

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8220
White Plains, New York 10602

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

Elena Ruth Sassower, Director
Direct E-Mail: judgewatchers@aol.com

BY E-MAIL (5 pages)

February 22, 2007

TO: Albany Times Union
 Associate Editor Mark Spain
 State Editor Jay Jochnowitz
 Reporter James Odato

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

RE: Background to Times Union coverage of Senate confirmation of Justice
Theodore T. Jones, Jr. as associate judge of the New York Court of Appeals –
and to its February 15, 2007 article “*Egan among Spitzer’s selections*”, falsely
reporting on Senate confirmation of the reappointment of Chief Judge Kaye to
the New York Court of Appeals

This follows up my yesterday’s letter to Elizabeth Benjamin, stating that I would separately particularize my conversations with you, on February 12th, which I had only summarized to her. This is what occurred on that date.

At approximately 1:25 p.m. on Monday, February 12th, I telephoned James Odato (518-454-5013). I asked him whether he had been at the Senate Judiciary Committee’s hearing on Justice Jones’ confirmation to the Court of Appeals. He stated that he had not and that he wasn’t sure that any Times Union reporter had been there. He suggested that I call Jay Jochnowitz (518-454-5420), which I did immediately.

Mr. Jochnowitz told me that Michele Bolton was covering Justice Jones’ Senate confirmation, but not that she had been at the Committee hearing. His view was that the hearings are “*pro forma*” and that the Times Union would be “relying on the AP feed”. I related to Mr. Jochnowitz – much as I had to Mr. Odato – the background facts with respect to the Committee’s hearing – as set forth in CJA’s written statement opposing Justice Jones’ confirmation, which I had sent to the Committee for inclusion in the record. I identified that the statement was posted on our website, www.judgewatch.org – most conveniently accessible via the top panel “Latest News” containing a

heading "The Corruption of 'Merit Selection' to New York's Highest State Court" with a link to a webpage for "Theodore T. Jones-2007".

I thereupon asked Mr. Jochnowitz who would be covering the hearing on Chief Judge Kaye's confirmation – identifying that on February 9th, by phone and by letter, I had notified the Senate Judiciary Committee that there was serious and substantial citizen opposition to her confirmation and that I had requested to testify in opposition based on Chief Judge Kaye's corruption in office, both administratively and judicially. I possibly identified that my testimony would focally describe what she had done in CJA's public interest lawsuit against the Commission on Judicial Conduct. In any event, Mr. Jochnowitz cut me off stating that he "d[id]n't have time" to hear [my] conspiracy theories". He further stated that he didn't want to hear me because "[we] do it every time" – meaning CJA had opposed prior Senate confirmation of Court of Appeals judges. I believe Mr. Jochnowitz hung up on me as I protested his comments.

At approximately 4:05 p.m., I called the Times Union, requesting to speak to an editor having supervisory oversight over Mr. Jochnowitz. I was directed to Mark Spain, for whom I left a voice mail message of complaint. Mr. Spain called back at about 4:40 p.m.

I recounted the foregoing to him and told him that CJA does not engage in "conspiracy theories", but, rather, meticulously documents the corruption of the processes of judicial selection and discipline by evidence which is independently verifiable. I told Mr. Spain that he could judge this for himself, as the documentation was posted on our website, as likewise our correspondence with Mr. Jochnowitz and other Times Union reporters, establishing that we had long ago and repeatedly provided them with this documentary evidence for their independent verification. This included the documentation establishing the good and sufficient basis for CJA's opposition to Senate confirmation of prior Court of Appeals nominees. As I recollect, Mr. Spain told me that he was on our website as we spoke and I directed him, in particular, to the sidebar panel "Press Suppression", containing a link to our "paper trail" of correspondence with the Times Union, as well as to the sidebar panel "Elections 2006: Informing the Voters", also containing our correspondence with the Times Union.

Among the correspondence I specifically discussed with Mr. Spain was that from 2002, initially arising from the Times Union editorial series on the Commission on Judicial Conduct, as well as in September 2006 resulting from Rick Karlin's non-reporting of my opposition testimony at the Senate Judiciary Committee's September 14, 2006 hearing to confirm Justice Eugene Pigott's nomination to the Court of Appeals, covering up the corruption of "merit selection" appointment.

Mr. Spain conceded the Times Union has editorially endorsed replacing judicial elections to New York's lower state courts with "merit selection" appointment. I stated that such made it all the more critical for the Times Union to report on the "behind-the-scenes" background to that day's Committee hearing to confirm Justice Jones' nomination to our highest state court – as it

demonstrated, yet again, how degraded and violative of the public's rights the "merit selection" process to the Court of Appeals had become in the 30 years since New Yorkers had relinquished their constitutional right to elect Court of Appeals judges. I answered Mr. Spain's questions as to the basis for our contention, set forth in CJA's written opposition statement, that the "merit selection" process is "unconstitutionally closed". I also explained that the only two "windows" into this closed process that the public has are: (1) the Commission on Judicial Nomination's report of nominees to the Governor – which, with respect to the candidates from which Justice Jones was chosen, was non-conforming with the findings requirement of Judiciary Law §63.3; and (2) the Senate Judiciary Committee's hearing – which was a complete charade, as reporting of my written statement would reveal. I further explained that the corruption of the Commission on Judicial Conduct, which we had long ago and repeatedly documented, in and of itself undermines "merit selection" because the Commission on Judicial Nomination relies primarily on the Commission on Judicial Conduct for information about candidates for the Court of Appeals, most of whom are already judges.

