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### New York's Inbred Judiciary: Pathologies of Nomination and Appointment of Court of Appeals Judges

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### **New York's Inbred Judiciary: Pathologies of Nomination and Appointment of Court of Appeals Judges**

JAMES A. GARDNER<sup>†</sup>

#### INTRODUCTION

The problem of how to select judges has bedeviled Americans for more than two centuries. Its unusual difficulty arises from the peculiar mix of qualities that judges in a democratic society must possess. First, judges must be independent to serve effectively as a counterweight to executive and legislative power. At the same time, they must paradoxically be accountable in some degree to ensure that they operate within the limits established by popular authority. Finally, judges must be highly skilled legal craftsmen to serve as effective stewards of the legal system and indeed of the rule of law itself.

Judges may be selected in many different ways, but various methods typically do a better job of selecting for some of these qualities than others. Election of judges, for example, produces accountability, but is hard-pressed to guarantee quality. Gubernatorial appointment is calculated to protect quality, but risks sacrificing independence and accountability. Various hybrid systems such as the "Missouri Plan," which pairs initial gubernatorial

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appointment with subsequent retention elections,<sup>1</sup> try to balance all three criteria.

Like many jurisdictions, New York has over time employed numerous systems of judicial selection, and currently uses several different methods to select judges for its various courts. Judges of the New York Supreme Court, the general trial court, are generally elected in partisan elections, although judges of the Court of Claims are appointed by the governor subject to senatorial confirmation.<sup>2</sup> Justices of the Appellate Division of New York Supreme Court, the intermediate appeals court, are selected by gubernatorial appointment, but the governor may choose only from among judges who have been elected to the lower trial court bench, superimposing considerations of merit onto a set of candidates possessing a democratic pedigree.<sup>3</sup> Selection of judges to the Court of Appeals, the state's highest court, proceeds by yet another method, one often denominated a "merit" system because of its emphasis on producing judges of the highest possible quality.

Under the current system, Court of Appeals judges are appointed by the governor, subject to senatorial confirmation, from a list of nominees forwarded by a Commission on Judicial Nomination.<sup>4</sup> The twelve members of the Commission, who are charged with scouring the state for the best and most qualified nominees, are appointed by the governor, the chief judge of the state, and the four highest-ranking members of the Assembly.<sup>5</sup> This is clearly a system meant to produce nominees of substantial independence, some very limited and indirect democratic pedigree, and great capability. Such a system—now promoted actively by no less a legal celebrity than retired U.S. Supreme Court Justice Sandra Day O'Connor<sup>6</sup>—seems

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1. For a good discussion of methods of judicial selection, including the Missouri Plan, see Steven P. Croley, *The Majoritarian Difficulty: Elective Judiciaries and the Rule of Law*, 62 U. CHI. L. REV. 689, 714-25 (1995).

2. N.Y. CONST. art. VI, §§ 9, 21.

3. *See id.* at § 4(c).

4. *Id.* at § 2.

5. *Id.* at § 2(d).

6. *E.g.*, John Schwartz, *Effort Begun to End Voting for Judges*, N.Y. TIMES, Dec. 24, 2009, at A12.

well designed to produce judges of the best possible quality and significant independence.

But this is New York, and one must never underestimate the ability of New York officials to subvert the operation of a seemingly good process.

The curtain hiding the inner workings of New York's merit selection system fell aside slightly during the recent proceedings following Chief Judge Judith Kaye's announcement that she would resign at the end of 2008. As required by law, the Commission on Judicial Nomination undertook a search for qualified replacements and, after deliberating, forwarded a list of seven nominees to Governor David A. Paterson. The list, however, contained no female nominees, an omission that the Governor criticized loudly and publicly.<sup>7</sup> In response, the Commission revealed a considerable amount of information about its processes and its applicant pool, disclosing along the way that only three women had even applied for the chief judgeship.<sup>8</sup> This response apparently satisfied the Governor, who went on to elevate Jonathan Lippman, then New York's chief administrative judge, to the position of Chief Judge of the Court of Appeals.

