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Kris Fischer, Editor-in-Chief

New York Law Journal

RE: LETTER TO THE EDITOR:

"Pigott Breezes Through Hearing"/"Pigott Sails Through Confirmation Hearing", New York Law Journal, September 15, 2006

To the Editor:

It is fortunate that the New York State Senate Judiciary Committee hearing to confirm the nomination of Justice Pigott to the New York Court of Appeals was stenographically recorded so that it can be independently verified how ill served the bench and bar were by the Law Journal's front-page article "*Pigott Breezes Through Hearing*", continued inside as "*Pigott Sails Through Confirmation Hearing*" (9/15/06).

Once again, as in the past, the hearing was "prettied up" by the Law Journal's correspondent so as to make it appear that it had some substance, when, by any objective standard, it was a shameful, sham exercise. More than that, it was a violation of the public's right to the "merit selection" of New York Court of Appeals judges, guaranteed to them under New York's constitution and for which, in 1977, they relinquished their constitutional right to elect Court of Appeals judges.

As your correspondent knows from having attended many years of Senate Judiciary Committee hearings to confirm nominees to the Court of Appeals, the hearing on Justice Pigott's confirmation was the first where questions of the nominee were posed by the Committee at the end of the hearing – rather than at the outset, which is where his article makes it appear. The Committee did not question Justice Pigott until after I protested that no questions had been asked of him, which I did when Chairman DeFrancisco cut me off – after less than two minutes – from presenting the Center for Judicial Accountability's opposition testimony. To reinforce the Committee's obligations, I held up an editorial from Chairman DeFrancisco's own hometown paper, the Syracuse Post-Standard, "*A Flawed Process: Judicial nominees should be subject to more public scrutiny*". That important editorial, published more than three years ago, decried what had happened at the Committee's January 22, 2003 hearing to confirm Judge Read's nomination to the New York Court of Appeals – where the Committee had not asked her a single question – and I – the only speaker in opposition – had been similarly halted from testifying, with Senator DeFrancisco's memorable words, "Pack your bags".

Law Journal readers know nothing about the outrage of that earlier hearing because the same Law Journal correspondent decided to skip it so that he could be at the New York State Bar Association's annual meeting. This, reflective of his knowledge, never shared with Law Journal readers, that the Committee's confirmation hearings are a *pro forma* charade and that – as in the past – he was not going to report CJA's serious and substantial opposition, embodied in a written statement, which I had discussed and provided him, in advance. Indeed, the Law Journal's coverage of that hearing consisted of a photo of Judge Read at her confirmation hearing, accompanied by a false caption "*Smooth Sailing*".

Your correspondent's coverage of CJA's opposition to Justice Pigott's confirmation – the only opposition at the hearing – begins as follows: "Ms. Sassower complained primarily of the selection process that resulted in Justice Pigott's nomination, noting that the Commission on Judicial Nomination operates in secrecy and divulges virtually nothing about the candidates it deems qualified to sit on the Court of Appeals." Yet, it was not about the Commission that I complained in the 11 sentences of the written statement I sufficed to read before Chairman DeFrancisco commanded that my testimony was ended. It was about the Senate Judiciary Committee's failure to make any information about Justice Pigott's qualifications publicly-available, such that the public and the press are unable to investigate what he purports to be his relevant background and credentials.

Your correspondent then continues: "She also questioned Justice Pigott's role as a onetime member of a panel that screened judicial candidates, though not Court of Appeals candidates, for Mr. Pataki." Wholly concealed is that Chairman DeFrancisco would not allow me to set forth the facts pertaining to that important committee of which Justice Pigott was a member – facts substantiated by documentary evidence which I had brought with me and placed on the table from which I testified. Indeed, he creates the false impression that my testimony did not relate to Justice Pigott's "qualifications and fitness" to be a Court of Appeals judge. This, by his immediately following sentence: "But...Chairman DeFrancisco....repeatedly warned Ms. Sassower to confine her comments to Justice Pigott's qualifications and fitness, rather than the selection process. After several admonitions from Mr. DeFrancisco, Ms. Sassower's testimony was curtailed." Needless to say, none of my responses to Chairman DeFrancisco's "admonitions" are identified – responses exposing the utter farce of the Committee's hearing and its affront to the public's constitutionally-guaranteed right to "merit selection" of its Court of Appeals judges.

A copy of the hearing transcript, when available from the Senate Judiciary Committee, will be posted on CJA's website, www.judgewatch.org, accessible via the sidebar panel: "Judicial Selection-State/NY. That is where CJA's written testimony in opposition to Justice Pigott's confirmation is already posted, as likewise, our written opposition to five predecessor nominees for the New York Court of Appeals – the serious and substantial nature of which, both as relates to process and the nominees, the Law Journal has consistently withheld from the community it purports to serve.



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