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*Elena Ruth Sassower, Coordinator*

BY FAX: 212-556-3717 (9 pages)

October 27, 2000

The New York Times  
Metro Section

ATT: Tony Marcano, Editor

RE: Times upcoming coverage of Governor Pataki's  
*imminent* appointment of a third associate judge to the New  
York Court of Appeals

Dear Mr. Marcano:

This is to reiterate my request that the Times BALANCE the many articles in its national section focusing on the failings of judicial elections to highest state courts elsewhere in the country<sup>1</sup> and the article this week on Florida's possible switch from judicial elections to "merit selection" for its lower trial courts<sup>2</sup> with coverage of the situation here in NEW YORK. Isn't it at least reasonable for New York readers – presumably the bulk of the paper's readership -- to expect such coverage in the Times metro section?

To my knowledge, there has been NO Times coverage of "merit selection" to our state's highest court and, likewise, NO coverage of *any* of the judicial elections to our state's trial courts<sup>3</sup>.

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<sup>1</sup> See, *inter alia*, "Fierce Campaigns Signal a New Era for State Courts", 6/5/00; "A Spirited Campaign for Ohio Court Puts Judges on New Terrain", 7/6/00; "States Rein In Truth-Bending In Court Races", 8/23/00; "Court Rulings Curb Efforts to Rein In Judicial Races", 10/7/00; "U.S. Chamber Will Promote Business Views in Court Races".

<sup>2</sup> "Florida Voters Decide Judicial Selection", 10/25/00

<sup>3</sup> I do not believe that the Times saw fit to provide any coverage for the judicial races for which it editorialized on September 7, 2000 "For Assembly and Civil Court Judge" (emphasis added).

As to the Court of Appeals – for which the NYS Commission on Judicial Nomination has been purportedly screening candidates since May -- Times “coverage” over the past several months has consisted of a parenthetical insert in its September 8, 2000 article in the national section, “*Chief Justices to Meet on Abuses in Judicial Races*”:

“(Since 1977, judges of New York’s top court, the Court of Appeals, have been appointed by the governor after screening by a commission. But many other judges in New York are elected.)”.

This was followed the next day, by a September 9, 2000 obituary for former Court of Appeals Judge A.P. Burke, in the metro section, which read:

“(A change enacted in 1977 took the court of appeals *out of politics*. It mandates that the governor choose judges from a short list submitted by a selection panel, with the Senate voting on confirmation.)” (emphasis added).

As discussed, CJA’s October 16, 2000 Report, exposes the corruption of New York’s behind-closed-doors “merit selection” process to our highest court, with a fact-specific, fully-documented recitation – whose complete accuracy can be independently verified by the Times. Such verification is not overly time-consuming and, indeed, can be readily and easily accomplished

As CJA’s October 16, 2000 Report was hand-delivered on October 17<sup>th</sup> to the New York offices of the Governor, Chief Judge, the NYS Commission on Judicial Nomination, the NYS Commission on Judicial Conduct, and four bar associations, the Times can begin by asking them to comment on the Report. First and foremost, the Times should ask them to comment on Point I detailing that the Commission on Judicial Nomination’s October 4, 2000 report – the only public manifestation of the Commission’s adherence to “merit selection” -- is NON-CONFORMING with Judiciary Law 63.3. This, because it contains NO “findings” as to the qualifications of “each” of the recommendees. As a consequence, NONE of the recommendees can be lawfully appointed by the Governor or confirmed by the Senate.

Since the four bar associations have each failed to support their bald-ratings approving all of the Commission on Judicial Nominations’ recommendees – and have failed to issue any statement denying or disputing the complete accuracy of CJA’s October 16, 2000 Report -- the Times has a golden opportunity to demonstrate the factual basis for Mr. Glaberson’s otherwise grossly inappropriate

and defamatory "*The Legal Profession Smells a Rat*" ("Week in Review", 10/22/00).

Moreover, in the event no one from the four bar associations will provide the Times with comment as to the specifics of CJA's October 16, 2000 Report -- which should be a major story in and of itself -- the Times should avail itself of the many law professors and academics on whom it routinely relies for stories -- and who are happy to see their names in print, except, of course, when the stories, like this one, are politically-explosive.

