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BY FAX: 518-426-6036 (12 pages)
October 30, 2000

New York Law Journal/ John Caher

RE: The Commission on Judicial Nomination's **NON-COMPLIANCE**
with the findings requirement of Judiciary Law §63.3

Dear John:

Enclosed is the December 30, 1982 New York Times article by David Margolick, referencing a recommended change to "Require the commission to provide a more detailed account of its activities, along with a more complete assessment of the strengths and weaknesses of those whose names it submits" – and providing a terrific quote from Governor-elect Cuomo:

"Obviously, it needs to be something more than what you get out of a yearbook, which is what we got here,' Mr. Cuomo said. 'They ought to help me make a judgment, not just say that somebody was born in Hamilton County and has been on the bench for 14 years.'"

THE QUESTION IS: WHAT KIND OF DEAL THWARTED MORE INFORMATIVE COMMISSION REPORTS IN CONFORMITY WITH THE THEN EXISTING JUDICIARY LAW §63.3 THAT ALREADY REQUIRED FINDINGS FOR "EACH CANDIDATE"?

Please call law professors, etc. for their opinion as to whether the Commission's October 4, 2000 report complies with Judiciary Law §63.3's requirement of "findings" for "each candidate" as to "character, temperament, professional aptitude, experience, qualifications and fitness for office" – and whether, as CJA contends, any of Commission's recommendees can be lawfully appointed by the Governor and confirmed by the Senate by reason of its violation of the public's rights under that statute.

FYI, enclosed is the Commission's October 18, 2000 letter and its handy 5-page list of Court of Appeals recommendees and appointees, to date.

Regards.



12/30/82

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York, New Jersey, Connecticut

Cuomo Requests Greater Leeway To Select Judges

Seeks Revised Procedure for Top Court in State

By DAVID MARGOLICK

Governor-elect Mario M. Cuomo said yesterday that he would ask the Legislature to enact changes in the method of selecting judges for the state's highest court.

The proposed modifications are designed to diversify the pool of candidates for seats on the New York Court of Appeals, as well as to give the Governor a longer list of people to choose from.

Earlier this month, a special nominating commission forwarded to Mr. Cuomo the names of four candidates for the court seat now held by Judge Domenick L. Gabrielli, who is retiring tomorrow.

None of them were women or had extensive criminal-justice experience, two specifications that Mr. Cuomo had suggested, and he asked the panel for more names. The panel responded that it could not legally do so.

A Jan. 15 Deadline

It was uncertain whether Mr. Cuomo hopes to have the proposals enacted in time to broaden his choices for the Gabrielli seat, or would choose one of four candidates already nominated: Judges Vito J. Titone and Richard D. Simons of the Appellate Division, Joseph M. McLaughlin of Federal District Court in Brooklyn and Surrogate Bertram R. Gelfand of the Bronx. The vacancy must be filled by Jan. 15.

"It was clear that the people in the room wanted me to pick from the four names, and I told them I understand that," Mr. Cuomo said. "But if the theory is to improve the statute, the theory should be to improve it immediately."

Mr. Cuomo said he intended to discuss the proposed changes in the merit selection scheme soon with Mendes Hershman, the chairman of the nominating commission.

Asked when he hoped to meet with legislative leaders, he said: "I will be Governor Saturday. I would say, on Sunday."

Changes Proposed

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"Mechanically it would be possible by the 15th," Mr. Dumas said. "But whether there'd be sufficient time for deliberative consideration of the proposals would have to be decided by the legislators themselves."

The recommended changes would do the following:

¶ Increase the maximum number of candidates that the commission can provide the Governor for vacancies on the Court of Appeals from five to seven. The higher figure currently applies only the position of chief judge. The panel is required to submit at least three nomi-

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Cuomo Asks Change in Naming Judges

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nees when an associate judgeship becomes vacant.

¶Decrease the number of votes required for a finding of "well-qualified" from eight to seven of the commission's 12 members. The lower number, it is felt, will make it harder for a small number of commissioners to block nominations through abstentions.

¶Require the commission to seek the broadest possible cross-section of candidates for court vacancies, with particular emphasis to be placed on finding qualified women, minorities and lawyers from private practice. All of those heretofore nominated by the commission have been sitting judges.

¶Require the commission to provide a more detailed account of its activities, along with a more complete assessment of the strengths and weaknesses of those whose names it submits.

"Obviously it needs to be something more than what you get out of a year-book, which is what we got here," Mr. Cuomo said. "They ought to help me make a judgment, not just say that somebody was born in Hamilton County and has been on the bench for 14 years."

In the meantime, the Court of Appeals is scheduled to be in session the first two weeks of January. Should Mr. Cuomo wait until the deadline for filling the seat, the seven-member court could hear some 60 cases short-handed.

The changes sought by Mr. Cuomo were agreed upon Tuesday night at a meeting between him and a group of

bar leaders and good-government officials active in replacing the direct election of judges with merit selection. Among those attending were Cyrus R. Vance, who headed an influential 1974 study on court reform; Louis A. Craco, president of the New York City Bar Association, and Robert MacCrate, the president of the Committee for Modern Courts.

The session, held at the City Bar Association's headquarters on 44th Street, appeared to leave all parties satisfied.

Making the System Strong

"I think we have a Governor very receptive to making the judicial system strong," said Alan Rothstein of Citizens Union, one of those attending the dinner. "The major import of our meeting is that all of the proposed changes maintain the structure of merit selection intact."

"I'm very pleased with the intelligent, mature way the lawyers extended themselves to me last night," Mr. Cuomo said. "There was a union formed. It has been there incipiently; now it's there kinetically, and I hope it will continue. If all of government works this well, it should be a pleasant four years."

In some instances the proposals represent a compromise for Mr. Cuomo. He had asked, for instance, that only five votes be required for a finding of "well-qualified." Earlier this month, moreover, he claimed that under the state constitution, he was entitled to the names of all of those found "well-quali-

fied" by the commission, not merely to a predetermined number.

The need for a fixed number of choices was reiterated by participants at Tuesday's meeting.

"The cap is really essential to the proper functioning of a nominating commission," said Mr. MacCrate. "If you do not have that, it becomes a screening panel for the lowest common denominator."

Mr. MacCrate cautioned that any attempt by Mr. Cuomo to seek to apply the changes retroactively to the Gabrielli vacancy would be a "grave mistake."

"It would be a slap in the face to the commission and hostile to the whole idea of your merit selection process to say 'thanks for your time and effort' and throw the whole thing out," he said.

Mr. Hershman, the panel's chairman, said he generally supported the recommended changes, but warned that requiring reports more detailed than those already provided could threaten the panel's confidentiality requirements.

LOTTERY NUMBERS

Dec. 29, 1982

New York Numbers — 422
New York Win 4 — 1521
New Jersey Pick-It — 257
New Jersey Pick 4 — 8202
Connecticut Daily — 488