The Governor's question about the diversity of the nominee pool is a fair one, but the information released by the Commission prompts a more interesting line of inquiry. According to the Commission's data concerning the Court of Appeals appointment process, the question isn't why only three women applied and none were nominated. The real question turns out to be this: why does virtually *no one*, male or female, black or white, experienced or inexperienced, talented or untalented, apply for vacancies at the New York Court of Appeals? Despite what the Commission describes as substantial outreach efforts,<sup>9</sup> a grand total of seventeen individuals bothered to apply for

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7. Jeremy W. Peters, *Paterson Criticizes Panel for Its Judicial Selections*, N.Y. TIMES, Dec. 4, 2008, at A39.

8. Letter from John F. O'Mara, Chair of N.Y. Comm'n on Judicial Nomination, to N.Y. Senator John L. Sampson (March 25, 2009), [http://www.nysegov.com/cjn/assets/documents/press/OMara\\_Judiciary\\_Committee\\_Update\\_Letter.pdf](http://www.nysegov.com/cjn/assets/documents/press/OMara_Judiciary_Committee_Update_Letter.pdf).

9. Letter from John F. O'Mara, Chair of N.Y. Comm'n on Judicial Nomination, to Governor David A. Paterson (December 17, 2008), <http://blog.timesunion.com/capitol/files/2008/12/judicial.pdf>.

the job of head of the entire judicial branch of the State of New York.<sup>10</sup> That bears repeating: in a completely open application process, only seventeen people applied to be the chief judge of New York. Indeed, the Commission's data shows that it has never received even fifty applications for any Court of Appeals seat that has opened up in the thirty-three years since New York adopted its current method of gubernatorial appointment.<sup>11</sup> The typical number of applications is fewer than thirty.<sup>12</sup>

Thus, the important question is: why aren't more people willing to apply for these jobs? Perhaps only the Commission really knows, and of course it can say nothing due to the confidential nature of its communications with potential applicants. Nevertheless, even a cursory examination of the actual appointments made by New York governors over the last three decades yields a pretty obvious answer. Although the current method of selecting Court of Appeals judges was designed to be wide open and based entirely on merit, the selection process, as it has actually evolved in practice, is neither. It has instead degenerated into a fundamentally closed competition among a very small number of sitting, experienced justices of the Appellate Division. It has become, in other words, a process not of judicial appointment but of judicial promotion.

There are at present only sixty-five sitting Appellate Division justices.<sup>13</sup> If the main point of promoting justices from the Appellate Division is to secure the benefits of prior appellate judicial experience, fewer than half of sitting Appellate Division justices have even five years experience, so the potential field is limited realistically from the outset to fewer than thirty.<sup>14</sup> Among these, the candidates with the greatest prospects of success are naturally those who are members of the governor's party or whom the governor otherwise has some reason to find appealing. This of course drastically limits the field of actual prospects, and

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10. O'Mara, *supra* note 8.

11. *Id.*

12. *Id.*

13. See New York State Unified Court System, Appellate Divisions, <http://www.courts.state.ny.us/courts/appellatedivisions.shtml> (last visited June 14, 2008).

14. *Id.*

knowledge of these realities among the pool of potential candidates undoubtedly discourages interest in applications.

It thus appears that, in practice, the pool of individuals with a realistic chance for appointment to the Court of Appeals consists of perhaps a dozen or fifteen senior judges of the state's intermediate appellate court. This cannot possibly be what the people of New York intended when they approved the constitutional change to merit selection.

### I. THE NEW YORK COURT OF APPEALS

Like any other state high court, the New York Court of Appeals performs two principal functions. First, it exercises ultimate responsibility for overseeing the application and development of state law in the courts of the state. Second, it sits at the apex of a co-equal branch of state government, and in that role, by constitutional design, serves as a check on and counterweight to the state's executive and legislative branches.

One of the most important ways to make sure that this or any other court successfully performs its institutional duties is to see that it is populated by judges of appropriate talent and dispositions. This leads directly to the question of the method of judicial appointment.

