

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

COUNCIL ON JUDICIAL ADMINISTRATION

REPORT ON NOMINATION AND CONFIRMATION
OF COURT OF CLAIMS JUDGES

In recent years there has been no meaningful opportunity for public input in connection with the confirmation of Court of Claims nominees. Though the advice and consent process is the only democratic check on this segment of the judiciary, as demonstrated in the appendices to this Report, the Senate often confirms the Governor's nominees within days of their nomination. Indeed, of 37 Court of Claims nominees in 1995 and 1996, 36 were confirmed within two weeks of their nomination and some in much less time than that. For example, in 1995, of the 12 Court of Claims judges confirmed by the Senate, eight were confirmed within four days of their nomination. For the reasons set forth below, we recommend that the Governor and the Senate agree on procedures that would ensure a 30-day period for public comment between the date the Governor announces nominees for the Court of Claims and the date the Senate begins confirmation proceedings. In making this recommendation, it is not our intention to attack the quality of individual judges who have previously been confirmed; rather, our goal is to improve the confirmation process by providing for meaningful public participation.

Article 6, Section 9 of the Constitution of the State of New York provides that judges of the Court of Claims shall be appointed by the Governor by and with the advice and consent of the Senate. A purpose of the advice and consent process is to elicit public participation in judicial selection. For example, when a constitutional amendment authorizing the Governor to appoint Court of Appeals judges with the advice and consent of the Senate was first proposed in the early 1970's, it was contemplated that before acting on nominees for the Court of Appeals, the Senate would "receive a report from its Judiciary Committee, which will have held public hearings, with the nominee asked to appear for questioning by Committee members and with interested citizens invited to be heard." Report of the Joint Legislative Committee on Court Reorganization, State of New York Legislative Document No. 24, at 12 (1973). Senate confirmation -- with public input -- was viewed as an essential element of the appointive method of judicial selection.

Hamilton ascribed a similar purpose to the advice and consent clause in the federal Constitution. As he wrote in *The Federalist*, No. 76, while the act of nomination was proposed to be conferred exclusively on the President, the cooperation of the Senate

would have a powerful, though, in general a silent operation. It would be

an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters

United States Supreme Court Justice Stephen Breyer recently reflected on the intense media scrutiny surrounding his own confirmation experience: "[T]he reason people were interested was because I had been nominated to a non-elective and powerful position." *Centennial Address*, 46 *Syracuse L. Rev.* 1179, 1180 (1996). The confirmation process, he noted, is a compromise between the need to have important decisions made democratically and the need, absolutely important, to appoint unelected judges." *Id.* at 1182. The Senate's role in this balancing act is critical:

We live in a democracy, and in a democracy power is supposed to flow from the people. People nonetheless are prepared to put unelected judges in high offices and grant them power to affect everyone's lives, because of the importance of such structures in our system of government [T]he confirmation process . . . offer[s] people a glimpse of the person who might hold that powerful office.

Id. at 1181. For this process to be meaningful, however, it must involve "the active participation of the Senate and individual citizens, acting alone or through organized groups." William G. Ross, *The Supreme Court Appointment Process: A Search For A Synthesis*, 57 *Alb. L. Rev.* 993, 996 (1994).

In New York, unfortunately, such public input in connection with the confirmation of Court of Claims nominees has been virtually impossible. For example, in 1995, of the 12 Court of Claims judges confirmed by the Senate, eight were confirmed within four days of their nomination -- four within three days, two within two days and two on the same day. Three of the other four were confirmed within eight days of their nomination. In 1996, of 25 nominees submitted to the Senate, 24 were confirmed within two weeks of their nomination; in one instance, confirmation occurred within 24 hours of the nomination. Moreover, a number of these judges were incumbents, as to whom there is even less excuse for not allowing the public adequate time to comment. Presumably, the Governor and the Senate have had even more time to evaluate the qualifications of an incumbent Court of Claims judge who has nearly completed a nine-year term than the qualifications of a new candidate. (A list of all Court of Claims nominees for the past two years, with their dates of nomination and confirmation, is annexed.) This tradition of speedy confirmations apparently has become the norm, regardless of party.

The Council urges the adoption of a brief 30-day interregnum between the date the Governor announces nominees for the Court of Claims and the date the

Senate begins confirmation proceedings for those nominees. Such a modest "opening up" of the process would encourage public participation without hampering the Governor and the Senate in promptly discharging their responsibilities in filling vacancies. It would enable interested members of the public -- both individuals and organizations -- to make their views known prior to the Senate's consideration of the nominees. It would also provide the public, in Justice Breyer's words, with "a glimpse of the person" who might hold an office with the "power to affect everyone's lives."

**COURT OF CLAIMS JUDGES
CONFIRMED IN 1995**

COURT OF CLAIMS JUDGE	NOMINATED	CONFIRMED
John J. Brunetti	6/6	6/14
Donald J. Corbett, Jr.	5/10	6/14
James P. King	6/12	6/14
Richard M. Klein	6/12	6/15
Dan Lamont	6/29	6/29
Jonathan Lippman	6/29	6/29
Colleen McMahon	6/12	6/15
Thomas J. McNamara	6/12	6/15
Nicolas V. Midey, Jr.	6/6	6/14
Terry Jane Ruderman	6/12	6/14
Ronald H. Tills	6/6	6/14
William A. Wetzel	6/12	6/15

**COURT OF CLAIMS JUDGES
CONFIRMED IN 1996**

COURT OF CLAIMS JUDGE	NOMINATED	CONFIRMED
Phyllis Skloot Bamberger	5/30	6/11
Antonio I. Brandveen	5/30	6/11
Joan B. Carey	5/30	6/13
Matthew J. D'Emic	6/27	7/3
Lewis L. Douglass	5/30	6/13
Norman George	5/30	6/13
Robert J. Hanophy	5/30	6/11
Alan L. Honorof	6/27	7/3
Michael R. Juviler	5/30	6/11
Gabriel S. Kohn	5/30	6/11
Dan Lamont	5/30	6/11
John P. Lane	5/30	6/13
Joseph J. Maltese	6/27	7/3
Dominic R. Massaro	5/30	6/13
Christopher J. Mega	7/2	7/3
Michael F. Mullen	5/30	6/11
Juanita Bing Newton	5/30	6/11
Victor M. Ort	6/27	7/3
Phillip J. Patti	7/5	7/12
Stephen J. Rooney	7/1	7/3
Frank S. Rosseti	5/30	6/13
Harold J. Rothwax	5/30	6/13
James G. Starkey	5/30	6/13
Franklin R. Weissberg	5/30	6/13
John M. Perone	7/11	9/17

**COURT OF CLAIMS JUDGES
CONFIRMED IN 1993**

COURT OF CLAIMS JUDGE	NOMINATED	CONFIRMED
Louis C. Benza	4/8	6/22
Dorothy A. Cropper	4/8	6/23
Edward M. Davidowitz	4/8	6/22
William C. Donnino	4/8	6/22
Jerome F. Hanifin	4/8	6/22
Julian F. Kubiniec	4/8	6/22
Herbert J. Lipp	4/8	6/23
Christopher J. Mega	7/7	7/7
Ronald Zweibel	4/8	6/23

**COURT OF CLAIMS JUDGES
CONFIRMED IN 1994**

COURT OF CLAIMS JUDGE	NOMINATED	CONFIRMED
Israel Margolis	4/11	5/10
Leonard Silverman	4/11	5/10