

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station  
White Plains, New York 10605-0069

Tel. (914) 421-1200  
Fax (914) 428-4994

E-Mail: [judgewatch@aol.com](mailto:judgewatch@aol.com)  
Web site: [www.judgewatch.org](http://www.judgewatch.org)

*Elena Ruth Sassower, Coordinator*

BY FAX: 212-556-3717 (8 pages)

October 20, 2000

The New York Times  
Metro Section

ATT: David Rohde

RE: The demonstrated abandonment of "merit selection" principles by the New York State Commission on Judicial Nomination (a.k.a. corruption)

Dear David:

It defies belief that you and your editors at the The New York Times have to be convinced of the newspaper's obligation to provide the public with information about the process that produces judges for our State's highest court.

Enclosed is a typed copy of the hand-written note I left for you on Tuesday, October 17<sup>th</sup> when I hand-delivered a copy of CJA's October 16, 2000 Report – a Report *documentarily* establishing the Commission on Judicial Nomination's abandonment of "merit selection" principles. The note specifically draws your attention to the conclusion at page 22 as giving "a concise 1-page summary".

Nonetheless, when I called you this morning, you confessed you had *not* read the "conclusion". This, AFTER telling me there was "no change". By this you meant "no change" in the Times' refusal to respond to CJA's long-standing and repeated proposals that it explore the REALITY of the supposed "merit selection" process to the Court of Appeals.

To my knowledge, over these many months that the Commission on Judicial Nomination has been purportedly screening candidates to fill the vacancy created by Judge Bellacosa's resignation -- which I urged you to use as an opportunity to explore the "merit selection" process – the Times has *not* even informed the public,

that such screening was taking place. Nor has it informed the public about the end-result of the purported screening: the Commission's seven recommendees presented to the Governor by its October 4, 2000 report.

This is even more of a "news black-out" than occurred two years ago, when following the Commission's November 12, 1998 report of recommendees, the Times at least promptly printed a November 13, 1998 AP item, "*Panel Nominates Seven for High Court Vacancy*". A copy is enclosed.

Indeed, Times' non-coverage of the selection process to the Court of Appeals seems to be broken this year only by parenthetical insertions to other pieces. The two examples I have previously brought to your attention are the Times' September 8, 2000 article in the National Section, "*Chief Justices to Meet on Abuses in Judicial Races*", followed the next day, September 9, 2000, by an obituary for former Court of Appeals Judge A.P. Burke. The parenthetical insertion in the obituary:

*"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).

is an outrageous deceit on the public – as the Times knows from the voluminous materials on the subject that CJA has, over and again, supplied it – and you -- to no avail.

As agreed, I will call you on Monday. Hopefully, by then, you will have had an opportunity to discuss this important, time-sensitive story with your editor, Tony Marcano, for whom I have left several messages over the past weeks, including a voice mail message yesterday.

Yours for a quality judiciary,



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

Enclosures

**CENTER for JUDICIAL ACCOUNTABILITY, INC.**

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*Elena Ruth Sassower, Coordinator*

October 17, 2000

ATT: DAVID ROHDE  
METRO

Dear David:

As I spent so very long trying, without success, to get you to do a story about the *readily-verifiable* corruption of the two vital state agencies to ensuring the integrity of the judiciary – the New York State Commission on Judicial Conduct and the New York State Judicial Nomination – I thought you should see the enclosed Report of CJA.

The conclusion at p. 22 gives a concise 1-page summary.

Please pass it on to your editor – who I will call on Wednesday, October 18<sup>th</sup>.

ELENA SASSOWER, CJA

P.S. Enclosed is today's front-page Law Journal story, "*Court of Appeals Nominees Grilled by Bar Groups*".

# ork Law I

NEW YORK, TUESDAY, OCTOBER 17, 2000

## *Court of Appeals Nominees Grilled By Bar Groups*

BY JOHN CAHER

ALBANY — Candidates for the Court of Appeals will be making the bar association rounds in New York City Thursday when three statewide organizations interview contenders for appointment to the state's highest court.

The New York State Bar Association, the Women's Bar Association of the State of New York and the New York State Trial Lawyers Association are separately querying candidates in the city. A subcommittee of the City Bar is also conducting interviews this week. Following the interviews, those groups will submit to Governor Pataki their evaluations of the seven candidates.

"We are looking for judges who have shown independence, objectivity, a willingness to uphold the traditions of an independent judiciary and an independent civil justice system and protection of litigants' rights to a fair trial and a fair lawsuit," said David B. Golomb, president of the Trial Lawyers Association.

Governor Pataki, following the practice of his predecessor, Mario M. Cuomo, is not personally interviewing the candidates. However, his counsel's office is reviewing the nominees and plans to present its findings to the Governor before the end of the week.

