

## Judges Are Better Elected Than Selected

STANLEY FINK

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### Letter: On the Appeals Court

## Judges Are Better Elected Than Selected

To the Editor:

Your Dec. 29 editorial "What's on Trial Is How Best to Pick Judges" prompts me to recall the negotiations preceding final passage of the legislation creating the Commission on Judicial Nomination for Court of Appeals judges, and to state my own lack of surprise at the dilemma in which Governor Cuomo found himself.

In the first place, your recollection of the legislative negotiations is not entirely accurate. It was Governor Carey who agreed with the reformers on the desirability of a short list of nominees. The Assembly was pushing hard for a list of nine candidates for chief judge, and, as you reported on April 6, 1978, the Governor adopted our position in order to keep the negotiations moving. (Ultimately, the parties agreed to a list of seven candidates for that seat.)

Governor Carey wanted the number of Court of Appeals nominees limited in order to curb gubernatorial abuses. Apparently, he trusted an appointed commission more than the popularly

elected highest state official.

What bothered me more than imposing this limitation was the predictability of the outcome, and I continue to be concerned deeply about this aspect of the selection process. With The Times and most other newspapers at that time leading the charge for change, New York abandoned an elected Court of Appeals because that process was deemed too demeaning to the court's stature, as evidenced by the 1973-74 hotly contested and well-financed campaigns for court seats.

Thus, despite the fact that our elected Court of Appeals had the best reputation of any appellate court in the nation, it required "reform" because the "right" people were not being elected.

Governor Cuomo just found himself forced to choose the "right" appointee from among only four nominees. During the 1978 negotiations, the Assembly contended that a larger pool of nominees would produce a broader cross-section from which to choose. Instead, what was created was an

elite nominating panel that could control choices simply by limiting them.

The Governor is correct in wishing to enhance his own discretion at the expense of an appointive body. But there is a more fundamental question involved, and that is whether a desire to select the right people for our judicial system should override the fundamental right of the people to choose their public servants, whether they be members of the executive, legislative or judicial branches of governments.

I submit that the advantages of judicial appointment have not been shown to outweigh the disadvantages of casting aside our elective franchise, and that this most recent episode simply illustrates that the political process is an inevitable and probably a necessary ingredient in the selection of individuals for public office.

Unfortunately, in this case, it is the citizens of New York State who have been eliminated from the process.

STANLEY FINK  
Speaker of the Assembly  
Albany, Jan. 1, 1983

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Exhibit A-4(b)