

Letters

Judge Selection for New York's High Court: The System Works

To the Editor:

For the second time this year a superb candidate has been nominated to fill a vacancy on the New York State Court of Appeals. And yet, despite the obvious qualifications of the people whose names were submitted to the Governor for consideration, each time the selection process generated considerable controversy.

In the first instance the criticism was well-deserved. The Commission on Judicial Nominations failed in its mandate to reach out to the broadest possible cross-section of the qualified legal community and failed to break new ground by opening the court to representation by women and minorities. The perpetuation of the state's highest tribunal as the exclusive domain of the white middle-class male diminished the stature of the court.

In the upshot that followed, I believe the commissioner learned the valuable lesson that, in addition to searching for the best legal talent available, it must also be sensitive to the composition of the court, endeavoring to select candidates who reflect the diversity of the population of the state.

In the second instance, it is important to note that the controversy did not revolve around the selection process. On the contrary, the commission did its job well and gave the Governor a broadly based list of candidates, which resulted in the selection of the first woman to sit on the Court of Appeals. This time the controversy centered on the past-nomination activities of the many organizations which have an interest in maintaining high judicial standards. The impres-

sion that such "political" activity somehow detracts from the process mixes apples with oranges.

I believe that this time the commission took great pains to correct its earlier failure to submit a diverse selection of candidates, as demonstrated by the fact that two distinguished women were among the nominees. The one remaining, glaring inadequacy with respect to the composition of the court is the absence of a qualified member of our minority communities, and I trust that when the next vacancy occurs the commission and the Governor will make it possible for a minority candidate to be appointed.

The criticisms that have surfaced about the process have prompted suggestions that the limit on the number of nominees submitted to the Governor be either increased or eliminated and that the commission's internal deliberations be made public. Both suggestions are unwise.

During the last session, the Legislature did increase the maximum number of nominees from five to seven, to give the Governor greater latitude in making his selection. It is important to remember, however, that a limitation on the number of nominees was imposed on the process in order to protect it from being tainted

with charges of political cronyism.

Furthermore, the interviewing process was deliberately made confidential in order to assure that each applicant's professional situation would not be compromised in any way. The assurance that each person's interview will be handled confidentially is essential to encouraging the maximum number of people to apply.

To alter either of these two parts of the process will only serve to undermine the fundamental goal of selecting judges solely according to merit, although I do urge the commission to release the standards used for evaluation and the statistical data pertaining to the applicants.

Our experience with merit selection has carried us through two gubernatorial administrations, resulting in the appointment of four superior judges and the designation of a fifth. Where there have been problems, the system has proven to be resilient enough to correct and improve upon itself. I see no reason to tinker further with a process which demonstrably is fulfilling its mandate to select the most talented people for our state's highest court.

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Minority Leader
New York State Senate
Albany, Aug. 24, 1983

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Exhibit A-7