

EDITORIALS

What a way to pick judges

THE ISSUE *Judges are hand-picked by politicians.*

OUR OPINION *True merit selection is the answer.*

The pending appointment of state Supreme Court Justice Lawrence E. Kahn to U.S. District Court is an object lesson on much that is wrong with our system for selecting judges, both in New York and nationally. Although it is no reflection on Justice Kahn, who seems to be fully qualified to sit on the federal bench, his nomination clearly illustrates a system, or systems, in disarray.

Consider how the two systems work, or don't work:

Federal judges are officially appointed by the president, but in reality the selection is made by a U.S. senator and usually rubber-stamped by the chief executive. In New York, senators Daniel P. Moynihan and Alfonse D'Amato have cut a deal. Whichever senator's party controls the White House gets three of every four judicial picks. Right now, that means Moynihan gets the lion's share. It also means that politicians sometimes delay appointments almost indefinitely in hopes that the White House will change hands.

State trial judges are elected for 14-year terms. However, they are routinely cross-endorsed and rarely have to run in a contested election. Reason: Party leaders would rather wheel-and-deal than wage a real race in a multicounty district. Such a contest is expensive and pays almost nothing in political dividends. Judges can't do anything for the party while they are in office and, except for a clerk and a secretary, there is very little patronage.

In Justice Kahn's case, he was apparently recommended by Senator D'Amato to fill a judgeship created to alleviate an emergency backlog... four years ago. That's right, four years ago Congress created an extra position in the Northern District, which includes the Capital Region, because it had one of the

most serious case backlogs in the nation. Not surprisingly, the "crisis" continues as politicians haggle over who should get the lifetime job.

Initially, Senator D'Amato recommended Ulster County District Attorney Michael Kavanagh. Mr. Kavanagh won a nomination from President Bush, but that support vanished after the 1992 election. Just recently, when it became clear that the onetime lieutenant governor candidate and Mario M. Cuomo critic would never win the support of the Clinton Administration, Mr. Kavanagh graciously stepped aside. Now, it's Justice Kahn's turn and, with the requisite investigation by the Federal Bureau of Investigation and American Bar Association, it will be at least several months before the local federal bench has an additional jurist.

Meanwhile, politicians are already in deal-making mode as they contemplate filling Justice Kahn's seat, and several others, in state court. Republican and Democratic party leaders are intent on coming to an agreement that will keep the same political mix. One hand, in short, washes the other.

The pity of both the state and federal systems is that citizens have woefully little to do with selecting the men and women who will preside over their trial courts. Both systems tend to treat the citizenry as an unnecessary appendage to the selection process.

It is time for the state to scrap the sham election process and replace it with a merit selection system, but not the system of the federal government. Rather, what is needed is a selection process that invites public participation and not only allows, but encourages, the citizenry to take part. Currently, with all due respect to Justice Kahn, neither system measures up.