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Pigott Breezes Through Hearing

*No Searing Questions
For Nominee From
Judiciary Committee*

BY JOHN CAHER

ALBANY—After responding to queries about separation of powers and diversity on the bench, Eugene F. Pigott Jr. yesterday sailed through his Senate Judiciary Committee confirmation hearing, virtually ensuring that he will join the Court of Appeals later this month.

The full Senate is expected to vote this afternoon, and with Justice Pigott's unanimous support of the Judiciary Committee his appointment seems assured.

Justice Pigott, now the presiding justice of the Appellate Division, Fourth Department, did not face any particularly searing questions, and was not asked about any of the decisions he has rendered on either the trial or appellate bench.

But he was queried about, and did respond to, concerns about judicial activism and about the fact that he is set to replace the only black judge now on the Court, George Bundy Smith.

Yesterday was Judge Smith's last day of hearing oral arguments. His term expires Sept. 24.

The nominee made clear—as did supporters who testified on his behalf—that he is not inclined to thwart the aim of the Legislature. Justice Pigott said he always looks first to the plain language of a statute and attempts to determine legislative intent only if the statute is ambiguous.

"I approach each case with a great deal of humility," said Justice Pigott, who is set to become the first Court of Appeals judge from Erie County, which includes Buffalo, since the mid-



Court of Appeals nominee Eugene F. Pigott Jr., left, laughs with Senator John A. DeFrancisco before yesterday's Senate Judiciary Committee hearing.



PHOTOS BY DAVE OXFORD

Judge George Bundy Smith waves to well wishers after his final Court of Appeals session yesterday as Chief Judge Judith S. Kaye looks on.

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Pigott Sails Through Confirmation Hearing

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1980s. "I don't think I am smarter than this body, the governor or another court."

Earlier, one of the four attorneys who testified on Justice Pigott's behalf, Supreme Court Justice James C. Tormey III of the Fifth Judicial District, pointed to two matters in particular where the nominee deferred to the Legislature and rejected judicial attempts to force the hand of the Assembly and Senate.

One involved cameras in the courts, which some judges have permitted even though the Legislature has not directly authorized the use of audio-visual reporting equipment. The other involves the fight a few years ago over assigned counsel rates, which led several judges to authorize higher compensation than that specifically permitted by law. In both cases, Justice Tormey said, Justice Pigott refused to order through judicial decree that which had not been approved by the Legislature.

The diversity issue was raised in a press conference 90 minutes before the confirmation hearing, when Senator Malcolm A. Smith, D-Queens, criticized Governor George E. Pataki for leaving an all-white Court of Appeals.

Judge Smith will involuntarily retire Sept. 24 after 14 years on the Court of Appeals and 31 years on the bench.

Although he was among the seven candidates recommended by the Commission on Judicial Nomination, the governor denied Judge Smith reappointment last month, at least in part because he would have only one year before facing mandatory retirement.

Senator Smith, the ranking Democrat on the Judiciary Committee, observed that when Mr. Pataki leaves office at the end of the year there will be no blacks on the Court of Appeals and only two among the approximately 55 justices of the four Appellate Divisions, neither of whom was appointed by Mr. Pataki.

The senator said he has no reservations about Justice Pigott's qualifications or fitness for the Court, and in fact voted for confirmation. But said the Court of Appeals should reflect the diversity of the state.

"Justice Pigott is qualified," Senator Smith said at his press conference. "He has served well on the appellate division and he will do well on the Court of Appeals. But what is at stake is a much larger issue."

The senator said he will convene

hearings later with the aim of creating a "blueprint for judicial diversity" to guide the next governor.

At yesterday's hearing, Senator Eric T. Schneiderman, D-Bronx, pursued the diversity issue, asking Justice Pigott of the importance of maintaining ethnic balance on the courts.

"It is the view of many of us that the law appears to be evolving without [the participation of the] substantial African-American community in our state," Mr. Schneiderman said. "I wanted to give you an opportunity perhaps to say something about the issue of diversity and your views on that."

Justice Pigott grasped that opportunity.

In testimony, Justice Pigott was portrayed as a "lawyer's judge" with a common sense approach and a knack as an administrator for bringing out the best in the people and institutions around him.

"When I was a young lawyer and then at Legal Aid, one of the things that scared me, something I was most concerned about in dealing in the local criminal courts...was a fear that someone of minority descent would be arrested by a white policeman, taken before a white judge, with a white district attorney, a white defense lawyer and tried before a white jury without any sense of participation in a society that was about to impose a sanction should that person be convicted," Justice Pigott said.

Justice Pigott, a former president of the Legal Aid Society of Erie County and member of the NAACP, said that in every position he has held he has worked to improve opportunities for minorities in the law. Coincidentally, he will be recognized for those efforts tonight when he receives an award from the Rochester Black Bar Association.

'Lawyer's Judge'

Testifying for Justice Pigott, in addition to Justice Tormey, were Fourth Department Justice Elizabeth W. Pine, Ontario County Judge Craig J. Doran and attorney Jeremiah J. McCarthy of Phillips Lytle in Buffalo.

Justice Pigott was portrayed as a "lawyer's judge" with a common sense approach and a knack as an administrator for bringing out the best in the people and institutions around him.

"Our cases are not decided by computers, but by human beings, and there is no finer human being to sit on the Court of Appeals than Justice Pigott," Mr. McCarthy said. "I've won a few cases in his court, and I've lost a few. But I've never come away thinking I didn't get a fair shake."

The only opposition came from Elena Ruth Sassower of the Center for Judicial Accountability.

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. 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.

But Senate Judiciary Committee Chairman John A. DeFrancisco, R-Syracuse, 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.

Justice Pigott, a 60-year-old Republican who lives on Grand Island, has risen rapidly through the judicial ranks.

He was a trial judge for only about a year before he was promoted to the Appellate Division by Mr. Pataki, and two years after that was elevated to presiding justice.

He is a 1968 graduate of LeMoyne College and a 1973 graduate of the University at Buffalo School of Law. He is also a Vietnam War veteran.

Justice Pigott has spent much of his legal career in private practice, mainly representing plaintiffs in civil cases.

He and his wife, Peggy, have two children. Mrs. Pigott and their daughter, Martha, attended yesterday's hearing. Their son, David, is a captain in the U.S. Army and a West Point graduate serving a second tour of duty in Iraq.

The Senate has never failed to confirm a Court of Appeals nominee who cleared the Judiciary Committee, and the Judiciary Committee has never rejected any governor's nominee.

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