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Free Buffalo News Alert No. 7

What's the Big Secret?

(How State Trial Judges Are Selected in Western New York)

By James Ostrowski¹

March 27, 2006

In a few months, the political parties will be out and about gathering signatures for candidates for judicial delegate. Yet, the public knows little about this mysterious process and the parties apparently don't want you to know. Go to the websites of all major local parties and look for information about this and you will find little or none.

¹ James Ostrowski is an attorney and the President of Free Buffalo. He was a delegate to the Democratic Judicial Convention in 1977. The views expressed herein are those of the author and not necessarily those of Free Buffalo.

A lawsuit was filed to declare that this system violates the Constitution. A federal court in New York City [agreed](#),² but allowed the convention system to continue pending appeal. We can therefore expect at least one more year of the judicial convention system.

Unlike all other elected offices, nominations for the position of State Supreme Court Justice (“state trial judge”), are not determined in a primary election, but in a strange, secretive and archaic system of judicial conventions. Most people have never heard of this system; the parties don’t talk about it much publicly. Even if they knew about it, it is very difficult for citizen-activists to defeat the candidates sponsored by the machine for the position of judicial delegate. Habitually, well-known public officials permit their names to be used to ward off lesser-known challengers. These elected officials then usually do as they are told by the party chairmen. That assures they will receive full support in their next re-election effort.

Each year, there is a mad scramble among lawyers to curry favor with the five party chairmen who traditionally control the conventions. They control the conventions because they choose the delegate candidates in the first place who usually run unopposed and whose names are therefore not even on the ballot. Also, it is usually too expensive and time-consuming for anyone to oppose them. Anyway, candidates seeking the lucrative 14-year term of state trial judge compete with each other for the nomination by contributing large sums to the parties and their various slush funds.

The Buffalo News has had some good investigative articles that expose this shakedown operation.

So, what we have is, essentially, *five people picking our state trial judges*, based in large part on various behind-the-scenes efforts to influence them, including with large donations to party coffers. Not only is this a terrible way to pick the judges who preside over our most serious criminal and civil cases, but it props up local political machines that have done little but suck the life blood out of our economy and community for decades. The money squeezed out of judicial candidates and funneled to the parties often goes to campaigns to re-elect public officials whose performance has been less than stellar.

So, the populist uprising in Upstate New York, the tax revolt, would be ill-advised to ignore the judicial conventions. They are a bad way to choose judges; they strengthen the local political machines; and finally, they tend to install into judgeships lawyers predisposed to rule in favor of the status quo and special interests in public policy cases that come before them.

A far better system to break up this five-person monopoly on choosing state trial judges would be an open primary election such as we have for city courts and county courts. *A mechanism that disperses and decentralizes political power and is highly visible, is to be preferred over the current system of highly centralized and highly secretive decision-making.*

² <http://www.brennancenter.org/programs/downloads/lopeztorres/lopeztorres-decision.pdf>

Since the state legislature refuses to change this system, in spite of repeated requests, the only option for citizens to challenge this monopoly is to run for delegate themselves. It involves quite a bit of effort but it is not as hard as it looks.

Here's a quick overview of the process.

Judges are elected by judicial district, usually consisting of several counties. In this area, the 8th Judicial District consists of the eight Western New York counties. Click [here](#)³ for a statewide map of judicial districts. There will be at least one vacancy for State Supreme Court on the ballot this year in the 8th District. Delegates for each of the five permanent parties are selected in the primary election in September. Petitions must be gathered from June 10 through July 13. Delegates are elected by Assembly District.

I contacted the State Board of Elections to see how many delegates are allocated to each assembly district. They were helpful, but the information they receive from the parties is often inscrutable. You would be best advised to contact the State Board of Elections before putting together a slate of candidates. For example, the Republicans apparently require equal representation between the sexes. In assembly districts that cross county lines, there are often special rules for assigning delegates. To really understand all this, you would have read and analyze the rules for each state party. Good luck finding copies of those rules.

Anyway, here's a list of the number of delegates assigned to each district in Erie County:

	<i>Republican</i>	<i>Democratic</i>	<i>Independence</i>	<i>Conservative</i>	<i>Working Fam.</i>
140	4	5	3	1	2
141	2	10	1	1	2
142	4	4	4	1	2
143	5	5	4	1	2
144	3	6	3	1	2
145	5	5	4	1	2
146	4	5	4	1	2
148	5	5	3	1	2

For a sample petition, [click here](#).

³ <http://www.brennancenter.org/programs/downloads/lopeztorres/lopeztorres-decisionmap.pdf>

What you want to do is choose the best-known and most prominent activists to run for delegate. They will have the best chance to defeat the usually well-known candidates sponsored by the machine. Join forces with other persons and groups circulating petitions—that's what the machine does. A copy of the computerized voter list, which should be more readily available now, after Primary Challenge's successful fight to lower the purchase price to \$50, will be indispensable. All candidates in each Assembly District can be combined on one petition. Five hundred valid signatures are needed, so you will want to collect well over 1000 to have a sufficient margin for error in case some of your signatures are invalidated.

If you are looking for a way to turn a relatively small amount of citizen effort into a very large impact on breaking up the local political machine's stranglehold on power, you may wish to consider organizing a slate of delegates in your district and in your party.

Keep in mind that you must decide quickly. I assure you that the political machine is already on the case.