

PICKING OF JUDGES ASSAILED BY CUOMO
By DAVID MARGOLICK
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PICKING OF JUDGES ASSAILED BY CUOMO

Wants More Options in Filling Appeals Court Vacancies

By DAVID MARGOLICK

Governor Cuomo has called for major changes in the methods used to select judges for the New York State Court of Appeals, saying that the process under existing law limits his options unnecessarily and is unduly secretive.

The Governor said in an interview, however, that the present system had thus far given him two "really excellent" choices: Richard D. Simons, who Mr. Cuomo appointed to the Court of Appeals last January, and Judith S. Kaye, who last week became the first woman nominated for that court, the state's highest tribunal.

12-Member Commission

Under law, a 12-member Commission on Judicial Nomination, evaluates candidates for the Court of Appeals, and submits three to seven names to the Governor. That limit, Mr. Cuomo said, "doesn't make any sense" when there are more than seven well-qualified candidates available.

The Governor is bound by law to pick a nominee from the panel's choices. The changes discussed by the Governor would require legislative approval or possibly an amendment to the State Constitution.

"There ought to be no arbitrary limit on the number of qualified people that the commission can send to the Gover-

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Cuomo Is Seeking Changes In Way Judges Are Selected

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nor," Mr. Cuomo said. "A situation in which they conclude that X number of people meet their highest qualifications and then not give X number to the Governor is absurd."

Mendes Hershman, the chairman of the nominating commission, said in response that the panel had "worked, and worked well" and had come up with a "first-class selection of people."

Mr. Cuomo said it was "inexplicable" that the panel had failed to include in its most recent list two names it had forwarded for an earlier vacancy — Judge Joseph M. McLaughlin of Federal District Court in Brooklyn and Judge Vito J. Titone of the Appellate Division of State Supreme Court, Second Department.

The Governor did not suggest that he would have chosen either of them but simply that he should have had that option. He charged that other candidates he considered highly qualified never made a list of candidates. In the future, he said, the commission should explain such omissions as well as redouble its efforts to interest lawyers throughout the state in court seats.

"There are other people I would regard as excellent who I would like to see on lists," Mr. Cuomo said. "I find it difficult to believe that if you did it energetically, and assiduously pursued, you couldn't find 15, easily 20, superb candidates by every measure."

Governor's View Challenged

Mr. Hershman said that if Mr. Cuomo's suggested changes were implemented, the panel would cease nominating highly qualified candidates and would merely screen out mediocrities. And he challenged the Governor's contention that many highly qualified people were being overlooked.

"I don't know if there are that many great candidates who apply," he said. "There may be a number of Cardozos out there who prefer being partners in major law firms and collecting \$500,000 a year to spending six months in Albany for \$81,000."

Benjamin N. Cardozo, who was a chief judge of the State Court of Ap-

peals, served in the 1930's as an associate justice of the United States Supreme Court.

Associate judges on the Court of Appeals are paid \$80,892 a year.

Mr. Cuomo, who once served as a law clerk for the Court of Appeals and who has taken a keen interest in its affairs, has criticized the nomination procedure — and tangled with the commission — before.

Last year he upbraided the panel for submitting only four of the five candidates it was then authorized to provide for the Court of Appeals seat vacated by Judge Domenick Gabrielli. The Governor named Mr. Simons, an Appellate Division justice from upstate New York, to fill that vacancy on the court. Later Mr. Cuomo won legislative changes raising the maximum number of candidates to seven.

By law, the commission is bound to furnish to the Governor a report detailing its work along with its list of recommended candidates. Mr. Cuomo said the panel's most recent report was "not noticeably" better than its previous study, which he said he considered uninformative.

'A Kind of Irony'

