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September 28, 2006

Rick Karlin, Albany Times-Union

RE: The Timely, Electorally-Explosive, & *Readily-Verifiable* Documentary Evidence of the Corruption of "Merit Selection" to NY's Highest State Court: Bringing Down NY Senate Judiciary Committee Chairman John DeFrancisco, Would-Be Senate Minority Leaders Malcolm Smith & Eric Schneiderman – and Would-Be Governor Eliot Spitzer, Among Others

Dear Mr. Karlin,

This follows up our phone conversation yesterday afternoon, for which I thank you – most particularly because of your willingness to re-examine your contribution to Times-Union coverage of Justice Pigott's confirmation to the New York Court of Appeals.

As discussed, the SOLE report you provided of what you witnessed at the Senate Judiciary Committee's September 14, 2006 "hearing" to confirm Justice Pigott's nomination to the New York Court of Appeals was part of a September 15th article focused on Judge George Bundy Smith's final day on the Court of Appeals. Entitled "*A voice of justice bids farewell*", you share a by-line with Michele Morgan Bolton, whose name precedes yours. Its pertinent text is as follows:

> "Pigott's nomination sailed through the Senate Judiciary Committee Thursday. A confirmation vote is scheduled for today.
>
> 'You know what it is like to be in the trenches,' Sen. John DeFrancisco, R-Syracuse, who chairs the committee, said to the nominee.
>
> Pigott drew praise for his efforts as an Appellate Division justice to be more responsive to lower courts, including an initiative in which he traveled across his western New York judicial department to convene court in various locales.
>
> Supporters also spoke of his understanding that legislators, not judges, make the law. That was important to Republican members of the Judicial Committee, some of whom have complained that Cuomo-era appeals judges were too activists and liberal for their tastes."

When I asked you why you had omitted any mention of the fact, witnessed by you, that there was opposition to Justice Pigott's confirmation – which Chairman DeFrancisco had halted me from orally presenting – you stated your belief that the Times-Union had already "quite extensively" covered that the "process" was "faulty". You further stated that you had "limited space", and that it was "another story for another time".

This view that my testimony was about "process" reflects your credulous acceptance of Chairman DeFrancisco's stated excuse for having cut me off. It is, frankly, incomprehensible, as you heard the testimony I was reading at the time, had an exact written copy of it – which I had handed to you before the "hearing" began[1] – and heard my exchange with Chairman DeFrancisco. By that exchange, I emphasized that "process" is a legitimate, indeed determinative, basis of opposition for what is required to be, but is not, "merit selection", while at the same time asserting that my testimony was NOT about "process", but about Justice Pigott's qualifications and fitness, as to which I had brought substantiating evidentiary proof. This proof, which I had laid out on the tiny table from which I testified, included the casefile of a lawsuit against the New York State Commission on Judicial Conduct. This, I lifted up, expressly requesting that Justice Pigott be questioned about it.

In our conversation yesterday, I further explained the importance of "process" – as "merit selection" of Court of Appeals judges is the very basis upon which voters, in 1977, relinquished their constitutional right to elect their Court of Appeals judges. I also stated my belief that the Times-Union has not given coverage of the "faulty" "process" of "merit-selection" to the Court of Appeals — notwithstanding it has editorially endorsed extending merit-based appointment to other, presently elected courts in response to the federal decisions striking down the convention system for electing New York Supreme Court justices[2]. To your credit, you confessed you might have been confusing Times-Union coverage of the "faulty" convention system with coverage of the faults of "merit selection".

