more stories by writer.
First published: Thursday, February 15, 2007

ALBANY -- Gov. Eliot Spitzer on Wednesday announced eight more appointments and nominations to posts in his new administration, even as the Republican-controlled Senate has yet to act on a list of earlier nominees.

The new appointees include state government veteran John C. Egan as commissioner of the state Office of General Services.

Egan, 77, who worked under three previous governors, said his first day back at OGS, where he left the top job 18 years ago, will be Friday. He also headed the state Dormitory Authority and Department of Transportation before becoming chief executive officer at Albany International Airport in 1995.

Egan and Spitzer's other appointees need to be confirmed by the Senate, which has yet to act on any of the 18 names the governor has sent up for consideration since he took office Jan. 1. Some already are working in an acting capacity.

* The Senate did rapidly confirm Spitzer's reappointment of Chief Judge Judith Kaye to the Court of Appeals and his nomination of new Judge Theodore Jones Jr.

John McArdle, a spokesman for Senate Majority Leader Joseph L. Bruno, said there is no concerted effort to hold up Spitzer's appointments, despite the fact that Bruno and Spitzer haven't exactly been seeing eye to eye as of late.

"I don't think there would be a problem with most of them," McArdle said. "They'll go through the committee process, and we'll see."

The Legislature is on break through Feb. 26.

Spitzer cost Bruno a seat in his dwindling GOP majority by tapping former Republican Sen. Michael Balboni to serve as his public safety czar. Democrat Craig Johnson won a special election for the seat Feb. 6, bringing Bruno's majority to 33-29.

Aides to the governor and Senate Democrats have publicly acknowledged that they're trying to take control of the Senate before the 2008 elections by persuading Republican senators to switch parties or take jobs in the Spitzer administration.

McArdle said some have "voiced concern" over at least two of Spitzer's appointments: Assemblyman Alexander "Pete" Grannis, D-Manhattan, as commissioner of the state Department of Conservation; and Angela Sparks-Beddoe, a former energy lobbyist, as chairwoman of the Public Service Commission.

The New York State Rifle & Pistol Association has raised questions about Grannis' qualifications and says he is "hostile" to gun owners and too close to animal-rights groups.

Environmentalists have raised questions about Sparks-Beddoe, noting her former employer, New York State Electric & Gas, is fighting the PSC over a decision last August, when the utility was told to cut its rates by \$37 million annually.

Egan is unlikely to face such criticism. He is a longtime friend of Bruno's, and is held in high regard by Democrats and Republicans.

The New Scotland resident said activity at the Renaissance Corp., where he has served as full-time volunteer president since retiring from the airport in 2003, has slowed dramatically. He also is executive director of the New York State Task Force on High Speed Rail.

He said he'll aim to stay with the OGS job, which pays \$136,000 annually, for at least four years.

Egan, who also is overseeing the redevelopment of the Harriman State Office Campus, expressed enthusiasm for the work ahead.

"We can always make it better," he said. "We can always examine our performance, utilize technology and the great experience and intellect of the employees to improve. We can consume less energy. We can design buildings with more efficient properties. We can purchase products in New York state at the lowest prices."

The agency, he noted, manages nearly 36 million square feet of space in 600 locations around New York; buys some 40,000 products every year for state hospitals, prisons, offices and other facilities; designs upward of \$250 million in projects; and has more than \$400 million worth of construction under way at any one time.

Spitzer's other appointments included Delmar native Nancy G. Groenwegen, president of the Civil Service Commission; Robert Hermann, director of the Governor's Office of Regulatory Reform; Barry L. Kluger, inspector general of the Metropolitan Transportation Authority; Daniel D. O'Hara, director of the New York State Fair; Robert S. Hite, member of the Public Employment Relations Board; Jerome Lefkowitz, chairman of the Public Employment Relations Board; and Eric J. Schmertz, member of the Public Employment Relations Board.

Elizabeth Benjamin can be reached at 454-5081 or by e-mail at ebenjamin@timesunion.com.

