

VINCENT BONVENTRE ARCHIVED MEDIA COMMENTARIES

Organized by Year

2005

May 29, 2005
Gannett News Service

Top jurists defy expectations By YANCEY ROY

ALBANY - Having a majority of Republican appointees on New York's highest court has not meant more wins for district attorneys....

Pataki's criticism of the judicial system may have had its biggest impact in the late 1990s when the success rate for prosecutors rose, said Vincent Bonventre, an Albany Law School professor who has written a book about the court. The trend has leveled out a bit since then.

May 1, 2005
Associated Press

Appellate decision could reopen school funding in state budget by MICHAEL GORMLEY

An appeals court is scheduled to make two rulings Tuesday that could force the state to come up with billions of dollars more in school aid for September and blow apart New York's first on-time budget in 20 years....CFE seeks to eliminate the temporary stay _ or delay _ of the court order to pay billions of dollars more in state school aid to New York City schools until the appeal is decided....

Legally, CFE faces a tough day Tuesday, said Albany Law School Professor Vincent Bonventre, an expert on the New York's appeals courts. He said he can't imagine CFE winning the day.

"What CFE is asking for is entirely understandable, but it's drastic action," Bonventre said.

Bonventre said the CFE decision under appeal not only tells the state to act, but it tells the state how much to spend. CFE argues that the unusually detailed order from the court came only after Pataki and the Legislature failed to negotiate a settlement with CFE.

"None of this is to suggest (CFE's motions) aren't without merit. It's just that they are asking the court to take the kind of action that courts are most hesitant to make," Bonventre said. "It could develop into a separation of powers crisis ... the issues here are just too complex and just too serious to deal with on a summary basis."

March 16, 2005
New York Times

Pataki Confidant Is a Highly Paid Lobbyist, Too By KEVIN FLYNN

Over the past 10 years, working for either modest compensation or none at all, John F. O'Mara, a little-known lawyer from the upstate village of Horseheads, has helped Gov. George E. Pataki draw up the death penalty, deregulate the energy industry and direct campaigns....But while serving as one of the governor's most trusted advisers, Mr. O'Mara has also played another, more profitable role as one of the state's more potent lobbyists....

Vincent Martin Bonventre, an Albany Law School professor who is an expert in legal ethics, said multiple roles can present unenviable choices. "Ultimately you get to a point where you have to choose," he said. "Are my interests going to be what's best for Pyramid, or what's best for the state? Lawyers and lobbyists should never try to put themselves in that position."

March 6, 2005
Albany Times Union

Colonie probe spurs privacy fight By BRENDAN LYONS

When someone sent anonymous e-mails to Supervisor Mary Brizzell complaining of misconduct in the Emergency Medical Services department, the town went after the whistle-blowers....Police were called in. Criminal subpoenas, which town attorneys apparently had no authority to issue, went out....

"Not only did they not have any authority to issue criminal subpoenas where there is no indication of a crime, it seems a clear misuse of the legal process," said Vincent Bonventre, an Albany Law School professor and editor of Government, Law, & Policy Journal for the New York State Bar Association.

February 16, 2005
Albany Times Union

School funding lawsuit rejected By KENNETH AARON

....Monday's ruling by State Supreme Court Justice Leland DeGrasse affirmed a court plan to send New York City schools another \$5.6 billion in operating aid annually, phased in over four years. The order included another \$9.2 billion in building aid over the next five years....An appeal could mean Monday's ruling is a long way from the end of this case....How long?

"Decades," suggested Vincent Bonventre, an Albany Law School professor.

Courts are "at their weakest when they're actually ordering the Legislature or the executive to take specific action," he said. "What's the Court of Appeals going to do? Order a majority of them to vote for a tax increase?"

February 8, 2005
The New York Post

PICKING GAY OR NAY - ONE JUDGE IS KEY TO NUPTIALS by KENNETH LOVETT

Legalization of gay marriage in New York could come down to just one man - brainy, moderately conservative Court of Appeals Judge Albert Rosenblatt, legal scholars told The Post.

If the explosive case reaches the state's sharply divided top court, as Mayor Bloomberg and others expect, court watchers say Rosenblatt - a Harvard Law School grad and longtime jurist who was appointed to the state's top court by Gov. Pataki in 1998 - could hold the key.

"He's very intellectual and moderately conservative, but it wouldn't surprise me if he went either way," said Albany Law School professor Vincent Bonventre....

February 6, 2005
The Journal News

(Westerchester County, NY)

Hasidic circumcision rite debated by Gary Stern

The suctioning of blood by mouth during ritual circumcisions has long been dropped as a common practice by most of the Jewish world, but many Jews and non-Jews alike were shocked to learn in recent days that the practice remains standard in many Hasidic communities....