It is truly unfortunate – and also incomprehensible – that having sat right next to me at the "hearing", you did not, upon its conclusion, turn to me for comment or to clarify any confusion you may have had as to what you had witnessed or about the content of the statement I had been barred from presenting. From your questions to me yesterday, asking about the grounds of CJA's opposition to Justice Pigott's qualifications and fitness, including what substantiating evidence I had brought to the "hearing", it seems you had not read the portion of my written testimony from which Chairman

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1 This written testimony is posted on CJA's website, www.judgewatch.org, accessible *via t*he sidebar panel "Judicial Selection-State-NY: The Corruption of 'Merit Selection' to New York's Highest State Court – Eugene F. Pigott, Jr.". This is where the Syracuse Post-Standard editorial "*A Flawed Process: Judicial nominees should be subject to more public scrutiny*" (January 27, 2003), which I held up at the "hearing" – and a copy of which I also gave you – is posted. The stenographic transcript of the "hearing", already ordered, will be posted there, too, upon receipt.

2 See "*Choosing judges*" (January 31, 2006) and "*Strike two*"(September 1, 2006), copies of which are enclosed for your convenience..

DeFrancisco interrupted me, notwithstanding you had adopted the view that I was testifying about "process".

As you are now focused on the upcoming elections, I will reiterate the important proposal for press coverage embedded in my public response at the "hearing" to Chairman DeFrancisco's legally and factually insupportable conduct, *to wit*, that it is because the press has NOT examined Senator DeFrancisco's chairmanship of the Senate Judiciary Committee with respect to judicial selection and discipline that he is now running unopposed, or virtually so, for re-election. Indeed, he could never be re-elected if the press ever scrutinized his conduct in that crucial position. Rather, he would rightfully be prosecuted for corruption – as likewise the Senate Judiciary Committee's ranking member, Malcolm Smith, reportedly vying to succeed David Paterson as Senate minority leader. Similarly, Senate Judiciary Committee member Eric Schneiderman, also reportedly contending for such significant post.

Yet, this electorally-powerful proposal – critical as it is – pales against proposals for press coverage resting on much the same evidence, directly impacting on the key statewide races for governor, for attorney general, and for U.S. Senator from New York. I draw your attention to CJA's August 25, 2006 memo to New York media, a copy of which I enclose, together with the August 25, 2006 coversheet which had transmitted it to your boss, Jay Jochnowitz,[3] and to Editorial Page Editor Joanne Crupi It gives a thumbnail sketch of Attorney General Spitzer's corruption in office, as summarized in correspondence posted on CJA's website, www.judgewatch.org, accessible *via* the sidebar panel "Elections 2006: Informing the Voters". In pertinent part, the August 25, 2006 memo states:

> "With respect to Attorney General Spitzer, elected in 1998 on a pledge that he was going to clean up government and establish a 'public integrity unit', our correspondence summarizes that his 'public integrity unit' was a hoax – and that Mr. Spitzer refused to investigate and root out systemic governmental corruption involving a pattern and practice of litigation fraud engaged in by his predecessor Attorneys General in defending state judges and the Commission on Judicial Conduct, sued for corruption – for which they were rewarded with fraudulent judicial decisions. Instead, he engaged in the same litigation fraud to defend the Commission when we sued it for corruption – for which state judges, at every level, rewarded him with fraudulent judicial decisions. In so doing, Attorney General Spitzer not only perpetuated a documentably corrupted Commission on Judicial Conduct, leaving the People of the State of New York defenseless against the most flagrant lawlessness by state judges – including those who 'threw' the lawsuit – but perpetuated the corruption of the state judicial appointments process, including 'merit selection' to

[3] Mr. Jochnowitz was in the Times-Union office at the Capitol on September 14th when I came by following the Senate Judiciary Committee "hearing". I believe I left with him a copy of CJA's August 25, 2006 memo, as well as both a copy of CJA's written testimony in opposition to Justice Piggott's confirmation and the Syracuse Post-Standard editorial.

the New York Court of Appeals, which the lawsuit encompassed." (underlining added).