Staff writer Cathy Woodruff contributed to this report.

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February 9, 2007

Chairman John A. DeFrancisco
New York State Senate Judiciary Committee
Albany, New York 12247

ATT: Carole Luther, Chief of Staff

RE: (1) CJA's January 16, 2007 letter pertaining to Senate Judiciary Committee procedures & request to testify in opposition to Senate confirmation of Brooklyn Supreme Court Justice Theodore T. Jones, Jr. to the New York Court of Appeals:
 (2) CJA's opposition to Senate confirmation of the reappointment of New York Court of Appeals Chief Judge Judith Kaye & request to testify in opposition

Dear Ms. Luther:

This letter follows up my telephone call to you today, Friday, February 9th, at 11:00 a.m., which you returned approximately 15 minutes later. I then followed up with a further phone call to you shortly thereafter.

During these conversations, I reviewed with you the content of my January 16, 2007 letter, to which there had been no response. You stated as follows:

Senator DeFrancisco "will not let [me] testify" at the Senate Judiciary Committee's hearing to confirm the appointment of Justice Jones to the New York Court of Appeals. This, because, at the three previous hearings to confirm Court of Appeals judges at which I testified I had "not abided by the rules" – which you stated required me "to speak only on qualifications of the judge". In response to my question as to when Senator DeFrancisco had informed you that he would not let me testify in opposition to Justice Jones, you stated that you did not know and were "only passing on the

message”.

You further told me that Justice Jones’ confirmation hearing would be on Monday, February 12th, that the Committee does not have anything publicly available bearing upon his qualifications and fitness (except for Governor Spitzer’s notice of appointment, which you agreed to fax me – but which I have not yet received), and that there were no written procedures and standards governing the Senate Judiciary Committee’s proceedings to confirm New York Court of Appeals judges.

Additionally, you stated that the Committee has no policy with respect to providing witnesses who testify at Court of Appeals confirmation hearings with transcripts of their testimony, free of charge – and that I was the only witness who had ever requested their testimony. You agreed to ask Senator DeFrancisco if he would make such a policy so that I could have a free transcript of my testimony at the Committee’s September 14, 2006 hearing to confirm Justice Piggott’s appointment. I stated I would pay the \$.25 per page cost for the balance of the hearing, totally 81 pages altogether.

I also requested that you ask Chairman DeFrancisco to set forth, in writing, his denial of my request to testify in opposition to Justice Jones’ confirmation – and the reason therefor. I stated, in rebuttal, that: (1) my opposition testimony to the three previous Court of Appeals appointees – Judges Read, Smith, and Piggott – had each related to their qualifications and, moreover, that Chairman DeFrancisco had not cut me off from delivering my full testimony at Judge Smith’s January 12, 2004 confirmation hearing; and (2) that the Committee had not made ANY inquiry as to the basis of my intended testimony in opposition to Judge Jones’ confirmation – none having been identified by my January 16, 2007 letter requesting to testify.

Finally, in connection with Governor Spitzer’s just-announced reappointment of New York Court of Appeals Chief Judge Judith Kaye, who I identified to you as a corrupt judge, I gave you notice that the Center for Judicial Accountability, Inc. (CJA) strenuously opposes her confirmation and reiterated that the same information as my January 16, 2007 letter had requested in connection with Justice Jones’ confirmation, I was requesting with respect to Chief Judge Kaye’s:

- (a) all publicly-available documents the Committee receives bearing upon Chief Judge Kaye’s qualifications and fitness to be reappointed to the New York Court of Appeals;
- (b) any written procedures and standards governing the Senate Judiciary Committee’s proceedings to confirm New York Court of Appeals judges. This would presumably reflect whether the Committee now requires nominees to our state’s highest court to complete a publicly-available questionnaire, such as the U.S. Senate Judiciary Committee requires in its proceedings to confirm federal judges – and whether it has developed any criteria by which it evaluates requests by members of the public to testify in opposition at its confirmation hearings.

