The Eliot Spitzer Show

Ira Stoll & Jacob Gershman

When Eliot Spitzer took office as governor of New York on January 1 of this year, even the festivities were designed to convey the vigor and ambition of the new administration. Operating on what he said was just three hours of sleep, the forty-seven-year-old Spitzer, who had won election with a whopping 70 percent of the votes cast, arrived in Albany's Washington Park for a morning run at 5:45 a.m. To the gathered crowd, aides handed out T-shirts that read: "Day 1: Everything Is Changing." After the run, Spitzer, who had been sworn in at midnight the evening before, returned to the governor's mansion and by 9:00 a.m. had signed no fewer than five executive orders.

Later in the day came the inauguration ceremony itself, which, reportedly for the first time in over a century, took place outdoors—like a presidential inauguration. The stage was built specially for the occasion at a cost of $117,000. Spitzer wore no overcoat. After a brief speech by the new governor, Judy Collins sang "This Little Light of Mine" and the crowd adjourned to a reception on which Spitzer used $165,000 in leftover campaign funds to pay for food and drink from some of the state's finest restaurants. The day concluded with a rousing concert at an indoor stadium.

Yet, by July, a scant seven months later, Spitzer's popularity had plummeted. And, to make matters worse, he found himself on the front page of the state's newspapers as the target of an investigation by his successor as New York attorney general, a fellow Democrat, who found that Spitzer's top aides had misused the state police to investigate a major political foe.

How had the high hopes symbolized by the elaborate inauguration dissipated so quickly?

To understand his fall one must first recall how he rose. The square-jawed son of a self-made real-estate investor, Spitzer was educated at Horace Mann, one of New York City's elite private high schools, where he was captain of the tennis team and excelled in his studies; then at Princeton, where he headed the student government; and then at Harvard Law School, where he was an editor of the law review. After six years working under Robert Morgenthau in the office of the Manhattan district attorney, where he led a high-profile investigation of the Gambino family's control of the garment industry, and a short stint as an associate at a large corporate-law firm, he founded the Center for the Community Interest, a non-profit law firm.

In light of Spitzer's background and the heavily Democratic political culture in which he was reared and had groomed himself to serve, this was a non-profit law firm with an interesting difference. Whereas the ACLU and leftist Democrats in general tended to focus on defending the rights of criminals, the Center for the Community Interest

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fought for law-abiding citizens. For example, it favored committing a notorious homeless man to an institution, defended the legality of a ban on pornography parlors, and backed "Megan's Law," a bill designed to inform residents when a released sex offender moved into a neighborhood.

If this suggests that Spitzer was himself a Democrat of a different kind, the impression would be confirmed in his 1998 run for the office of state attorney general. In the Democratic primary, Spitzer aired television commercials touting his support for mandatory HIV testing of certain criminals—leading one AIDS organization to attack him as "a mega-rich conservative lawyer" who "panders to fear of persons with HIV." In an interview before the primary, he praised New York's Republican mayor, Rudolph Giuliani, asking rhetorically "Has he been good for the city?" and answering: "By and large, yes."

Spitzer went on to win the general election against the Republican incumbent Dennis Vacco by a narrow margin. But then, once in office, he appeared to set a course that ran truer to left-wing Democratic type. His initial targets were conventional bogeymen of the Left: gun manufacturers, corporate polluters, tobacco companies, and used-car dealers. It was in a meeting with the used-car dealers that, in Spitzer's own version of events, the idea was dangled that would make him a national celebrity. Instead of hassling us, a representative of the dealers supposedly said, why not go after the Wall Street investment banks? They're *really* crooked.

Spitzer promptly launched a series of probes. It had long been an open secret that the "research" recommendations of investment banks seeking business from publicly traded companies skewed positively. Spitzer's contribution was to use his subpoena power to unearth e-mail messages that, he said, demonstrated the bias of the research. By December 2002, he announced an agreement: research analysts at brokerage houses were henceforth to be insulated from investment-banking pressure; the banks would be required to supply customers with independent stock research; and ten banks would contribute a total of $1.4 billion to settle with Spitzer and the federal Securities and Exchange Commission.

