

The Campaign for Governor Is Over

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What's on Trial Is How Best to Pick Judges

New York's Governor-elect Cuomo asks hard questions of the State Commission on Judicial Nomination. He wonders why this body, created in a 1978 reform to make judicial selection fairer and less political, can't come up with more variety on its menu of candidates for a vacancy on the state Court of Appeals.

The commission offers four white males, all sitting judges, for the new Governor's choice. The nominees' skills vary, but they are just the type of nominees politicians used to give the voters for election. Why, Mr. Cuomo asks, can't he have more names, and especially some women? He feels bound to redeem a campaign pledge (also made by his opponent) to appoint a woman to the highest state court.

Although the state Constitution requires the commission to supply only the names of persons who are "well qualified" for the post, state law provides that it pick three to five candidates. So the commission has a basis for holding to its short list. But the future of judicial selection may depend on how much it learns from the Cuomo challenge.

If governors must choose judges from a list, they understandably want the longest possible list. But a jealous Legislature had found allies in the reform movement for limiting the Governor's discretion. The commission was really made a *nominating* body, not merely a screening committee. Governor Carey reluctantly signed this law to carry out a merit selection amendment — the statute Mr. Cuomo now finds so limiting.

It is too soon, after this experience, to scrap the procedure. It has provided able if monotonously similar jurists, and as intended, spared voters the unseemly electioneering for the bench. The Legislature might give the new Governor a chance to recommend changes in the law, but the main responsibility for validating merit selection now lies with the commission.

With four more vacancies due to arise in Mr. Cuomo's term, there is time enough for the new Governor to name women, blacks or Hispanics to the court. But there isn't much time for the commission to get acquainted with the many qualified jurists available among those groups.

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Exhibit A-4(a)