Until the mid-nineteenth century, judges in New York were selected by gubernatorial appointment. The Constitution of 1846 ended this system in favor of popular elections for all judicial offices.<sup>15</sup> This change in practice occurred as part of a Jacksonian wave of reform that swept the nation.<sup>16</sup> In New York, however, the switch to an elective judiciary responded just as much to a belief that the state's governors were dispensing judgeships as political patronage, resulting in the appointment of judges who were either unduly beholden to the governor or corrupt in that they had obtained their positions by performing service to the governor or his party.<sup>17</sup>

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15. PETER J. GALIE, *ORDERED LIBERTY: A CONSTITUTIONAL HISTORY OF NEW YORK* 82-83, 105-06 (1996); PETER J. GALIE, *THE NEW YORK STATE CONSTITUTION: A REFERENCE GUIDE* 128-29 (1991).

16. Croley, *supra* note 1, at 714-25.

17. See GALIE, *supra* note 15, at 105.

By 1977, however, dissatisfaction with the “unseemly spectacle of expensive, bitterly contested, partisan elections for seats on the highest court in the state” led to amendment of the New York Constitution to implement a new system for selecting judges of the Court of Appeals, one based on merit.<sup>18</sup> This amendment provided the current system, in which judges are appointed to the Court of Appeals by the governor, but the governor is restricted in his possible appointments to candidates forwarded by the Commission on Judicial Nomination. As in systems of lower-level civil service employment, the Commission’s role is to serve as an impartial filter to identify the very best candidates from among New York’s thousands of lawyers, public officials, and public figures. By this method, the New York Constitution attempts to avoid burdening nominees with the obligation to campaign for office, while simultaneously blocking the patronage abuses of the early nineteenth century and ensuring that the governor appoints only judges of the highest ability and integrity.

For more than one hundred years, from the 1870s through the 1970s, the New York Court of Appeals was regarded as one of the very best state courts in the nation, one that other state supreme courts routinely looked to for leadership on legal issues of common concern. Most studies that have examined the reputation and impact of state supreme courts through the 1970s ranked the New York Court of Appeals first or second among the nation’s high courts. By the close of the twentieth century, the Court’s impact had fallen dramatically. A recent study of the frequency with which state courts cite one another’s decisions—a not unreasonable proxy for reputation among fellow supreme court judges—ranked the New York Court of Appeals twenty-fourth.<sup>19</sup> Paradoxically, New York’s switch to merit selection of its judges coincides with a decline in the Court’s national reputation. To be sure, there are good reasons to be skeptical of ranking exercises. Even so, the

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18. *Id.* at 339.

19. Stephen J. Choi, Mitu Gulati, & Eric Posner, *Which States Have the Best (and Worst) High Courts?* 16 (Univ. of Chicago Law Sch. Pub. Law and Legal Theory, Working Paper No. 217, 2008).

belief that the Court is no longer what it used to be is widely shared among the bar and informed observers.<sup>20</sup>

## II. PROFILE OF COURT OF APPEALS JUDGES

New York contains the deepest pool of legal talent in the nation. It is home to more than 150,000 attorneys, a total exceeding that of any other state and comprising one of every eight American lawyers.<sup>21</sup> New York contains fifteen law schools, more than any other state except California, giving it the highest per capita concentration of legal learning in the nation.<sup>22</sup> As a global center of international commerce and finance, New York disproportionately draws the most talented law school graduates from across the United States.

Given the unparalleled depth of its legal talent and its constitutional commitment to merit-based selection, New York surely ought to have the best high court bench in the nation. Does it? Although no one would be inclined to deny the general competence of the Court of Appeals and its judges, I suspect that few believe that the Court's recent membership fairly reflects the range and depth of talent of the state's population. An examination of the backgrounds of appointees to the Court during the last thirty years confirms this suspicion.

In considering the characteristics of New York Court of Appeals appointees, a useful point of comparison is the United States Court of Appeals for the Second Circuit, a court that draws its membership from the same population and which has long been regarded as one of the finest appellate courts in the nation. Since New York adopted its current system of merit-based appointment to the Court of

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20. See, e.g., Vincent Martin Bonventre & Amanda Hiller, *Public Law at the New York Court of Appeals: An Update on Developments, 2000*, 64 ALB. L. REV. 1355, 1357-61 (2001).