Having chastened the big investment banks, Spitzer moved on to the mutual-fund industry, where he discovered that several large companies had been allowing hedge funds to make trades after regular trading hours, when the market was closed to other investors. Spitzer compared this practice to "betting on a horse race after the horses have crossed the finish line." As a result of his investigation he was able to announce that one such late trader, Canary Capital Partners, led by Edward Stern, the son of pet-food billionaire Leonard Stern, had agreed to a $40-million settlement.

Spitzer next turned to the insurance industry, charging Marsh & McLennan with bid-rigging and forcing the resignation of the company's chief executive, Jeffrey Greenberg. He also went after Greenberg's father, Maurice "Hank" Greenberg, the eighty-year-old chairman of another insurer, AIG, whom he accused of fraud. The elder Greenberg denied wrongdoing but nevertheless resigned under pressure from the company he had spent decades building. And finally Spitzer turned his attention to the New York Stock Exchange itself, suing its former chief executive, Richard Grasso, in an effort to get him to return some of the $187 million he had been paid—according to Spitzer, an unreasonable and excessive amount.

Spitzer's campaigns against Wall Street came under angry criticism, on several grounds. Spitzer, it was said, had encroached on territory properly belonging to the federal government, exploiting a 1921 New York State law that gave him wide-ranging power. Moreover, rather than bringing cases to trial where the charges could be aired in open court, he often sought settlements and then dictated their terms without judicial oversight, as if, in the words of a *Wall Street Journal* editorial, he was the "Lord High Executioner" of Wall Street. Then, too, rather than returning settlement money to individual investors, he sometimes dispensed it at his own constituency-building discretion to institutions like law schools, the Police Athletic League, the Hispanic Federation, and various charities in upstate New York. When he did dare to take a case to trial, he usually lost, suggesting the charges were baseless to begin with. He also used bullying, abusive tactics, appearing on ABC's *This Week* to accuse Maurice Greenberg of fraud before filing any charges against him, and telling John Whitehead, a friend of Greenberg, that "it's now a war between us. . . . I will be coming after you." Finally, he had acted as an enabling force for trial lawyers—as it happens, one of his main sources of campaign contributions—who followed up on each of his investigations with their own class-action lawsuits for which they stood to garner fees in the hundreds of millions of dollars.

To each of these criticisms, Spitzer had an answer. Settlements, he asserted, were friendlier to business and better for the economy than either indicting and destroying entire banks or marching executives out of their homes in handcuffs. His discretionary allocation of settlement funds was the exception rather than the rule, and happened only because it would have been too difficult to identify individual victims. More broadly, he argued that, by increasing transparency and making sure that small investors could depend on getting fair treatment, he was strengthening the efficiency of the market system.

Whatever one's position on these matters, there is no denying that in taking on Wall Street, Spitzer ensured himself a national reputation. The *Financial Times* named him "Man of the Year." *Time* named him "Crusader of the Year," enthusing extravagantly: "There has not been such an affirmation of what's right since Moses and the Ten Commandments." Spitzer had become such a big deal that a *Washington Post* reporter wrote a full-length biography under the title, *Spoiling for a Fight: The Rise of Eliot Spitzer*.

Moreover, and despite the enemies he had made among some conservatives, respect came from across the political spectrum. Hailing Spitzer as "the single most effective battler against corporate abuses in either political party" and "a fearless advocate for consumers" with "a great track record as a defender of women's rights," the website of the hard-left *Nation* recommended him as a running mate for John Kerry in 2004. The conservative *Weekly Standard*, for its part, ran a cover article depicting him as Theodore Roosevelt. "There is no Demo-crat more in love with the conservative theory of the investor class," claimed the author, quoting the money manager James Cramer's description of Spitzer as "the most Republican Democrat I know."