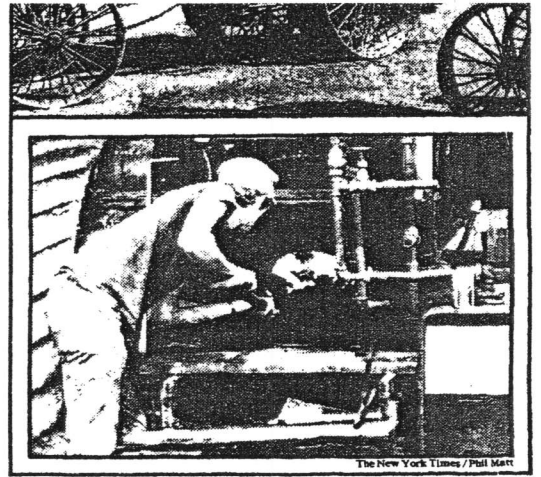
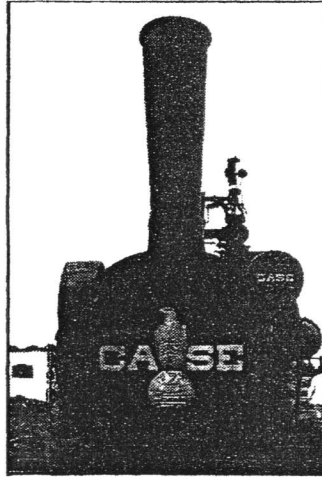
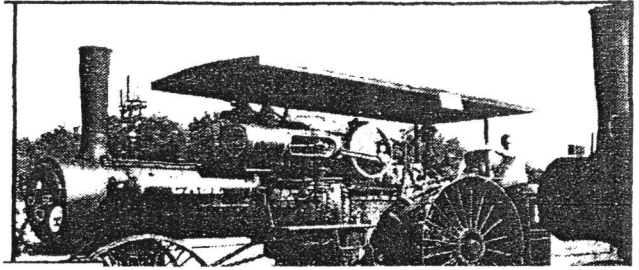
"There's a kind of irony at work here," he said. "Everywhere within our government we're opening up the processes, we're pushing open the formerly closed chambers of consultation and deliberation. But we don't know anything about how the commission functions, and I'm not sure that's good."

Mr. Cuomo's complaints are echoed to some extent in the private bar. Some lawyers contend that while there are worthy candidates on each list, taken as a whole, the names do not reflect the best legal talent in the state.

Arthur L. Liman, a Manhattan lawyer, who was the chairman of Gov. Hugh L. Carey's advisory commission on criminal justice, said that in addition to considering a candidate's merits, the panel was forced to take "political and policy" considerations into account. These include, he said, the court's ethnic, geographical and sexual makeup — factors that he said were more appropriately left to the Governor.

Steaming Along

Vintage machinery displayed over the weekend in the Pageant of Steam in Canandaigua, N. Y., included a steam traction farm vehicle, right, a 1923 Case steam tractor and a 1916 Frick Eclipse steam engine, being fed coal by Mike Kreydatus. The festival is operated by the New York State Steam Association.



The New York Times / Phil Matt

Mr. Liman said he considered Mrs. Kaye, a partner in a Manhattan law firm who specializes in corporate litigation, to be a "splendid choice."

But, he added, "we've now been through this twice, and each time there's been controversy, each time there's been a sense of frustration by people who've applied for seats and don't understand what criteria are being used. In the long run, what this process is going to do is discourage quality people from applying."

Both Mr. Liman and Edward N. Costikyan, the chairman of the City Bar Association's judiciary committee, dis-

cussed their concerns over the selection process recently with Mr. Cuomo's counsel, Alice G. Daniels.

Mr. Hershman said Mr. Liman's assertions were "absolutely not founded in fact."

Discontent With System

Legislators in both houses of the Legislature expressed discontent with the present selection system.

Charles Dumas, a spokesman for the State Senate majority leader, Warren M. Anderson, Republican of Binghamton, said: "Senator Anderson has expressed some dissatisfaction with the selection process in the past. If further

changes are needed, I'm sure the Senator would be willing to discuss them."

In the Assembly, the chairman of the Codes Committee, Melvin H. Miller, Democrat of Brooklyn, said: "Let's go back and elect the Court of Appeal judges. It was the best court in the country. I think we have brought more politics into the process through the last two selections than we ever did when judges were elected."

Supporters of the existing procedure say that Mr. Cuomo's proposal to remove the maximum on the number of candidates would effectively cripple selection by merit.

"If you remove the cap, you turn a nominating commission into a screening commission, in which almost anyone, including a governor's brother-in-law or campaign manager, could qualify," said M. L. Henry, Jr., executive director of the Committee for Modern Courts. "Unless the panel is firmly in control, this results in the worst of all possible selection mechanisms — unfettered appointment."

Mr. Cuomo said he was considering asking for legislative changes in the process. But he stressed his belief that the present system, despite its faults, was superior to the popular election of judges or unlimited gubernatorial discretion in appointing judges.

"Taking the total view, the state and the court are better off with this kind of system, which will give you closer to an evenness and uniformity than you could produce with executives of unpredictable quality, unpredictable interest, unpredictable political vulnerability," the Governor said. "I'd prefer to work toward improving this, rather than even think of abolishing it."