21. American Bar Association, Statistical Resources, <http://new.abanet.org/marketresearch/Pages/StatisticalResources.aspx> (last visited June 14, 2010).

22. New York's law schools are Albany, Brooklyn, Cardozo, City University of New York, Columbia, Cornell, Fordham, Hofstra, New York Law School, New York University, Pace, St. John's, Syracuse, Touro, and University at Buffalo. For a list of accredited law schools, see AALS Member Schools, [http://www.aals.org/about\\_memberschools.php](http://www.aals.org/about_memberschools.php) (last visited June 14, 2010).



Appeals in 1977, a total of twenty-seven judges have been appointed to the Second Circuit.<sup>23</sup> Of this group, twelve had careers at blue chip law firms with nationwide practices. Six had been legal academics, including well-regarded former professors at Yale and Columbia Law Schools, and the former Dean of Yale Law School, one of the leading legal minds of his generation. Three previously served as United States Attorneys, and eight others served as federal or state criminal prosecutors. Twelve held positions of responsibility in a state, federal, or local executive agency. Four held positions of responsibility with U.S. congressional committees. Two had been elected members of a state legislature. Fourteen had served as judges of the United States District Court and five as state court judges, including one former associate judge of the New York Court of Appeals.

The picture that emerges from this summary is clear. Appointees to New York's federal appellate bench have by and large distinguished themselves in arenas *other than* the judiciary. They are people with significant accomplishments in legal practice and in government service overwhelmingly in the executive branch. About half were appointed without any prior judicial experience at all, and even those who previously served at the federal trial level had already distinguished themselves in some area of legal accomplishment other than judicial service.

The judges of the New York Court of Appeals present a very different profile.<sup>24</sup> Eighteen judges have been appointed to New York's high court since the advent of merit selection in 1977. Of these, only four had significant careers at the highest levels of private practice. Only one was a prosecutor. Five had significant executive branch experience. One spent time on the faculty of a law school. But the most telling statistics are those relating to prior judicial service: sixteen of the eighteen appointees had previously served on the New York Supreme Court or Court

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23. For a chart summarizing the information contained in this paragraph, see *infra* Table 1; see also USCourts.gov, Second Circuit Judges, <http://www.ca2.uscourts.gov/judgesmain.htm> (last visited May 3, 2010).

24. For a chart summarizing the information contained in this paragraph, see *infra* Table 2; see generally THE JUDGES OF THE NEW YORK COURT OF APPEALS: A BIOGRAPHICAL HISTORY 1 (Albert M. Rosenblatt ed., 2007). Information about judges appointed since 2007 appears at [www.courts.state.ny/ctapps](http://www.courts.state.ny/ctapps).

of Claims, and nine had previously held appointments to the Appellate Division. In addition, six had served as permanent clerks or law secretaries to sitting state judges, or in an administrative role within the judicial branch. Only two had no prior service as a state judge.

This pattern, incidentally, persists even if one looks at the thirty-year period preceding the institution of merit-based appointment. Between 1946 and 1977, nineteen judges earned seats on the Court of Appeals. Although the position was then elective, seven of these first took their seats upon a gubernatorial appointment to fill a vacancy. Of that group, all but two had no significant accomplishments outside the lower court positions from which they were appointed.

Thus, in the last sixty years of gubernatorial appointments, all but four of the twenty-five judges appointed to the Court of Appeals were appointed directly from the lower state court bench. (Two of those four, incidentally, were Chief Judges Fuld and Kaye, widely regarded as among the most capable judges to sit on the Court in the twentieth century.) The judges of the New York Court of Appeals, in other words, overwhelmingly have been distinguished mainly for having worked their way up through the state judiciary.<sup>25</sup>

I do not wish to be understood to minimize the value of prior judicial experience. Appellate judges who have previously sat on an appellate court know how the job is done and can make a seamless transition to the state's highest court. Those who have previously sat on a trial bench bring a useful perspective to the job of reviewing the work of trial courts. Such judges are likely to be sound technicians who can ensure reliability and consistency in the application of the law, and who know from experience where many of the problems lie in the state's administration of justice.