Meantime, so that you can have before you the record of Times coverage for the last Court of Appeals vacancy two years ago, it is as follows:

**ANNOUNCEMENT OF THE COMMISSION ON JUDICIAL NOMINATION'S RECOMMENDEES:**

- (1) November 13, 1998 metro brief, "*Panel Nominates Seven for High Court Vacancy*"

**ANNOUNCEMENT OF THE GOVERNOR'S PICK:**

- (2) December 10, 1998 article, "*Pataki Nominates 2d Judge to State's Highest Court*". In addition to stating that "The Governor's selections to the Court of Appeals are closely watched..." -- by which it did not mean by the Times, whose only prior coverage had been the metro brief -- the article mischaracterized the Commission on Judicial Nomination as "an independent screening committee".

**EDITORIAL ENDORSEMENT OF THE GOVERNOR'S PICK:**

- (3) December 12, 1998 editorial, "*Governor Pataki's Wise Choice*", stating "The choice of a judge for the state's highest court is among the most important decisions a governor makes." This, of course, explains why Times coverage was limited to the November 13, 1998 metro brief and December 13, 1998 article on the Governor's pick -- and why it gave no coverage whatever to the unprecedented, no-notice, by-invitation-only confirmation "hearing", at which no opposition testimony was permitted [See CJA's December 28, 1998 letter to the editor, "*An Appeal to Fairness: Revisit the Court of Appeals*, NY Post, faxed to you yesterday as Exhibit "A-1" to CJA's October 16, 2000 Report

FINAL SMILING PICTURE OF THOSE WHO HAVE OBLITERATED THE PUBLIC'S RIGHTS:

(4) January 6, 1999, picture with caption "*New Year, New Judge*"

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After you have PERSONALLY reviewed CJA's October 16, 2000 Report, I trust you will invite me to come in and sit down so that we may finally explore this and other readily-verifiable, fully-documented stories of systemic governmental corruption. At such meeting, you may be assured I will bring the underlying documentation to which the Report refers -- excepting those documents that have long been in David Rohde's possession -- and which he told me he still has<sup>4</sup>.

Finally, it is absolutely imperative that CJA's Report be promptly transmitted to the Editorial Board so that this year -- unlike two years ago -- it does not rush out with an editorial endorsement for a nominee who is the end-product of a behind-closed-doors process about which it knows nothing.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability, Inc. (CJA)

Enclosures

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<sup>4</sup> David Rohde also still has a video cassette of a 1996 A & E Investigative Report which featured CJA. This was hand-delivered to him with a October 25, 1999 letter -- a letter to which I referred when you insistently asked me to recount the background to my interest in judicial selection/discipline issues -- a question to which you already knew the answer.

R E G I O N

***Panel Nominates Seven  
For High Court Vacancy***

ALBANY — Gov. George E. Pataki last night was given a list of seven names from which he must pick a new nominee for the state's highest court. The list was prepared by the state's Commission on Judicial Nomination.

The court, the seven-member Court of Appeals, has been one judge short since Sept. 1, when Vito Titone resigned from the \$125,000-a-year post as an associate judge that he had held since May 1985.

The nominees are all men and include an Albany lawyer, Michael Hutter Jr., who unsuccessfully battled efforts to keep secret the names of individuals and companies that contributed to Mr. Pataki's 1995 inauguration.

The others on the list are Albert Rosenblatt of Poughkeepsie, Joseph Sullivan of Brooklyn and Richard Andrias of Manhattan, justices in the Appellate Division of State Supreme Court; Justices George Daniels and James Yates of Supreme Court, both from New York City, and Guy Struve, a New York City lawyer. Within 30 days, the Governor must make an appointment, which is subject to confirmation by the State Senate. (AP)

*Ny Times Dec 10, 1998*

## **Pataki Nominates 2d Judge to State's Highest Court**

By ADAM NAGOURNEY

Seizing a chance to reshape a court he has repeatedly assailed as too sympathetic to criminal defendants, Gov. George E. Pataki yesterday nominated Albert M. Rosenblatt, a state appeals court judge and a former Dutchess County prosecutor, to replace one of the state's most liberal jurists on New York's highest court.

If confirmed by the State Senate — a step that is all but certain — Justice Rosenblatt, who sits on the Appellate Division of State Supreme Court in Poughkeepsie, would become Mr. Pataki's second appointment to the seven-member Court of Appeals. Justice Rosenblatt would replace Judge Vito J. Titone of Staten Island, the court's longest-serving member, who had been appointed in 1985 to the position by his friend, Gov. Mario M. Cuomo.

\* The Governor's selections to the Court of Appeals are closely watched, both because of the court's historic stature as one of the nation's most influential and once liberal benches, and because of Mr. Pataki's obvious dissatisfaction with some of its views. Mr. Pataki has long identified himself with

criminal justice issues and campaigned in 1994 on a pledge to reinstate the death penalty. He has often criticized Court of Appeals decisions, such as one making it harder for police officers to gather evidence against criminal defendants.