The Governor was presented with

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*In his two previous Court of Appeals selections, Governor Pataki has promoted Republicans Richard C. Wesley of the Fourth Department in 1996 and Albert M. Rosenblatt of the Second Department in 1998.*

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the list of candidates found qualified by the Commission on Judicial Nomination on Oct. 4. Under the law, the Governor must choose from the list, must wait 15 days before selecting a candidate and must make a decision within 30 days. That means he may select a new judge as early as Thursday and is required make a decision by Nov. 3. Then, the nominee is subject to State Senate confirmation.

Some of the bar evaluations may not be completed before Thursday, so the Governor could technically name a new jurist without input from major bar groups. However, the Governor usually announces his selection toward the end of the 30-day period rather than the beginning and is likely to have the bar evaluations in hand well before he reveals his choice.

Under consideration are Appellate Division Justices Victoria A. Graffeo, a Republican in the Appellate Division, Third Department; Richard T. Andrias, a Democrat serving in the First Department; Presiding Justice Susan Phillips Read, a Republican on the Court of Claims; Democrat Juanita Bing Newton, the Deputy Chief

Continued on page 2, column 6

## Candidates Grilled

Continued from page 1, column 4

Administrative judge; Administrative Justices Stephen G. Crane, a Democrat in Manhattan, and Steven W. Fisher, a Democrat from Queens; and former State Bar Association President James C. Moore, a Republican and a partner at Harter, Secrest & Emery in Rochester.

The State Bar Association has subcommittees that are reviewing the candidates, and a 16-member panel that is interviewing those on the list. The group will then rate the candidates as well-qualified, qualified or not qualified.

A similar process is under way at the City Bar, which will release its ratings on Wednesday, according to President Evan A. Davis, of Cleary, Gottlieb, Steen & Hamilton. Mr. Davis said the candidates will all be interviewed by subcommittees before the executive committee makes final determinations.

"We look at the quality of their work, character, temperament, experience, aptitude," Mr. Davis said.

### Term of Service

Court of Appeals judges serve a 14-year term, but are required to retire at the end of the year in which they reach the age of 70. They are paid \$151,000 annually.

The open seat was recently vacated by Judge Joseph W. Bellacosa, who retired in September to become dean of St. John's University School of Law.

In his two previous Court of Appeals selections, Governor Pataki has promoted Republicans from the Appellate Divisions. He appointed Richard C. Wesley of the Fourth Department in 1996 and Albert M. Rosenblatt of the Second Department in 1998.

Capitol denizens speculate that Justice Graffeo and Judge Read are the leading contenders. Both are women with close ties to Governor Pataki. Both have solid Republican connections and both live in the Capital Region, as did Judge Bellacosa before his retirement. Punditry aside, neither the Governor nor anyone close to the selection process has commented on the candidates.

The Senate, which is out of session, has no plan to return before the end of the year. However, the Governor's nominee could serve in an interim basis until confirmation.

The next Court of Appeals vacancy, barring an early retirement or death, will occur at the end of 2002, when Judge Howard A. Levine reaches mandatory retirement age.

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)

9/8/00

## Chief Justices to Meet on Abuses in Judicial Races

By WILLIAM GLABERSON

The chief justices of 15 states are planning an unusual "summit meeting" to try to limit what some of them describe as increasing abuses in bitter election contests for judgeships.

Several of the chief justices call the conference a response to growing concerns about the million-dollar war chests, attack advertising and even outright distortion of an opponent's record that seem to have become more widespread in judicial races this year and threaten public confidence in the courts.

"Within the last few years, this has become a national problem and one that has to be looked at nationally, not just in whatever state is having an election at the moment," said the chief justice of Texas, Thomas R. Phillips, an organizer of the meeting.

The conference is to be held in Chicago this December, attended by the chief justices of the 15 most populous states where at least some judges are elected.

Chief Justice Phillips, himself an elected official, and others said that rather than proposing wholesale changes in judicial selection systems that vary widely by state, the participants would look for limited reforms that can be more easily achieved.

For example, the chief justices, who will be accompanied by legislative leaders and court-reform advocates, are likely to evaluate official voter information projects that already exist in several states, with an eye to extending them elsewhere, said Roger K. Warren, president of the National Center for State Courts in Williamsburg, Va., which is coordinating the conference. These voter

**'This trend is not good for the country.'**

information projects try to present neutral information on judges' records so that voters do not have to rely on campaign allegations.

Other possible proposals, Mr. Warren said, include trying to remove judicial elections from the broader political fray by scheduling them when there are no other elections, and increasing the length of judges' terms so that they need not face election so frequently.

Randall T. Shepard, the chief justice of the Indiana Supreme Court, said several chief justices discussed the idea of a summit meeting when they gathered at a judicial conference in Rapid City, S.D., last month.

"There was general agreement," he said of the increasingly rough-and-tumble nature of some judicial campaigns, "that this trend is not good for the country."

Forty-two states elect judges at some level, according to the American Bar Association. Until recent years, races for judgeships in many of those states were polite affairs.

