

Cross-endorsements of judicial candidates mute the public's voice

By Janet A. Johnson

This year's general election is nearly five months away but the pre-election activities among the county's political kingmakers have, in all probability, already decided several who

will be "elected" as judges. While these political activities go mostly unobserved by the general public, they are far more important than the campaigns that will be waged later in the year. By the time the campaigns commence, it will be too late for the electorate to exercise any meaningful choice because those preliminary activities determine who the candidates will be for whom the electorate will vote.

These comments are occasioned by a recent column by Milton Hoffman



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GUEST COLUMN

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in these newspapers about the possible choice of candidates for judgeships to be filled next November. To be brief, Hoffman described a prospective deal between the Republican and Democratic county chieftains by which the parties will give cross-endorsement to Supreme Court Justice Sam Fredman, a former Democratic Party county chairman who was appointed to the bench earlier this year by Gov. Cuomo, and to Republican Supreme Court Justice Joseph Giudice of Dutchess County.

Next year there would be cross-endorsement of Nicholas Colabella, elected to the Supreme Court on the Republican ticket, for the office of surrogate (from which Evans Brewster, a Republican, will retire at

the end of this year) and of Francis Nicolosi, now a Democrat County Court judge, for the Supreme Court. For those interested in a more bipartisan process, the deal looks good. Democratic judiciary candidates will be able to by-pass the bloody battle to be elected and they will slip into judicial office with the ease and dignity that has traditionally been the prerogative of Republican judiciary candidates. In this respect, the odds are evening out.

But a second look arouses some second thoughts. There is no question that the four candidates who are to take office under this friendly arrangement are men of integrity, excellent character and even considerable personal charm. All are (or will be by election-time, in the case of Justice Fredman) experienced judges, who can be expected to serve the county well. However, if we consider the process, the long-term outlook should give us pause.

Traditionally, in New York the accepted wisdom has been to prefer the election of judges to the appoint-

ment of judges. Although I take strong issue with that preference, the arguments in support of election of judges depend on certain assumptions. Those who favor election give as their reason that voting for judges allows the public to control the outcome and it is therefore the method of selection most compatible with a democratic government. If public participation in the electoral process is to have any meaning, however, the assumption is that there will be a contest in the general election, giving voters a choice among two or more candidates.

There may even be primary elections, in which the public picks the party candidates. The voters may not choose wisely, but it is not in the rules that they must do so. They control the outcome of the contest in a democracy, and they get whom they want (or as the old saying goes, "whom they deserve").

This means, among other things, that there is always a possibility that an appealing judicial candidate may come from nowhere, and win, as a

candidate of the less popular party. Such an upstart candidate is motivated by the desire for the job, and would not normally expect much by way of rewards from the party under whose banner he or she had run. The reward is the election victory, necessarily hard-won, and the public receives the benefit. Westchester has had several such judges.

The practice of cross-endorsement of judiciary candidates eliminates that possibility, and gives us the worst of both systems, electoral and appointive. There is no contest when both major parties agree on a candidate for judicial office. Voters simply have to rubber-stamp the parties' pre-selected choice.

But how is the choice of the candidates made? Not by appointment from a list of carefully screened candidates found to be qualified by a bi-partisan nominating committee, but by a negotiation conducted in private by the powers and the bosses of the two major parties, from which the public is excluded, as are all possible challeng-

ers. This process deprives the voters of both quality control and democratic control.

It is misleading to focus on the personal excellence of the candidates now being hand-picked in a bi-partisan deal between the Republicans, who finally must deal with the reality that there are Democrats who can win judgeships by commanding margins, at least at the county level, and the Democrats, who can sense their growing strength and are keen to have more of their own on the bench to consolidate their gains.

We should remember, however, that party leaders are kept honest only by the scrutiny of the voters. Their motivation in private deals cannot be taken on faith. They may have given us good candidates this time, but another time (if this time works) their selections may not be so felicitous, and the public will have no choice at all.

If we believe that *vox populi* is *vox dei*, (as the majority of New Yorkers apparently do) we should not allow the people's voice to be muted in this way.