February 9, 2007

I also requested to testify in opposition to Chief Judge Kaye at the Committee's upcoming confirmation hearing. In that connection, I expressly requested that you tell Chairman DeFrancisco that to the extent that testimony is limited to 10 minutes, mine would be exclusively devoted to Judge Kaye's corruption in her judicial capacity as Chief Judge of the New York Court of Appeals, as well as in her administrative capacity as head of New York's court system. I specifically identified that I would be testifying about what she had done, both judicially and administratively, with respect to CJA's public interest lawsuit against the New York State Commission on Judicial Conduct – and that among the substantiating proof were my final two motions in the case, copies of which I had provided during my March 17, 2003 meeting with Chairman DeFrancisco and Ranking Member Malcolm Smith. I also stated that I would be testifying as to Chief Judge Kaye's role in the corruption of the state judicial appointments process.

Additionally, I informed you that there were numerous other people who, likewise, were strenuously opposed to Chief Judge Kaye's confirmation and wished to testify in opposition at the Committee's hearing – all of them with testimony relating to Chief Judge Kaye's corruption in her judicial capacity, in her administrative capacity, or both. I stated that they would be contacting the Committee separately.

As you told me that the Committee had not as yet scheduled any date for its hearing on Chief Judge Kaye's confirmation, please advise promptly upon its scheduling so that all concerned may be guided accordingly.



Thank you.

Yours for a quality judiciary,



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

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Justice and Gov. Spitzer

He takes giant steps to improve the courts and ensure the integrity of the bench

First published: Monday, February 12, 2007

As a former attorney general, Eliot Spitzer served within the judicial system, flaws and all. As governor, Mr. Spitzer now has the power to do something about those flaws. And, thankfully, he is wasting no time doing just that.

* Last Wednesday, Mr. Spitzer took the latest step toward ensuring the integrity of the state courts by nominating Chief Judge Judith Kaye for another term. Judge Kaye's record is exemplary. She has been a tireless advocate for a long list of overdue reforms, on issues ranging from the burden of jury duty to the need to replace New York's Byzantine court structure with a streamlined, efficient system that serves the needs of all New Yorkers. Yet without Governor Spitzer's nomination, she would have been forced to step down when her current term expires in March, depriving her of an opportunity to see through her far-reaching agenda before she reaches the mandatory retirement age of 70 in two years. Credit Mr. Spitzer for extending her wise leadership.

Just days before the Kaye nomination, Mr. Spitzer had turned his attention to New York's deplorable reputation for shortchanging programs that provide legal services to the poor. Now that reputation is about to change for the better, as the governor has included \$4.6 million for legal aid services in his first budget.

The new money, plus another \$5 million recommended by the state judiciary, will help close a widening gap in legal aid to the indigent. In 1998, a commission appointed by Judge Kaye found that a \$50 million investment in civil legal services was needed to ensure equal access to justice for all those in need. Yet the recommendation went largely unheeded, although the Assembly did provide member item money to keep some legal services programs afloat. Private donations and matching grants also helped to fill the void, but legal services programs are still in need, as Governor Spitzer recognizes.

The governor's first budget also includes pay raises for state judges, as long sought by Judge Kaye. Just as important, the governor wants to end the old practice of linking judicial salaries to pay hikes for legislators, who are subject to the political winds of the moment. The linkage punishes judges, who work full-time and whose case loads are steadily rising. Judges have received only two pay raises in the last 19 years, and are far behind the \$162,100 salary earned by their counterparts on the federal bench.

* Mr. Spitzer still needs to do more, however. His budget includes a net increase of only \$22,000 to the \$2.8 million budget of the state Commission on Judicial Conduct, which has the power to reprimand or call for the removal of errant judges. The commission has an exemplary record as a watchdog, yet its staff and budget have been sharply reduced over time. The commission seeks a \$5 million budget, which would bring it to the level, adjusted for inflation, when it was established some three decades ago. It's a fair request that should be granted.

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