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Breaking News:

Spitzer Names Jones to Court of Appeals

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ALBANY - Governor Eliot L. Spitzer today nominated Brooklyn civil term administrative Justice Theodore T. Jones Jr. for the Court of Appeals, a decision that may provide a window into how the newly installed executive will go about appointing judges.

Since this appointment would mark the new governor's first judicial selection, legal observers and court watchers were especially interested to see how Mr. Spitzer goes about the process of choosing judges.

Mr. Spitzer interviewed all seven candidates and met face to face with four of them - a virtually unprecedented approach, observers say. More often governors interview only the nominee they are favoring, or defer to staff. But Mr. Spitzer apparently played an unusually active role.

"I have always felt that the judiciary is our most important branch of government," Mr. Spitzer said at a press conference Sunday in Manhattan. "It is that branch that ensures that we maintain the constitutional principles relating to how our government is structured, our civil liberties are protected, our laws enforced and, as a consequence, the capacity to participate in nominating individuals for the state's highest Court is one I take remarkably seriously. It is a branch of government for which I have great reverence."

Justice Jones is a favorite of lawyers, particularly those representing plaintiffs in civil cases and his star rose after his deft handling of the 2005 Christmas season transit strike.

With a strict application of the Taylor Law, and at the urging of then Attorney General Spitzer, Justice Jones held union leader Roger Toussaint in contempt of court. Shortly after, he was promoted by the Office of Court Administration to Brooklyn administrative judge, taking responsibility for a court that had been rocked by scandal.

At the time, the OCA said that while Justice Jones was under consideration for an administrative post before handling the transit case, his "excellent demeanor, scholarship and handling of that case helped seal the deal."

Mr. Spitzer said Sunday that while the transit strike matter was perhaps Justice Jones' most publicly prominent, it was the judge's body of opinions and decisions over the last 16 years that swung the pendulum in his favor.

He said that in the transit case, the "public saw a jurist who was in command, a jurist who understood the rule of law, a jurist who understood how judges had to make tough decisions and did not flinch when doing so. But the governor added that Justice Jones had "already earned the respect of those who had worked with over the years in the judicial system."

Mr. Spitzer said Justice Jones brings "not only the intellectual skills but also a real-life understanding that you need on the highest court in the state - the capacity to be a superb appellate jurist but also somebody who understands how his writings and the decisions of the Court will be applied in a court of law, will be applied on the street and will percolate through the entire judicial system in a way that will reflect the rule of law as we believe in it."

With an announcement coinciding with the Martin Luther King holiday, Mr. Spitzer will apparently restore racial

balance to the Court of Appeals.

Justice Jones, who is black, was nominated to succeed Judge Albert M. Rosenblatt on a Court that has been without black representation since September when former Governor George E. Pataki refused to reappoint Judge George Bundy Smith. Judge Rosenblatt retired as of the first of the year, giving newly inaugurated Governor Spitzer his first opportunity to name a Court of Appeals judge.

Although the governor was immediately praised for nominating a black jurist, Mr. Spitzer insisted at a Sunday afternoon press conference, that race played no role in his decision and insisted his nomination was based solely on merit.

"I have always believed that government should reflect the diversity of our society," Mr. Spitzer said. "Having said that, race, gender did not play a role in our selection process. I was asked to make a choice for the Court of Appeals based upon who would be the best jurist. I chose based on the merits of the individual candidates. I think that is what the public would expect."

Still, it was clear from the outset that Mr. Spitzer would nominate a black if at all possible.

Mr. Spitzer had seven candidates to choose from, and the only other black on the list was Deputy Chief Administrative Judge Juanita Bing Newton. Although well regarded and respected, Judge Bing Newton had not been in the courtroom as either a judge or a lawyer in at least a decade.

The other candidates on the list were three highly - respected appellate judges -- Justices Thomas E. Mercure of the Third Department, Steven W. Fisher of the Second Department and Richard T. Andrias of the First Department; and Supreme Court Justice James A. Yates of Manhattan; and practicing attorney George F. Carpinello of Boies, Schiller & Flexner in Albany.

The governor suggested he was pleased with the caliber of candidates presented by the Commission on Judicial Nomination - he was constitutionally required to choose from the seven candidates nominated by the bipartisan commission. Mr. Spitzer said any one of the seven could have served admirably.

"It was a hard choice because the roster of individuals who were presented to us by the screening committee were remarkably talented jurists and each one of them could have served with distinction on New York's Court of Appeals," Mr. Spitzer said.