At a news conference in Albany, Mr. Pataki chose not to reiterate his frequent criticism of the court and instead cast his decision in broader terms than judicial ideology. The Republican Governor invoked Justice Rosenblatt's breadth of experience, particularly his two years as the state's chief administrative judge, in addition to his judicial writings and personal bearing.

"If you look at his opinions," Mr. Pataki said, "they are just really thought out and intelligently written and have that combination of judicial wisdom and common sense that I think makes for an outstanding



Justice Albert M. Rosenblatt

judge."

All seven members of the Court of Appeals who were sitting when Mr. Pataki took office in 1995 had been appointed by Mr. Cuomo, a Democrat.

Justice Rosenblatt, 62, began his legal career as a prosecutor in Dutchess County in 1964, where he worked until he was elected a county judge in 1975. He also was the last judge in New York to sentence a defendant to death prior to the reinstatement of the death penalty: Lemuel W. Smith, for killing a prison guard, in 1981. Mr. Smith's sentence was converted to 25 years to life in prison after the state's highest court overturned the portion of the death penalty law under which he had been sentenced.

Still, it was far from certain that Justice Rosenblatt's arrival on the bench would be a sign of a significant shift in the court's direction. For one thing, the Court of Appeals is no longer viewed as being as sympathetic to the rights of defendants as it was in the 1980's, when it was led by Sol Wachtler as chief judge.

And at least in the way it presents itself to

*Continued on Page B14*

## ***Pataki Picks His 2d Nominee For High Court***

*Continued From Page B1*

the public with its written decisions, it has been relatively free of the kind of sharp ideological discord that is associated with the United States Supreme Court. Last year, for example, 93 percent of the New York high court's decisions were unanimous.

"They generally speak with one voice," Norman A. Olson, a professor at the John Jay College of Criminal Justice in Manhattan, said of the court's members. "It's rare that one judge can make a difference."

Although Justice Rosenblatt declined in an interview to categorize himself ideologically — standard practice for judicial nominees — scholars and lawyers familiar with his written decisions described him yesterday as a moderate.

"He's a middle-of-the-road, traditional, craftsman-type judge," said Evan Davis, who served as counsel to Mr. Cuomo. Accordingly, the resignation of Justice Titone, who was known as a fierce advocate of the rights of defendants, might have more bearing on the court's ideological direction than Justice Rosenblatt's arrival.

"Everything that George Pataki has said has led the public to believe that he would appoint a right-wing, very strong law-and-order judge; someone who is almost blindly in favor of the prosecution and law enforcement," said Vincent M. Bonventure, an Albany Law School professor who specializes in the court and its history. "There doesn't seem to be anything in Judge Rosenblatt's record that fits that bill."

Justice Rosenblatt, who was appointed an appellate judge by Mr. Cuomo, spoke only in general terms about his views on criminal justice issues that Mr. Pataki has addressed. "There's a balance out there that has to be played out," Justice Rosenblatt said. "There is a delicate balance between the rights of individuals, the rights of the community."

Justice Titone resigned Sept. 1 at the age of 68 to take a position with a private law firm. At the age of 62, Justice Rosenblatt is nominated to a 14-year term with a mandatory retirement age of 70.

Justice Rosenblatt was selected from a list of seven candidates provided to Mr. Pataki by an independent judicial screening committee. He had been recommended once before to Mr. Cuomo.

He is a registered Republican; with his appointment, the court will comprise three Republicans, three Democrats and an independent.

Saturday  
New York Times editorial Dec. 12, 1998

## Governor Pataki's Wise Choice

\* The choice of a judge for the state's highest court is among the most important decisions a governor makes. This week Gov. George Pataki chose well, nominating Albert Rosenblatt, a widely respected New York State Appellate Division judge to a seat on the state's Court of Appeals.

Mr. Pataki's harsh attacks on the court during his first term for decisions he viewed as too sympathetic to the rights of criminal defendants raised concern he would appoint blindly pro-prosecution judges. But in selecting Justice Rosenblatt as his second appointment to the seven-member bench, Governor Pataki opted for a moderate whose background includes stints as a Dutchess County prosecutor and as the state's chief administrative judge.