The correspondence on our "Elections 2006" webpage best summarizing Mr. Spitzer's active role in the corruption of "merit selection" is CJA's June 20, 2006 memo-letter to the Attorney General candidates – Democratic nominee Andrew Cuomo and Republican nominee Jeanine Pirro, among them. The substantiating enclosures to this 3-1/4 page letter include:

(1) CJA's 4-page story proposal "*The REAL Attorney General Spitzer – Not the P.R. Version*", which identifies that *immediately* upon Mr. Spitzer's announcement of his establishment of his "public integrity unit", which was on January 27, 1999, I publicly presented him with a fully-documented complaint for investigation as to the corruption of "merit selection" to the New York Court of Appeals;

(2) CJA's letter to the editor, "*An Appeal to Fairness: Revisit the Court of Appeals*", published in the New York Post on December 28, 1998, reciting facts reflecting the Senate Judiciary Committee's role in the corruption of "merit selection" to the Court of Appeals pertaining to its confirmation "hearing" and whose concluding sentence, "This is why we will be calling upon our new attorney general as the 'People's Lawyer,' to launch an official investigation", was actualized by my public presentation of that fully-documented complaint to Mr. Spitzer on January 27, 1999 for investigation by his "public integrity unit".

Reinforcing the relevance and timeliness of a journalistic expose of Mr. Spitzer's corruption in office involving "merit selection", I enclose a September 6th Associated Press article, "*Faso says Spitzer's judicial proposal bad idea*", about the very different responses of gubernatorial candidates Spitzer and Faso to what should replace the unconstitutional convention system for electing Supreme Court justices. Mr. Spitzer, unlike Mr. Faso, favors a constitutional amendment abolishing judicial elections for "merit selection". In other words, he is trying to pawn off on voters the very kind of *verifiably-corrupt* process he has knowingly and deliberately perpetuated and facilitated as Attorney General, causing vast, irreparable injury to New Yorkers individually and to our state as a whole.

Since the elections are rapidly approaching, please advise by next Wednesday, October 4th, as to whether you will pursue the fully-documented, election-altering stories embodied by CJA's June 20, 2006 letter and related June 26, 2006 letter to Mr. Faso. As I have already offered these major stories in various ways and times to your colleagues – Jim Odato and Elizabeth Benjamin, as well as to your boss, Jay Jochnowitz – the four of you not only constituting the full Times-Union team covering state government and the elections, but its "Capitol Confidential" bloggers – I am sending a copy of this letter to each of them, with a request that they, likewise, advise me as to their intentions by Wednesday, October 4th. That will leave sufficient time for me to follow up, if necessary, with the Times-Union's managing and executive editors, the editorial board editor and editorial board members.

As always, CJA offers you and your colleagues our full assistance – including by transmittal of hard copies of ANY and ALL of the *readily-verifiable* substantiating proof posted on CJA's website, or inspection of original documents. Needless to say, no proof is more threshold to your election reporting than that reflecting transmittal to, and involvement by, our incumbent and would-be public officers.

Yours for a quality judiciary, meaningful elections,
and responsible journalism,

[signature]

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

Enclosures: (1) Times-Union editorials:
Choosing judges" (January 31, 2006); "*Strike two*"(September 1, 2006)
(2) CJA's August 25, 2006 transmittal sheet and memo on the electoral races for NY Governor, U.S. Senator from NY, and NY Attorney General
(3) September 6, 2006 AP story, "*Faso says Spitzer's judicial proposal bad idea*", by William Kates

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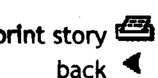
back



Choosing judges

A federal judge orders changes in the way New York Supreme Court candidates are selected

First published: Tuesday, January 31, 2006

If state lawmakers thought they could once again duck the thorny issue of judicial reform, they will have to think again. A federal judge has ruled unconstitutional the process by which Supreme Court judicial candidates are selected -- which is to say, by political party bosses. And he wants the Legislature to come up with a better system.

Barring a successful appeal, there will be an immediate change, thanks to U.S. District Judge John Gleeson of the Eastern District, who ordered that voters have the opportunity to select candidates through primaries. But his ruling specifies that the final solution will be up to the Legislature.