On the other hand, a uniform policy of promoting from within has certain obvious drawbacks for assembling a high

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25. The proportion of New York's judges elevated from lower state courts (84%) is also notable when compared to the practice of other states. According to a recent study, nationwide about 63.5% of all sitting state high court judges have some prior judicial experience. See Gregory L. Acquaviva & John D. Castiglione, *Judicial Diversity on State Supreme Courts*, 39 SETON HALL L. REV. 1203, 1233 (2009).

court of the greatest possible talent and most appropriate qualifications, especially in New York. First, there is the matter of how people get in the door in the first place – by securing a seat on the Supreme Court, the state’s general trial bench. Here we must be honest. Talent has rather little to do with becoming a New York trial judge. The most significant qualification is obtaining the favor of a local party leader. Talented men and women may well sit on the bench, but if they do it is in spite of the route to appointment, not because of it. Few of the most talented legal minds in New York are interested in the burden of running for an office for which they consider themselves self-evidently qualified, and even fewer are interested in the sometimes demeaning process of seeking—and trading for—political patronage. This was, of course, precisely the hurdle that merit appointment was supposed to short-circuit. Instead, the very same obstacle has been reintroduced by a consistent gubernatorial practice of making election to the Supreme Court a *de facto* qualification for appointment to the Court of Appeals.

Second, a policy of virtually uniform appointment from within the judicial branch is by no means a formula for producing the kind of independence of mind that the New York Constitution contemplates in designating the judiciary one of three co-equal branches in what is meant to be a working system of meaningful checks and balances. A career spent within the narrow confines of the lower state courts is not likely to cultivate the kind of large view and self-assurance necessary to stand up to the other branches in times of conflict.<sup>26</sup> The kind of background that we see among Second Circuit judges seems more suited to this enterprise; significant personal achievement and leadership in the executive branch, the private sector, or academia are experiences more likely to produce the necessary confidence and independence in legal minds of native talent.

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26. A recent example is the Court of Appeals’ disgraceful capitulation to the governor’s “appointment” of a lieutenant governor, an act for which the New York Constitution makes absolutely no provision; indeed, it is absurd to think that any constitution would permit a sitting governor to appoint his own successor without the involvement of any other branch of government or the people. *See Skelos v. Paterson*, 915 N.E.2d 1141 (2009).

### III. THE ROLE OF THE NOMINATING COMMISSION

The process by which Court of Appeals judges are appointed does not rest exclusively in the hands of New York's governors; the Commission on Judicial Nomination also plays an important role. The Commission's involvement raises the question of whether it has contributed in any way to the development of the current, desultory appointment practices. The answer seems to be that although the Commission has contributed to the problem by forwarding to the governor a constant stream of Appellate Division justices or administrative state judges, it has also done a reasonably decent job under difficult circumstances of including among its nominees at least some candidates who would bring more wide-ranging qualities to the job. The Commission's task has been greatly complicated by the appointing proclivities of a long series of governors.

First, the Commission faces a great challenge in the low volume of applications. Independent-minded New York lawyers who are not presently sitting on the Appellate Division know they will not get picked for the job and understand that, notwithstanding New York's constitutional commitment to merit-based appointment, appointment is in fact not based primarily on merit. Applying is therefore a waste of time. Add to this the low regard in which the judiciary is obviously held by officials of the other branches; the low pay; the need to run first for lower judicial office; and the complete failure of the New York Senate to serve as a legitimate check on the gubernatorial appointment power, and it is a miracle that any of the state's most accomplished lawyers outside the judicial branch would for a moment contemplate even taking a phone call from the Commission, much less permitting their names to be put forward.