But aggressive campaigning has now grown sharply. Some candidates make false charges against their opponents. Others, despite rules intended to forbid the practice, indicate how they would decide on issues like the death penalty or abortion.

By wide agreement among experts on judicial politics, the cam-

paigns this year are among the most aggressive ever. Several candidates in primaries in Illinois each spent \$1 million in races for the Supreme Court, and Idaho, Michigan, Ohio, Alabama and other states have seen particularly bruising campaigns.

Some of the chief justices said they had grown alarmed at the changing climate even if they had not yet noticed it in their own states.

New York's chief judge, Judith S. Kaye, said she was not aware of campaign problems there. But, Judge Kaye said, "we have a very cynical public generally, and this just feeds the cynicism of the public to have people raising these huge sums for judicial campaigns and running campaign ads that are false." (Since 1977, judges on 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.)

Some critics of the current state of affairs say incumbent judges are unlikely to come up with meaningful reform of a system from which they have benefited. Tom Smith, the director of Public Citizen's Texas office, said his group was supportive of the summit idea, but skeptical.

"It is our fear," Mr. Smith said, "that what will result is a strategy for defense of the system rather than an effort to find solutions."

According to the organizers, top judges from the following states are expected to attend the conference: California, Florida, Georgia, Illinois, Indiana, Michigan, Missouri, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Washington and Wisconsin.

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# A.P. Burke, 95, Appeals Court Judge, Dies

By WOLFGANG SAXON

Adrian P. Burke, a former associate judge of New York State's highest court who was also New York City corporation counsel, died last Sunday at his retirement home in Lauderhill, Fla. A former resident of Manhattan, he was 95.

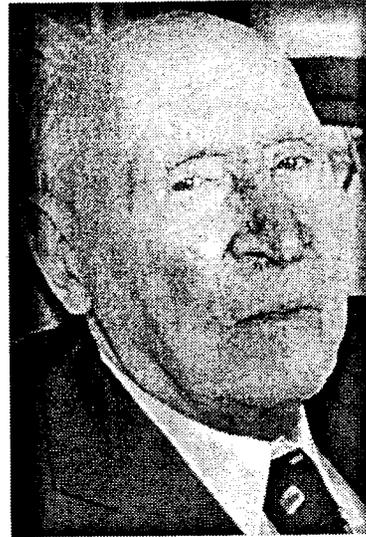
Judge Burke was the city's chief lawyer twice, though briefly, under Mayor Robert F. Wagner in 1954 and Mayor Abraham D. Beame in 1974. In between, from 1955 through 1973, he wrote 252 majority opinions and 146 dissenting or concurring opinions while on the New York State Court of Appeals.

Long before that, as a young, politically well-connected lawyer, he played a role in a change in state laws known as the "aid the needy" provision of the State Constitution. It was adopted at a constitutional convention of 1938 at the behest of Mayor Fiorello H. La Guardia.

Adrian Paul Burke was born in the Bronx. He graduated from Holy Cross College in 1927 and Fordham University Law School in 1930. In private practice, he represented individual and corporate clients in city, state and federal courts.

Through his activity in charities that aided children, he met Mayor La Guardia, who never forgot his tenement background, and sometimes the two visited children's shelters together. The mayor, a liberal and nominally a Republican, believed that government had a duty to protect the unfortunate. Mr. Burke, a Democrat, liked what he heard from him, as did Senator Robert F. Wagner, Democrat of New York, a leading New Dealer.

With the three men pushing for the



Cindy Karp, 1996

Judge Adrian P. Burke

## *New York's corporation counsel under Mayors Wagner and Beame.*

change in the constitution, the State Legislature, the constitutional convention and the voters endorsed an amendment stating, "The aid, care and support of the needy are public concerns and shall be provided by the state." The United States Constitution has no such provision, and few states have one.

As Mr. Burke's standing in his party rose, he became the friend, confidante and campaign manager of the senator's son, also named Robert F. Wagner. Even before the younger Mr. Wagner took office as mayor of New York City in 1954, he offered Mr. Burke his pick of posts in his administration, and Mr. Burke chose to head the city's law department as corporation counsel.

He led a fight against higher telephone rates and a campaign against smut, but soon went campaigning for himself as a Democratic candidate for associate judge of the Court of Appeals. He won, and among his law clerks in the 1950's were Mario M. Cuomo and Fabian Palomino, who later was Governor Cuomo's special counsel.

(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.)

In 1971, Judge Burke wrote the majority opinion in a groundbreaking case of national significance. Reversing its own precedent, the court said that plaintiffs could sue for damages purely on the ground of emotional distress. Another opinion in 1966 overturned a murder conviction and set standards for judges to determine when criminal co-defendants are entitled to separate trials in the interest of fairness.

In a more sensational case, the court in 1970 unanimously overturned the manslaughter conviction of Alice Crimmins in the death of her little daughter. Judge Burke wrote that reversal was mandatory because the case had been flawed by

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