Though more conservative than Justice Vito

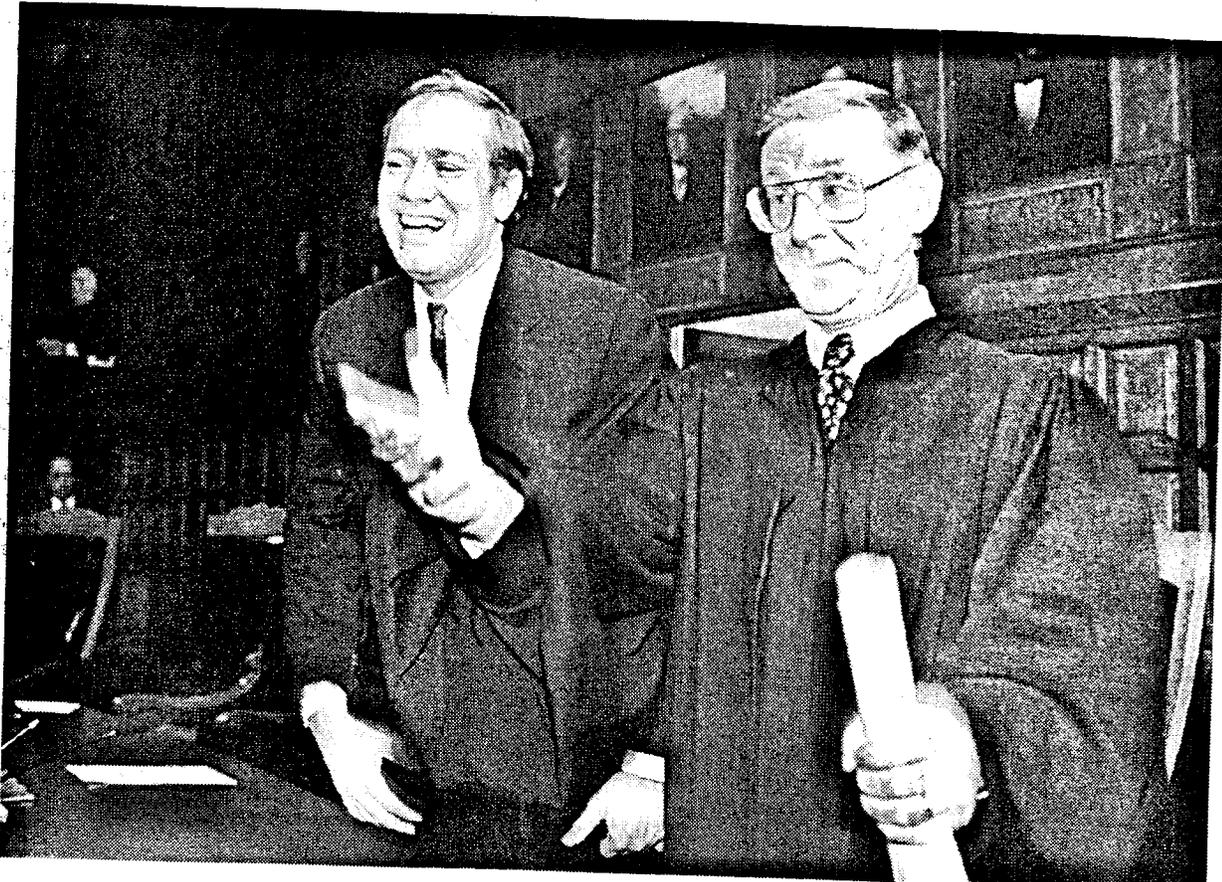
Titone, the fierce defender of civil liberties he is to replace, Justice Rosenblatt has produced a string of well-written opinions that suggest a thoughtful approach not captive to any rigid ideology. Justice Rosenblatt's imposition of the death penalty in 1983 under provisions of the state's old capital punishment statute no doubt helped him gain favor with Mr. Pataki, an ardent death penalty supporter. But the judge's regrettable ruling in that case does not necessarily foretell how he will vote 15 years later on issues concerning the state's new death penalty law or other criminal justice matters.

While Justice Titone's principled voice will be missed, the selection of Justice Rosenblatt adds a fair and capable jurist to a court that decides the vast majority of its cases by unanimous decision.

Wednesday January 6, 1999

THE NEW YORK TIMES **METRO**

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David Jennings for The New York Times

**New Year, New Judge**

Justice Albert M. Rosenblatt reacted to the sight of a friend in the audience yesterday after Mr. Rosenblatt was sworn in as an associate judge on the state's

Court of Appeals. Gov. George E. Pataki, who will deliver his State of the State Message today, was present for the swearing-in ceremony in Albany.