Understandably, given gubernatorial appointment preferences over the last sixty years, the Commission has for every vacancy provided a list of nominees weighted heavily toward sitting justices of the Appellate Division and the Supreme Court. In its thirty-year history, the Commission has forwarded 160 nominations for twenty-two vacancies.<sup>27</sup> Of the nominees, 112 (70%) have been sitting

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27. NEW YORK COMMISSION ON JUDICIAL NOMINATION, CANDIDATES NOMINATED FOR APPOINTMENT TO THE NEW YORK STATE COURT OF APPEALS, 1979 TO PRESENT,

New York judges: twelve incumbent Court of Appeals judges, sixty-five justices of the Appellate Division, thirty-two judges of a state trial court, two judges in the state judicial administrative system, and one former judge of the Supreme Court. To its credit, the Commission has also nominated individuals who have made their reputation in law outside the state lower court system. On nine occasions it has nominated a judge of the U.S. District Court, though it has not done so in twenty years. Fourteen of its nominations have been members of the state's legal academy, including the law deans of New York University, Fordham, and Albany. Other nominees include practitioners at some of the nation's leading law firms, past presidents of leading New York bar associations, and a former counsel to the governor. Of course, a succession of governors has chosen not to appoint such individuals, so their continued willingness to apply is surely at risk.

Under the circumstances in which it operates, the Commission probably has not done a bad job. Still, one might ask: where are the former governors, attorneys general, legislative leaders, county executives, commissioners of leading state agencies, mayors, or administrators of federal agencies? Where, in short, are the people who have held high positions of leadership outside the formal confines of New York's own judicial branch?

#### IV. SOLUTIONS?

Because the problem with appointment to the Court of Appeals seems to lie with the way in which New York governors have chosen to exercise discretionary power, it does not admit of easy solutions. One possibility might be that the Senate begins to take seriously its constitutional role in the confirmation process and insist upon populating the Court with independent-minded individuals from more varied backgrounds that better reflect the depth of legal talent in the state. In New York, however, to hope for a change in legislative practice is probably every bit as futile as to hope for a change in gubernatorial practice.

A second option would be for the Commission to compensate for gubernatorial proclivities by drastically

limiting the number of sitting judges it nominates. For example, it might confine itself to a single sitting judge—the very best the state has to offer—and then nominate people from other backgrounds, perhaps without any duplication in any single category. This might force governors to think more seriously about appointments that do more than promote from within.

A third possibility might be for the Commission to generate greater publicity earlier in the process concerning the nominees it is contemplating. Perhaps it could circulate a preliminary draft with a public comment period. This might allow a better airing of the Commission's criteria, and permit talented people to present themselves after they have seen what the preliminary list looks like.

Finally, the Commission might take a lesson from diversity outreach efforts in other areas of high-level employment. When prominent organizations need to find leaders, they do not wait for applications, nor do they merely beat the bushes to scare up good-looking applications. Instead, they identify and go after people they want through targeted, personalized recruiting efforts. The Commission on Judicial Nomination is a government organ of constitutional stature. It is open to the Commission to interpret its role as more than merely a passive screener of applicants. Given the state's constitutional history described earlier, it is not unreasonable to conceive of the Commission as playing a stronger and more affirmative role in safeguarding the quality and constitutional efficacy of the Court of Appeals. Thus, in the absence of any other development, the Commission might do well to identify and seek out people it thinks ought to sit on the Court, and to energetically induce them to permit their names to be placed in nomination.