The ruling represents a victory for the Brennan Center for Justice at New York University, which brought suit against the status quo, and the voters, who are more often than not denied any choice in the voting booth. It's also a victory for qualified candidates who lack connections to their county political bosses, whose support is vital to getting on the ballot. For generations, party bosses have made a mockery of the elective system by handpicking candidates and then striking cross-endorsement deals with the political opposition.

The danger now is that the Legislature, which was unable to agree on judicial reform last year, will see the judge's ruling as a permanent solution and drop further efforts to improve the process. But the only genuine reform is one that many critics, including this page, have long advocated -- an appointed judiciary.

The best way to wring politics out of the process is to let independent panels decide who is best qualified to serve. Moreover, an appointed judiciary would be spared the high cost of running in primaries and general elections -- costs that could result in a system where only affluent candidates could afford to run.

While the Republican-led Senate showed scant interest in judicial reform last year, the Democratic-led Assembly did pass some reform measures, including a call for public financing of judicial campaigns. Regrettably, the Assembly reform package also proposes that candidates be screened by panels composed of local non-profit organizations. No. The screening should be done by independent, non-partisan panels that are qualified to assess a candidate's qualifications, and appointments should be based on those qualifications. Nothing else.

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Strike two

A federal appeals courts upholds a ruling striking down New York judicial conventions

First published: Friday, September 1, 2006

Time is running out for state lawmakers to change the way Supreme Court judges are elected in New York. In January, U.S. District Court Judge John Gleeson ruled that the traditional system of selecting candidates at judicial conventions is unconstitutional because it gives party bosses, not the people, the power to decide who will run. But the judge also agreed to stay his order that required open primaries, pending an appeal by political leaders and the state Board of Elections. On Wednesday, that appeal failed, as the 2nd Circuit of Appeals upheld Judge Gleeson's ruling.

What now? An appeal all the way to the U.S. Supreme Court may be possible, but it would be unadvisable. There's simply no good argument to be made for New York's unique convention system. It is undemocratic on its face. Conventions give party insiders the power not only to select candidates but also to strike cross-endorsement deals that are often based on patronage. All too often the voters have no real choice at the polls.

Judge Gleeson's order specified that candidates should be selected through primaries until the Legislature agrees on a new system. But state leaders have protested that primaries can be expensive, especially in large judicial districts that span several counties. Thus, the advantage would fall to candidates who are wealthy enough to finance their own campaigns, while leaving other hopefuls beholden to deep-pocket contributors.

These arguments may appear to have the best interests of candidates at heart, but they are smoke screens for stalling. There's an easy way to address the money issue: Allow for public financing of campaigns. Yet the Legislature remains divided on this simple solution. Sen. John DeFrancisco, R-Syracuse, chairman of the Senate Judiciary Committee, remains cool to the idea. His counterpart, Assemblywoman Helene Weinstein, D-Brooklyn, has introduced a public financing bill but also calls for screening panels composed of members of nonprofit groups to vet potential candidates. But why, when the goal should be to let the voters -- not party insiders and not panels -- make those choices.

Ordinarily, the differences between the Senate and Assembly bills would lead to an impasse that could drag on for years, or decades. Only this time around, the courts have ordered that changes be made this year, not after 2007 as the Legislature had requested in its appeal.

So the clock is ticking. Nonetheless, it is still not too late to address the one reform that should have been adopted years ago -- an appointed judiciary. True, such a change would require a constitutional amendment, which requires the approval of two consecutive legislatures before it can appear on the ballot. But that needn't be an obstacle. A reform package could call for publicly funded open primaries until the voters decide whether they want an appointed system. It's all so simple, if only the insiders would stop stalling.

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BY FAX: 3 pages
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DATE: August 25, 2006

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

RE: **YOUR UPCOMING EDITORIAL ENDORSEMENTS AND ONGOING ELECTION COVERAGE**: The Races for New York Governor, U.S. Senator from New York, and New York Attorney General

Memo enclosed.