Such wide-based favorable treatment was more than enough to help Spitzer win the Democratic nomination for governor in 2006 with 81 percent of the primary vote. In the general campaign that followed, television commercials aired by Spitzer headquarters featured the candidate in a black-and-white photograph that was an acknowledged homage to Robert Kennedy. The ads portrayed Spitzer almost messianically. In one spot, an announcer intoned:

> For every New Yorker whose husband or child has to go somewhere else just to get a job. . . . For every New Yorker drowning in property taxes. . . . For every New Yorker who's been ignored . . . left out . . . who's been told you can't fight City Hall so many times they've come to believe it. . . . For every New Yorker without a voice. . . . Listen . . . there's one strong enough for all of us.

The Republican candidate, John Faso, was a seasoned politician who had served as his party's leader in the State Assembly from 1998 to 2002 and had fended off a primary challenge from William Weld, the former governor of Massachusetts. But Faso faced an uphill battle. Early in the campaign, he had raised only $1 million to Spitzer's $19 million. Much of Spitzer's money came from members of the financial industry he had regulated and class-action lawyers who had benefited from his work as attorney general.

True, in debates and through effective use of the press, Faso was able to compel Spitzer to come out publicly in favor of term limits for legislative leaders and lawmakers in Albany and to promise not to raise taxes if elected. Faso also sought, with some success, to portray Spitzer as corrupt, tying him to the Democratic candidate for state comptroller, Alan Hevesi, who was the subject of an investigation by the Albany district attorney for using a state employee to drive his sick wife around and to serve as her companion. When news emerged that Spitzer had been flying to fundraisers on the private jet of a lobbyist who was bidding for a potentially lucrative gambling concession, Faso worked the "Air Spitzer" scandal until Spitzer agreed to stop taking the flights and his campaign reimbursed the lobbyist at the cost of a first-class commercial ticket.

Nevertheless, a landslide vote for Spitzer was all but foreordained. Not only would he be the first Democrat in twelve years to hold the governorship in a state in which registered Democrats outnumbered Republicans by roughly 5 to 3, but the 2006 election followed eight years of erratic performance by the Republican George Pataki. Nor did it hurt that, by the time of the election, Spitzer's reputation as a centrist had been burnished to a fine sheen. To top it off, no sooner was he elected than he sought to reassure Wall Street that he would approach his new job differently from that of attorney general. "I'll work to make sure the financial companies stay here," he declared in a post-election interview with the *Financial Times*. "We're going to look at the tax code to make sure we're not pushing capital elsewhere."

In his state-of-the-state speech, delivered two days after his inauguration, Spitzer gave still further encouragement to those who held out hopes for him as (in James Cramer's words) a "Republican Democrat." Outlining his priorities, he listed an expansion of the number of charter schools in the state, a "property-tax-cut plan," a law to speed up the construction of new power plants, civil-confinement legislation for sexual predators, and an end to "the culture of spending" in Albany. But, in a sign of things to come, he also gave fodder to left-liberal Democrats, calling for such big-government programs as "full public financing" of political campaigns and universal pre-kindergarten.

In the months that followed, Spitzer would continue to display this sort of dual-personality position on issue after issue. In education policy, he made good on his promise to achieve an increase in the number of charter schools in the state, and he broke with the powerful teachers' unions to propose a state income-tax deduction of $1,000 for families with an annual income of $116,000 or less who were paying tuition to private or parochial schools. (The latter initiative finally fell victim to union opposition.) The big education news, however, lay in the other direction: an agreement to spend an additional $1.76 billion on education in the coming year—this, in a state that was already second in the nation in per-pupil spending.

