

A surrogate election for 1989 calendar?

Deal? Did anyone say "Deal?"

Everyone. Everyone, that is, except the man in the middle, Westchester Surrogate Evans Brewster.

The talk among the courthouse set and among some other politicians would give the impression that something is in the wind concerning the election of a surrogate. The only problem is that Brewster's term on the bench isn't up this year. It runs through the end of 1990, when he must retire because of the age limit of 70. According to the hot stove league in the courthouse, there might not be a problem, but the surrogate election could be held this year.

Brewster is a Republican who was elected surrogate in 1973 and re-elected in 1983 with Democratic cross-endorsement. That's the year the Republicans cross-endorsed Democrat Lawrence Martin for state Supreme Court justice. Martin has since resigned from the bench.

The interesting thing about 1983 is that Republicans were so interested in keeping the surrogate post they were willing to cross-endorse a Democrat, which they have not done for a major judgeship in modern times.

If you believe the talk around the courthouse, the Republicans are still interested in protecting the surrogate post. Surrogate has the power to award lucrative special guardianships to lawyers, although Brewster, more than any other surrogate in modern times, has spread the assignments well beyond the clubhouse and has appointed not only Republicans but some Democrats, women and minority lawyers as well.

If you follow the line of thinking of all the political talk, Republicans believe they will have a better chance of winning the surrogate position this year than next, because they fear that anything can happen next year with Democratic Gov. Cuomo at the top of the ticket. Thought of another Cuomo landslide, like his winning by 1.4 million in 1986, sends chills through the GOP, especially because Cuomo took Westchester by 50,000.

With that in mind, the armchair strategists have come up with some scenarios.

Most often mentioned is the one in which Brewster, for the good of his party, resigns in



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September, after the primary, and Republican and Democratic leaders hand pick their candidates.

There are variations on this theme. One is that Brewster is nominated by Republicans for state Supreme Court for one of two posts that will be filled by election this year. If elected, he would be allowed to sit on the bench through age 76 as a certificated Supreme Court justice, provided he passed physical and mental tests. The state constitution bars county-level judges such as surrogates from sitting beyond age 70.

To carry that idea further, to insure that Brewster resigns as surrogate a year early, Brewster would get Democratic support for Supreme Court and Republicans would cross-endorse Democrat Samuel Fredman, a former Democratic chairman and leading matrimonial attorney, for Supreme Court. Any day now Cuomo is expected to name Fredman to fill a Supreme Court vacancy for the rest of this year.

The courthouse fantasy goes farther, involving not only surrogate but a political arrangement for two Supreme Court justices this year (the other vacancy to be caused when Republican Harold Wood reaches 70) and a multitude of judgeships next year. Republican Family Judge Louis Barone is interested in Supreme Court.

The main drawback for all plots is Brewster himself. Nobody bothered to tell him. "I'm not privy to it," he said the other day. "It's speculation, and I can't imagine a scenario like that coming about."

Brewster, who was ill but now is functioning full time, indicated that he had no plan to resign this year, 18 months ahead of his retirement.

He didn't say it, but unlike some other judges, Brewster owes little if anything to his political party. In 1973, Republican leaders denied him the nomination to succeed Otto Jaeger. Brewster defeated Julian Hyman of New Rochelle in the primary and won a 10-year term.

If he were to open up the surrogate seat this year by resigning in September, Brewster would be forfeiting four months of his \$94,000 annual salary. If he didn't get a Supreme Court nomination, he would lose an additional full year off the court payroll. So any arrangement would have to take into consideration Brewster's own needs and aspirations.

These Rube Goldberg scenarios have some other booby traps. Republicans believe they do not have to cross-endorse Democrats to win Supreme Court posts in the 9th Judicial District, which covers Westchester and Rockland, two politically marginal counties, as well as very Republican Putnam, Orange and Dutchess counties. The court has only one elected Democrat, Sondra Miller, and 23 elected Republicans. When judges run entirely in Westchester, however, it's a different ball game. Last November Democrats won four of five countywide posts for county and family courts. Democrats do have a bargaining chip.

An arrangement could happen because Democrats hold Sam Fredman in high esteem and many Republican leaders respect Fredman. Both sides could make an unusual arrangement if Fredman were one of the subjects.

While all this is going on — or not happening — a number of persons are being mentioned for Brewster's surrogate seat, next year or this. A leading name among Democrats is County Judge Francis Nicolai, whose present term expires at the end of 1993, followed by A. Robert Giordano, a former North Salem justice. Names of Republicans who have been mentioned, with or without their permission, include Supreme Court Justice Nicholas Colabella, Family Judge Adrienne Hofmann Scancarelli, whose term expires the end of 1990, and local judges such as City Judge James Reap of White Plains and Justice William F. Harrington of Pound Ridge.

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EXHIBIT "A"