

September 15, 2006

## Pataki Chided Over State Court Appointments

By MICHAEL COOPER

ALBANY, Sept. 14 — Gov. George E. Pataki came under fire from State Senate Democrats Thursday for appointing a less diverse judiciary to the state's courts: There are only two African-American judges among the 55 judges in the Appellate Division, and there will soon be none on the state's highest court, the seven-member Court of Appeals.

The Senate Democrats raised the issue as Governor Pataki's nominee for the Court of Appeals, Justice Eugene F. Pigott Jr., faced a Senate committee hearing that paved the way for his nomination to be approved by the full Senate on Friday. Justice Pigott, who is white, is set to replace the court's lone black judge, George Bundy Smith.

Many of the Democrats praised Justice Pigott, who is the presiding justice of the Appellate Division, Fourth Department in Rochester. But they expressed concern that Governor Pataki had appointed so few blacks, Hispanics or women to the bench.

"It's abysmal," said State Senator Malcolm A. Smith of Queens.

Michael Marr, who is a spokesman for the governor, said, "The governor is very proud of his record of appointing outstanding jurists who he believes will have the greatest long-term impact on the judiciary."

At his confirmation hearing — which would never be confused with, say, the hearings that United States senators hold on nominations to the United States Supreme Court — Justice Pigott said that he was concerned about the lack of diversity as well, and had been since his days as a Legal Aid lawyer in Buffalo.

"There is no way in the world that members of our society can believe in our society, participate in our society, if they're not participating at every single level," he said, observing that he was about to receive an award from the Rochester Black Bar Association for championing diversity.

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## Pataki Appointments Leave a Lasting Stamp

By SAM ROBERTS

In his final months in office, Gov. George E. Pataki has appointed or reappointed hundreds of officials to state boards, commissions and authorities, assuring his imprint on state government for years after his term expires on Dec. 31.

The appointments include Peter S. Kalikow, the chairman of the Metropolitan Transportation Authority, to a new six-year term and overseers of the Jacob K. Javits Convention Center, who could play a role in the redevelopment of the West Side. Many are Pataki contributors, political allies or their relatives.

Mr. Pataki has submitted dozens more nominees to the Republican-controlled Senate for confirmation today, and Albany Democrats estimate that he could fill at least another 50 vacancies before leaving office. The appointments lock them into policy-making and regulatory roles over a range of matters, including mass transportation and economic development — in some cases until 2013.

Rewarding political supporters with “midnight appointments” to terms fixed by law is a practice that dates back to at least the early 19th century, when President John Adams tried to stack the deck against his successor, Thomas Jefferson.

What distinguishes Mr. Pataki’s going-away appointments, besides the sheer volume, is the fact that this is the first time in decades that a departing governor’s party enjoys a majority in the Senate. That opportunity last presented itself in 1974, although other governors have made midnight appointments that did not require Senate confirmation.

The process first raised alarms earlier this summer when Mr. Pataki tried to make two \$90,000-a-year appointments that, to provide the longest possible terms, did not take effect until Jan. 1, 2007. Senate Democrats balked, citing an unofficial opinion from the United States Naval Observatory that midnight — when the governor’s term expires — is actually the last moment of Dec. 31, not the beginning of Jan. 1. Mr. Pataki withdrew those nominations.

“It’s what I call ruling beyond the grave,” said Senator David A. Paterson of Manhattan, the minority leader and now the Democratic nominee for lieutenant governor on the ticket with Eliot Spitzer, who hopes to succeed Mr. Pataki. “In wills, trusts and estates law we have pretty much gotten rid of ways people could

direct actions of other people in perpetuity. For some reason, in government we haven't addressed it."

"The Cuomo administration didn't do it," Mr. Paterson said, "but, to be fair, the Cuomo administration required the consent of the Senate."

A spokesman for Mr. Pataki, Michael Marr, defended the appointments, saying yesterday: "The governor is the governor until Dec. 31, and he will continue to fulfill the constitutional and legal obligations of the office for the remainder of his tenure. As vacancies come up on state boards and commissions, the governor will continue to submit qualified nominations to ensure the continued efficient operation of state government."