Similarly on health care. On the one hand, Spitzer proposed $900 million in cuts for hospitals and nursing homes, thereby incurring the ire of another powerful labor group, Local 1199 of the Service Employees International Union. When that union joined with the Greater New York Hospital Association to launch a campaign warning of the "hugely destructive" effect of Spitzer's proposed cuts, which would "shatter the health system New Yorkers rely on," the governor fought back, accusing his attackers of "demagoguery" and even dipping into his campaign funds to air ads of his own. In a letter to the Hospital Association, he reminded his opponents that New York was first "in Medicaid spending per capita, more than twice the national average," and stated flatly that "New York's health-care system is broken. New Yorkers pay far too much and get far too little in return."

On the other hand, Spitzer also proposed to expand the state's Medicaid program to cover children from families earning up to 400 percent of the federal poverty level—i.e., up to $82,600 a year. In the end, no doubt partly on account of vacillations like these, Spitzer was able to impose less than half of the spending cuts he had proposed for hospitals and nursing homes.

In the area of overall spending, the same pattern prevailed. The budget Spitzer sent to the legislature would have increased state-funded spending by considerably less than the previous year's figure under Pataki. Yet in the budget he finally agreed to, the figure was back to Pataki-era levels and even beyond. The editorial page of the *New York Post*, which had endorsed Spitzer for governor, protested heatedly:

> [T]he special interests snapped him upside-down by his ankles and shook all of the pennies out of his pockets. The result: a $122-billion spending monstrosity.

And so it went. On taxes, Spitzer's property-tax measure turned out to be not an actual cut but an expansion of a Pataki program that merely redistributed the burden by doling out a portion of income- and sales-tax funds as "relief." On crime, Spitzer did manage to pass a civil-confinement law for sexual predators, but he could not persuade the legislature to pass new death-penalty legislation. On the issue of power plants, no agreement was reached at all, a dereliction whose costs were underscored by a summer blackout of Manhattan's Upper East Side that brought subways to a halt and forced the evacuation of the Metropolitan Museum of Art.

All in all, then, while not a complete embarrassment, the governor's first legislative session fell significantly short of the ambitions signaled in the inauguration-day hoopla. Nowadays, it would be difficult to wear a "Day 1: Everything Is Changing" T-shirt in Albany without inducing bitter laughter. In July, the governor conceded to the *New York Times* that even his own wife thought he would have been better off going into his father's real-estate business and leaving Albany to someone else. By that time, moreover, the furor over the alleged use of the state police by Spitzer's aides in a scheme to discredit his Republican rival Joseph Bruno was stuck on the front pages and in the evening broadcasts.

To be fair, the challenge facing Spitzer was immense. New York taxpayers are saddled with the highest state and local tax burden in the nation. Upstate New York is hemorrhaging jobs and population (during the campaign, Spitzer likened it to Appalachia). The entrenched power of organized labor ensures that the cost of state government steadily grows far above the rate of inflation. And Albany has deservedly amassed a reputation for corruption; between 2003 and 2006, nine members of the New York City delegation to the legislature were arrested, indicted, or convicted.

Still, for a man with an undisguised desire for higher national office, up to and including the presidency, these first months in office were and remain a serious setback. And it is far from clear that Spitzer's troubles are over. If he fails to make meaningful improvements in the balance of his term, especially in the two related areas of reducing New York's tax burden and improving the upstate economy, he could find himself facing a serious re-election struggle, either from a labor-backed candidate on the Left or from a free-market challenger on the Right. It is no secret that his successor as attorney general, Andrew Cuomo, who served as housing secretary in the Clinton administration and is the son of former Governor Mario Cuomo, is eager to follow him into the governor's mansion. If that should happen, Spitzer's route to national office could be severely impeded.

Whether he succeeds or fails as governor will depend on a variety of factors. In the mind of many of his detractors, a particularly salient problem is, to be blunt, his character. Spitzer's short temper was on famous display when he yelled at the Assembly's minority leader, "I'm a f—ing steamroller, and I'll roll over you." In a conversation with another lawmaker, he reportedly disparaged the seventy-eight-year-old Bruno as "an old, senile piece of s—." To many lawmakers, both Democrats and Republicans, Spitzer is every bit the bully he showed himself to be in his treatment of Hank Greenberg and John Whitehead.