Elena Ruth Sassower

CENTER for JUDICIAL ACCOUNTABILITY, INC. *

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DATE: August 25, 2006

TO: **NEW YORK MEDIA: EDITORIAL BOARDS & NEWS DEPARTMENTS**

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

RE: **YOUR UPCOMING EDITORIAL ENDORSEMENTS AND ONGOING ELECTION COVERAGE:** The Races for New York Governor, U.S. Senator from New York, and New York Attorney General

This is to bring to your attention – to aid you in both your upcoming editorial endorsements and ongoing election reporting – primary source documentary evidence establishing the unfitness of the Democratic and Republican candidates for Governor, Senator, and Attorney General. Such evidence is posted on the Center for Judicial Accountability's website, www.judgewatch.org, accessible *via* the sidebar panel "Elections 2006: Informing the Voters".

Scroll down the "Elections 2006" webpage to the section entitled "Searching for Champions", posting our correspondence to all Democratic and Republican candidates for Governor: Tom Suozzi and John Faso, for U.S. Senate: Jonathan Tasini, John Spencer, and Kathleen Troia McFarland, and for Attorney General: Andrew Cuomo, Mark Green, Charlie King, Sean Patrick Murphy, and Jeanine Pirro – except for Attorney General Eliot Spitzer and Senator Hillary Rodham Clinton, whose corruption in office the correspondence summarizes.

With respect to Attorney General Spitzer, elected in 1998 on a pledge that he was going to clean up government and establish a "public integrity unit", our correspondence summarizes that his "public integrity unit" was a hoax – and that Mr. Spitzer refused to investigate and root out systemic governmental corruption involving a pattern and practice of litigation fraud engaged in by his predecessor Attorneys General in defending state judges and the Commission on Judicial Conduct, sued for corruption – for which they were rewarded with fraudulent judicial decisions. Instead, he engaged in the same litigation fraud to defend the Commission when we sued it for corruption – for which state judges, at every level, rewarded him with fraudulent judicial decisions. In so doing, Attorney General Spitzer not only perpetuated a documentably corrupted Commission on Judicial Conduct, leaving the People of the State of New York defenseless against the most flagrant lawlessness by state judges – including those who "threw" the lawsuit – but perpetuated the corruption of the state judicial appointments process, including "merit selection" to the New York Court of Appeals, which the lawsuit encompassed.

* The **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, based in New York, working, since 1989, to ensure that the processes of judicial selection and discipline are effective and meaningful.

With respect to Senator Clinton, she not only covered up – and thereby perpetuated – the systemic governmental corruption challenged and chronicled by the documentary record of our lawsuit against the Commission, but, additionally, the corruption of federal judicial selection and discipline. To accomplish this and effectuate a behind-the-scenes political deal seating a corrupt New York Court of Appeals judge on the Second Circuit Court of Appeals, she maliciously set in motion and complicitly acquiesced in my wrongful arrest, prosecution, conviction, and six-month incarceration on a bogus "disruption of Congress" charge. My "crime"? At the U.S. Senate Judiciary Committee's public hearing to confirm the judge, I respectfully requested to testify in opposition based on his on-the-bench corruption, as established by the record of our lawsuit against the Commission – a record Senator Clinton was duty-bound to have examined, making findings of fact and conclusions of law.

All the summaries presented by our posted correspondence identify the substantiating primary source documentary evidence – and where it is posted on our website. You can thereby *readily verify* its serious and substantial nature, warranting criminal investigation and prosecution of Attorney General Spitzer and Senator Clinton for corruption.