The administration has been able to make hundreds of appointments in part by putting permanent appointees in posts that were previously filled on an interim basis, or by dismissing holdovers so that Mr. Pataki could then make appointments to longer terms.

The administration has also invoked another tool: shifting its appointees back to Civil Service titles that protect them from dismissal, a process that may bump current employees into lower-paying jobs.

In other cases, officials who are likely to lose their state jobs with the arrival of a new governor are being placed on boards and commissions with fixed terms.

In June, Mr. Pataki sought to reappoint Ellen O. Paprocki, whose father, John F. O'Mara, is an influential lobbyist and one of Mr. Pataki's closest advisers, and to name Lisa Wright, the former wife of an upstate Republican state senator, to the Workers' Compensation Board, even though Mr. Paprocki's current term does not expire until after Jan. 1. Those positions pay \$90,800 annually.

Today, the Senate will consider the reappointments to the board of Ms. Paprocki and of Michael T. Berns, a former Conservative Party county chairman from Manhattan.

In a variation of musical chairs, they would be swapping seats. Ms. Paprocki would serve through 2011, Mr. Berns through 2007.

Mr. Pataki's most controversial late-term appointment so far was of Mr. Kalikow, a real estate developer and Pataki patron, to a new six-year term as unsalaried chairman of the transportation authority. Mr. Kalikow said at the time that he was committed to his unfinished transit agenda and had no intention of quitting even if the incoming governor asked him to.

"Appointing people to the M.T.A. into 2013 — we're at the end of the second Spitzer administration," Mr. Paterson said.

Mr. Kalikow was far from alone. Among other such recent appointees are Maureen Harris, whose brother is a

lobbyist and was Mr. Pataki's chief counsel, and Cheryl Buley, whose husband is counsel to the Republican State Committee, to six-year terms at \$109,800 a year on the Public Service Commission, which oversees utilities.

Mr. Pataki also appointed Eileen Long-Chelales, the daughter of the state's Conservative Party chairman, to a five-year term on the State Unemployment Insurance Appeal Board. She is a former Pataki aide and a veteran of state government.

Charles A. Gargano, the chairman of the Empire State Development Corporation and one of the governor's closest advisers, was reappointed to the board of the Port Authority of New York and New Jersey for a term expiring in 2012.

Caroline W. Ahl, a deputy secretary to the governor, was named to a \$90,800 slot on the Civil Service Commission.

Today the Senate will also consider nominees to a number of agencies, including the New York Convention Center Operating Corporation, the State Insurance Fund and the Metropolitan Transportation Authority.

In June, Senator Paterson calculated that Mr. Pataki had made 262 such appointments since Jan. 1, to positions on agencies and boards that include the State Liquor Authority, the State Parole Board, the State Racing and Wagering Board and the State Council on the Arts.

Mr. Paterson said that when those nominations were rushed through the Senate during the last week of June, on one of several days when the vote was taken, he "voted against everybody in a symbolic gesture."

"I feel really bad voting against people I don't know," he said.

While many of the appointments are honorary and unsalaried, they often include perquisites. And appointments to policy-making positions can tie the hands of a successor.

Assemblyman Richard L. Brodsky, a Westchester County Democrat and frequent critic of public authorities, said that after treating supposedly independent authorities as cash cows and patronage mills for years, the Pataki administration is justifying the filling of vacancies by maintaining that the authorities are supposed to be independent of any governor. "It's like an emancipation proclamation: 'On my way out, I'm liberating you,'" Mr. Brodsky said.

To which Mr. Marr, the governor's spokesman, replied, "Some of the loudest voices talking in the past about the independence of authorities and commissions now seem to be arguing that their boards be completely dependent on who they wish to be the next governor."

As of late yesterday, Governor Pataki had submitted about 50 more nominees to the Senate to consider today. That would bring the number since Jan. 1 to more than 300, with more than three months remaining before he leaves office.

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