Judge	Year Appointed	Private Practice		Academia	Prosecutor				Other Exec. Branch			Legislative Branch		Judicial Branch					Notes	
		Local or Regional	National		US Attorney	AUSA	DA	ADA	Local	State	Federal	Congress. Staff	Elected	State Trial	State Appellate	State Highest	USDC	Perm Clerk/Secy		Jud. Admin.
Kearse	1979		✓																	Hughes, Hubbard
Newman	1979	✓			✓					✓	✓	✓						✓		HEW, US Sen staff, US Atty D. Conn.
Cardamon	1981	✓											✓							
Pierce	1981							✓	✓									✓		Dpty Comm'r NYC Police Dept
Winter	1981			✓								✓								Yale Law School professor
Pratt	1982	✓																✓		
Altimari	1985	✓											✓					✓		
Miner	1985	✓					✓	✓	✓		✓		✓					✓		Colum Cty DA, Hudson Corp Counsel
Mahoney	1986	✓																		
Walker	1989	✓	✓			✓					✓							✓		Asst Secy US Dept of Treasury
McLaughlin	1990		✓	✓														✓		Fordham Law School prof
Jacobs	1992		✓																	Simpson, Thacher
Leval	1993		✓			✓		✓										✓		Cleary, Gottlieb
Cabranes	1994		✓	✓					✓									✓		Rutgers-Newark, Gen Counsel Yale U
Calabresi	1994			✓																Dean of Yale Law School
Parker, F.	1994	✓							✓									✓		Deputy Attorney General of Vermont
Pooler	1998	✓						✓	✓			✓	✓							Syracuse Corp Counsel, NY agencies
Sack	1998		✓									✓								Patterson, Belknap; Gibson, Dunn
Sotomayor	1998	✓						✓										✓		
Straub	1998		✓						✓			✓								✓ Wilkie Farr; NY Assembly, NY Senate
Katzmann	1999		✓							✓	✓									Georgetown, Brookings
Parker, B.	2001	✓	✓															✓		Morrison & Foerster
Raggi	2002	✓	✓		✓	✓												✓		Cahill; Interim U.S. Attorney
Wesley	2003	✓										✓	✓	✓	✓					✓ NY Assembly, NY Court of Appeals
Hall	2004	✓			✓	✓			✓											U.S. Attorney, D. Vt.
Livingston	2007		✓	✓		✓		✓												Paul, Weiss; Michigan Law School
Lynch	2009	✓		✓		✓		✓	✓	✓								✓		Columbia Law School prof

**Table 1. Prior experience of Second Circuit judges appointed between 1979 and 2009**

Source: <http://www.ca2.uscourts.gov/judgesmain.htm> (2009-10)

Judge	Year Appointed	Private Practice		Academia	Prosecutor				Other Exec. Branch			Legislative Branch		Judicial Branch						Notes
		Local or Regional	National		US Attorney	AUSA	DA	ADA	Local	State	Federal	Congress. Staff	Elected	State Trial	State Appellate	State Highest	USDC	Perm Clerk/Secy	Jud. Admin.	
Fuld	1946	✓						✓		✓	✓									Chief Deputy to Thomas Dewey
Bromley	1949		✓																	Winthrop, Stimson; Cravath
Van Voorhis	1953	✓							✓				✓	✓						Town Attorney
Foster	1960	✓						✓					✓	✓					✓	Sullivan County DA
Breitel	1967	✓							✓				✓	✓						
Rabin	1974	✓											✓	✓	✓					NY Assembly
Stevens	1974	✓									✓		✓	✓						
Meyer	1979	✓									✓		✓							Nassau County Democratic Chairman
Simons	1983	✓							✓				✓	✓						Rome Corporation Counsel
Kaye	1983		✓																	
Alexander	1985	✓												✓	✓					
Titone	1985	✓												✓	✓					
Hancock	1986	✓							✓				✓	✓						Syracuse Corporation Counsel
Bellacosa	1987		✓	✓									✓					✓	✓	Albany Law, Chief Admin Judge
Smith, G.B.	1992		✓						✓				✓	✓				✓		NAACP Legal Defense Fund
Levine	1993	✓	✓					✓	✓				✓	✓						Schenectady County DA
Ciparick	1994								✓				✓					✓	✓	
Wesley	1997	✓											✓	✓	✓					NY Assembly
Rosenblatt	1999	✓											✓					✓		State legislative counsel
Graffeo	2000	✓								✓			✓	✓						NY Solicitor General
Read	2003	✓								✓	✓		✓							
Smith, R.	2004		✓																	Paul, Weiss
Pigott	2006	✓								✓			✓	✓						Erie County Attorney
Jones	2007	✓								✓			✓					✓		
Lippman	2008												✓						✓	Chief Administrative Judge

**Table 2. Prior experience of NY Court of Appeals judges appointed between 1946 and 2009**

Sources: THE JUDGES OF THE NEW YORK COURT OF APPEALS: A BIOGRAPHICAL HISTORY (Albert M. Rosenblatt ed., 2007) and [www.courts.state.ny/ct\\_apps](http://www.courts.state.ny/ct_apps)