In presenting this to the other Democratic and Republican candidates, as would-be champions of the public, we requested that they use the opportunity of their candidacy to expose the corruption of these incumbents for the benefit of all New Yorkers. That they did not do so – indeed, that they did not even favor our request for a meeting so that we could answer their questions and provide them with hard copies of the website-posted evidence – preferring instead to mount candidacies made futile by the landslide leads enjoyed by Attorney General Spitzer and Senator Clinton and, in the case of the candidates endeavoring to succeed Mr. Spitzer as Attorney General, extolling him and seeking the mantle of his "greatness" – can only be explained one way. Notwithstanding their posturing and rhetoric about being reformers who are going to "fix Albany" and make government work, they will NOT touch the vested political interests and their friends and patrons involved in the systemic governmental corruption that reaches into and pollutes the judiciary. Such will remain unchanged upon their election – subjecting countless innocent New Yorkers and our state at large to continuing injustice and irreparable injury.

<u>Only the media can make the difference</u>.

We offer you our fullest assistance so that you can discharge your First Amendment responsibilities to the voters by reporting on this powerful election-altering evidence – rather than on polls, financial war chests, political endorsements, and handicapping that have become the standard fare of political reporting, contributing to the demise of competitive elections.

Elena Ruth Sassower

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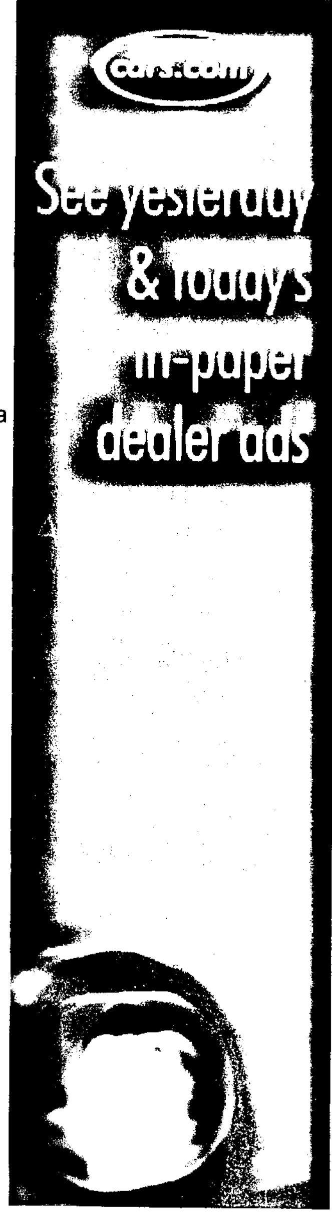
Faso says Spitzer's judicial proposal bad idea

By WILLIAM KATES
Associated Press Writer

September 6, 2006, 4:05 PM EDT



SYRACUSE, N.Y. -- Democrat Eliot Spitzer's plan to abolish judicial elections and give the governor power to appoint the state's trial judges shows he is "power hungry" and wants to deny voters the chance to choose their own jurists, Republican gubernatorial candidate John Faso said Wednesday.

For years, state Supreme Court justices have been nominated at conventions controlled by party bosses. Last month, a federal appeals court upheld an earlier ruling that declared the method unconstitutional and that ordered the state to elect judges through more open primaries.

Spitzer, who is running for governor, on Wednesday told the New York Daily News that a better way to select state justices would be to have them appointed by the governor, sparing judges from having to campaign for office.

"Look, we all know this is the last vestige of real patronage in the political party structure," he told the newspaper. "What I want is merit selection."

He said if he's elected, he'll push for a constitutional amendment eliminating judicial elections.

Faso, in Syracuse to promote his Medicaid reform proposals, said the federal courts had made a rational decision but he criticized Spitzer's plan.

"I think it is a fundamentally bad idea to have the governor appointing all the supreme court justices in the state," Faso said.

"Mr. Spitzer seems to want to consolidate an awful lot of power in his hands. I think that Mr. Spitzer is certainly power hungry and this is an example of how he is overreaching already," Faso said.

"I don't think taking away the people's right to choose those judges is a good idea. Eliot Spitzer wants to take the power to himself and away from the people," Faso said.

Faso agreed that it was important to insulate judicial candidates as much as possible from the political process. Instead, he suggested nonpartisan election of judges or imposing restrictions on how money could be raised in judicial campaigns.

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