Justice Jones was accompanied at a Manhattan press conference by his wife of 39 years, Joan, two sons, Wesley and Theodore, and granddaughter. The nominee said he was "humbled by the trust placed in me" and promised to "do my best to live up to that great responsibility."

"I am profoundly aware of the importance of this nomination, and I cherish the position in which I find myself," Justice Jones said. "I know the strength of the competition presented by the other judges who were considered along with me. I know of their abilities as scholars and writers, and I am profoundly grateful to have emerged as the nominee under those circumstances. I am persuaded that my 34 years of legal experience up to this point put me before you today."

Justice Jones, 62, was born in Brooklyn and grew up in Queens. His mother was a teacher and his father worked with the Long Island Rail Road, eventually becoming station master at Penn Station. He saw active duty in Vietnam from 1967-1969 and left the military as a captain.

A graduate of Hampton University and St. John's University School of Law (1972), Justice Jones spent two years with the criminal division of the Legal Aid Society. He then clerked for a Court of Claims judge and practiced law in Brooklyn before his election to Supreme Court in 1989. Justice Jones was a member of the Second Department's character and fitness committee from 1978 to 1990 and has taught as an adjunct professor at the City University of New York and St. John's University School of Law.

Justice Jones, like the governor, is a Democrat. If confirmed by the Senate, he will join a bench that now includes two appointees of the last Democratic governor, Mario M. Cuomo (Chief Judge Judith S. Kaye and Judge Carmen Beauchamp Ciparick) and four Republicans appointed by Mr. Pataki (Judges Victoria A. Graffeo, Susan Phillips Read, Robert S. Smith and Eugene F. Pigott Jr.). Because of his age, Justice Jones would have only eight years, not a full 14-year term, on the Court before facing mandatory retirement at age 70.

Justice Jones would become the fourth black judge to sit on the Court of Appeals. The others were Judges Bundy Smith (1992-2006), Fritz W. Alexander II (1985-1992) and Harold A. Stevens (1974). The Senate is required to take action within 30 days. It has never rejected any governor's nomination for a Court of Appeals position. Mr. Spitzer said he had advised Senate Majority Leader Joseph L. Bruno of his choice, and that the majority leader

responded favorably.

New York State Bar Association President Mark H. Alcott said that while racial diversity is a "plus," Justice Jones also brings the diversity of someone who was an active litigator, a seasoned judge and a judicial administrator. He said that combination of qualities helped him to stand out.

Nadine C. Johnson, president of the Metropolitan Black Bar Association, said in a statement that the organization is "ecstatic" over the selection of Justice Jones.

"Justice Jones is a great judge with an exemplary reputation and will bring to [New York's] high court a keen understanding and knowledge of the legal issues the Court is likely to be faced with in the near future," Ms. Johnson said. "He is known for excellent judicial temperament, a high sense of integrity, intellect and judicial independence, respect for the laws with fair and accurate application of the law."

Attorney General Andrew M. Cuomo said he is "pleased that the Court will once again begin to reflect some of the diversity that is representative of our state."

Senate Democratic Leader Malcolm Smith said in a statement that "while Governor Spitzer made it quite clear that race would not be a factor in his judicial appointments, he also made it clear that he values a diverse judiciary. The appointment of Judge Jones is a clear indication that Governor Spitzer will set out to create a judiciary that is respected and trusted by all the people of New York State."

Senator Ruth Hassell-Thompson, Ranking Democrat on the Senate's Judiciary Committee, said that with the nomination of Justice Jones, Mr. Spitzer "has done more to increase diversity on the State's highest Court than his predecessor did in 12 long years." Mr. Pataki never appointed a minority to the Court of Appeals.

"Judge Jones has shown himself to be a courageous and fair judge who will bring his unique perspective to the bench and will help to make the state's court system stronger and healthier," Ms. Hassell-Thompson said in a statement. "Governor Spitzer said in his State of the State address that there are chapters yet to be written in the nation's civil rights movement. I hope this is the first statement of the Governor's chapter."

Albany Law School Professor Vincent M. Bonventre said that some were predicting Justice Jones' pro employer, anti union decision in the transit case would derail his chances with a newly elected Democratic governor.

"This shows that Spitzer is willing to make appointments to the Court that don't necessarily please all his Democratic constituents," Mr. Bonventre said. "And maybe Justice Jones' ruling suggests he will be independent, which would certainly be good."

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