But perhaps the biggest factor is not personal but ideological. Throughout his career, Spitzer has shown instincts and predispositions that would seem to put him in the camp of the "New Democrats." This movement began in the mid-1980's, with the involvement of Bill Clinton and Al Gore, as an effort to modernize the party by reclaiming it from McGovernism and, if not reverting altogether to the political agenda of Truman, Humphrey, Kennedy, and Johnson, then at least forming a kind of "third way" between conservatism and leftism. Under the aegis of the Democratic Leadership Council (DLC), chaired by Clinton and later by Senator Joseph Lieberman of Connecticut, the New Democrats embraced charter schools and economic growth, favored hawkishness in foreign policy, took a tough stance on crime, and were tolerant of if not friendly to religious faith. It was the New Democrat creed that lay behind Clinton's proposal to "end welfare as we know it," his expansion of the federal death penalty, and his use of NATO air power to bring an end to the conflict in the Balkans.

The same New Democrat creed can be seen informing such Spitzer initiatives as wanting to give parochial-school parents a tax cut in the face of opposition from the teachers' unions, not to mention his professed admiration for Mayor Giuliani or his insistence that the Iraq war was winnable. This is the Spitzer whom Bruce Reed, Clinton's domestic-policy adviser, has praised for "pushing for a number of New Democrat ideas in Albany" and for being "willing to offer new approaches and break with orthodoxy." But is it the real Spitzer? Or is the real Spitzer the one who uses the power of government to bully businessmen, who pushed for a vast expansion of the government-run health-care system in New York, who agreed to a no less vast increase in spending on the government-run public schools, and who, to top it off, in mid-September announced a new initiative to issue New York State driver's licenses to illegal immigrants?

Thus far, Spitzer's policy agenda as governor has been a study in ideological contradiction. Purely as a matter of political calculation, one can perhaps understand the rationale for this. Although certain policies—acting tough on crime and welfare, and pressing for school choice—have been popular with New York voters, it is far from clear that such sentiments translate into a desire for the Democratic party to return to the pro-growth and hawkish-on-national-security positions of the past.

The New Democrat creed itself has been decidedly in eclipse since Clinton left office and the party's leadership was turned over to politicians like Nancy Pelosi and Howard Dean. Joseph Lieberman, a one-time chairman of the DLC, is now an independent, having been run out of the party by its current leadership. None of the current presidential contenders attended the DLC's annual convention in 2007, leading Noam Scheiber of the *New Republic* to declare that "Today, the [DLC] has almost no constituency within the Democratic party."

Spitzer's own weak political position in New York at the moment may, from this perspective, reflect the larger national weakness of the New Democrats. But it may also reflect his own unwillingness or inability to resolve the ideological tensions within his political persona, a failure that in turn leaves him open to the criticisms of would-be supporters on all sides. As things stand now, many Republicans and conservatives dismiss him as a liberal Democrat, many leftists revile him as too conservative, and others rightly complain that, having alienated both the Left and the Right, he has paralyzed himself altogether.

Is there a way out of this dilemma? As Bill

Clinton demonstrated, it is not necessary to be a perfect New Democrat in order to succeed as enough of one. While the former President gets credit from conservatives for welfare reform and the North American Free Trade Agreement, he sharply increased federal taxes in his first term, attempted a government takeover of the health-care system, and did little to challenge the power of the teachers' unions. There is a reason New Democrats are Democrats and not Republicans, after all. Still, for a large and definable part of the electorate, even an erratic New Democrat is preferable to the current Democratic alternative.

The absence of New Democrats on the national scene (not counting Hillary Clinton) leaves a vacuum for Spitzer to occupy. The case to be made for him in that role is admittedly thin, thanks in large part to his own waffling and overreaching. But it is better than nonexistent. In a country in which his party controls both houses of Congress, it is not too much to speculate that a governor willing to depart from left-wing orthodoxy on even a few core issues could yet play a constructive and even a winning role.