I told Mr. Spain that the focus of my intended testimony at Chief Judge Kaye's upcoming confirmation hearing would be her corruption, both administratively and judicially, in CJA's public interest lawsuit against the Commission on Judicial Conduct – a lawsuit embodying the corruption of "merit selection" and itself arising from Justice Albert Rosenblatt's nomination and confirmation to the Court of Appeals in 1998. I stated that the facts of the lawsuit and corroborating casework proof had long ago been made known to, and provided to, Mr. Jochnowitz and other Times Union editors and reporters, whose cover-up of the lawsuit and its far-reaching political ramifications would necessarily be exposed by appropriate coverage of CJA's opposition to Chief Judge Kaye. I believe it was at this point that Mr. Spain, who until then had been engaged and interactive, abruptly stated that he had been on the phone with me for "23 minutes" and that I had "done most of the talking".

Plainly, I had done "most of the talking", since it was I – not Mr. Spain – who was reporting a complaint against Mr. Jochnowitz and other Times Union editors and reporters AND substantiating it with a mountain of factual particulars, all germane to the Times Union's coverage of that day's confirmation of Justice Jones and the upcoming confirmation of Chief Judge Kaye. I told Mr. Spain that I would e-mail him CJA's written statement of opposition to Justice Jones' confirmation so that Times Union coverage could present the "behind-the-scenes" facts, concealed at the hearing. I further stated that I wished to discuss CJA's fully-documented opposition to Chief Judge Kaye's reappointment with whoever was going to be handling her confirmation so that the necessary journalistic verification of its dispositive nature could precede her confirmation hearing. Mr. Spain's response was "if you have more than rhetoric, we will factor it in".

At 5:25 p.m., I e-mailed CJA's written statement of opposition to Justice Jones' confirmation to Mr. Spain, sending copies to Messrs. Odato and Jochnowitz. Its attached documentary appendix included my February 9th letter to the Senate Judiciary Committee requesting to testify in opposition to Chief Judge Kaye's confirmation and outlining its basis.

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The Times Union's coverage of Justice Jones' confirmation appeared the next day, Tuesday, February 13th. It consisted of a single article by Michele Morgan Bolton, "*Jones sworn in as high court judge*", which made no mention of the Senate Judiciary Committee's February 12th confirmation hearing. The nearest sentence was "Jones was unanimously tapped by the Senate Judiciary Committee Monday and later approved by the full Senate". To my knowledge, the Times Union ran no additional story based on any "AP feed", although the Associated Press distributed at least one feed about the confirmation hearing, identifying that I "wasn't allowed to testify".

A handwritten signature in black ink, appearing to read "Elena S. Massowen". The signature is fluid and cursive, with "Elena" and "S." on top, and "Massowen" below.

Enclosure: "*Jones sworn in as high court judge*", article, Times Union, February 13, 2007

cc: Elizabeth Benjamin, Reporter
Michele Morgan Bolton, Reporter
Rick Karlin, Reporter

timesunion.com[print story](#) 
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Jones sworn in as high court judge

By MICHELE MORGAN BOLTON, Staff writer

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Last updated: 12:54 p.m., Tuesday, February 13, 2007

ALBANY - Gov. Eliot Spitzer's first nominee to the state's highest court - an African-American Vietnam veteran - was sworn into office this morning in a moving ceremony in Court of Appeals Hall.

Surrounded by family, friends and downstate colleagues, former Brooklyn Supreme Court Justice Theodore Jones Jr., 62, admitted to being overwhelmed.

"I take this responsibility very seriously, aware of the almost 200 years of history in this particular court," he said.

"Next to the Supreme Court of the United States, this is probably the most important appellate bench in the country."

As he acknowledged February as Black History Month, Jones said he was mindful that he stands "on the shoulders" of those who preceded him, including George Bundy Smith.

The court's first black judge retired last year after former Gov. George Pataki refused to extend his term.

Jones was unanimously tapped by the Senate Judiciary Committee Monday and later approved by the full Senate.

Chief Judge Judith S. Kaye praised Jones' integrity, intellect and independence, but said she was sad to learn, given his extraordinary people skills, that he makes everybody feel special: "I thought it was just me."

He is also known for an uncanny ability to "bend people to his will," Kaye said: "Now that skill will surely be tested."

Spitzer smiled broadly as he expressed his envy at the 'collegiality' of the high-court bench, something he said "does not exist up the hill, in the Capitol building ... with my colleagues, should I call them, in the Legislature."

"It is a place that has come to typify 'three men in a room,'" he said.

The phrase takes on new meaning in the Court of Appeals, Spitzer added, considering the make-up of the 7-member high court, dominated by four women.

"I realize here that three men in a room means you've been outvoted," he joked.

Jones was elected to the state Supreme Court in Brooklyn in 1989 and re-elected in 2003.

He handled criminal and civil cases before being named administrative judge of the court's civil term. Jones was thrust into the spotlight when he was assigned to handle the case surrounding the three-day New York City transit strike in 2005.

After Local 100 of the Transport Workers Union shut down Manhattan's public transportation system for 60 hours, Jones fined the union \$2.5 million for violating the law that bans public employees from striking, and sentenced President Roger Toussaint to 10 days in jail.

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