Fischer is not accused of any crimes, but in a day when there is great concern about sexual molestation of children, many may wonder how an adult can legally put his mouth on a child's genitals. Vincent Bonventre, a law professor at Albany Law School, said that courts often allow exemptions to general laws for religious practices.

"Cases are more difficult when there is a direct conflict between law and religion, like when a religion requires an act that is forbidden by law," Bonventre said. "When the government's interest is not paramount, the courts generally hold that you can't require an individual to violate their religion."

February 5, 2005
The New York Times

Judge's Ruling Opens Window for Gay Marriage in New York City By SABRINA TAVERNISE

New York State judge in Manhattan ruled yesterday that a state law that effectively denied gay couples the right to marry violated the state Constitution, a decision that raised the possibility that the city would begin issuing marriage licenses to same-sex couples as soon as next month....

"Sooner or later, a case raising the exact same issue is going to get to the Court of Appeals and whatever it rules will be the final word," said Vincent Bonventre, a professor at Albany Law School and an expert on the Court of Appeals. "It will make no difference what anyone else has said about it. If the Court of Appeals rules no, that's the end of it."

The court is already being asked to consider an appeal for another gay marriage case - Samuels v. New York State Department of Health - with almost identical issues, he said. In that case, a lower court judge rejected efforts to challenge the state's marriage laws.

January 1, 2005
Gannett News Service

Conservative additions cause splits on Court of Appeals By YANCEY ROY

Political viewpoints are splitting votes at the state's highest court as new appointees form a bloc favorable to the governor and prosecutors.

In recent months, the Court of Appeals has broken 4-3 or 5-2 in a series of cases, bringing the number of split decisions in 2004 to 39 -- more than double the amount recorded in each of the five previous years.

"The dynamics of the court today are much different than just a year ago," said Albany Law School's Vincent Bonventre, who has studied the Court of Appeals for years....

The Kaye court has long striven for consensus, feeling that issuing unanimous opinions provides better direction for the legal system. That's not so easy, lately.

"It may be that a bloc of the court is voting so conservative that Kaye and the rest of the court won't go along with it," Bonventre said. The conservative bloc is Susan Read, who once worked for Pataki, and Victoria Graffeo, who worked for a Republican attorney general before going to the bench, and Robert Smith, a former private lawyer whom analysts say isn't so much conservative as independent.

The court has issued 4-3 rulings on several significant cases this year....In each case, Rosenblatt, a Republican, went with the liberal wing to swing the outcome...."He's not anybody's puppet," Bonventre said....

Robert Smith wrote the decision in a recent case that gave Pataki a huge victory over the Legislature in the fight for authority to make a state budget...."I can't remember the last time there was such a major case where Judge Kaye was in (the minority)," Bonventre said.

And the trend toward a more conservative panel could continue.

2004

December 24, 2004
Albany Times Union

Court raps Rensselaer County DA By MICHELE MORGAN BOLTON

For the second time in six months, a midlevel appeals court has cited Rensselaer County District Attorney Patricia DeAngelis for prosecutorial misconduct and reversed the conviction of a sex offender.... Thursday's decisions come as the 35-year-old district attorney is rounding out her first full year in office....

Albany Law School professor Vincent M. Bonventre, who writes about legal ethics, said trial reversals often bounce back at particularly aggressive prosecutors, like DeAngelis.

"Most of them view what they do as law and order and crime control," he said. "But that is only one part of the job. It takes seasoning, open-mindedness and a deeper understanding of other due-process components."

Prosecutors' hands are tied by a number of rules that must be followed. DeAngelis will likely grow into a deeper understanding of her job, in time, he said.

12/21/04
New York Times

Velella Ordered Back to Jail, but Legal Maneuvering Goes On By SABRINA TAVERNISE

A New York state appeals court ruled yesterday that former State Senator Guy J. Velella and four other released inmates must return to jail next Monday, unanimously upholding a mayoral panel's order that their early release from Rikers Island was illegal....Mr. Velella[s]lawyer, Charles A. Stillman, vowed to contest the decision before the state's highest court, the Court of Appeals....

Vincent Martin Bonventre, a law professor at Albany Law School who studies the court, said he thought it unlikely that it would issue a stay and accept Mr. Velella's case. The court pays particular attention to issues of constitutionality, he said, and Mr. Velella's case is more about procedure than constitutional rights.

However, the case is high-profile, and the court may decide that it should not be ignored for that reason, Mr. Bonventre said. The court accepted just 8.2 percent of applications for civil cases last year, said the court spokesman, Gary Spencer.

"I would give it about a 30 percent chance," Mr. Bonventre said, regarding the likelihood of acceptance. "There doesn't seem to be any big issue here. The only thing that might persuade the court is that it's a high-profile case, and perhaps the state ought to get final word from the Court of Appeals on it."

12/21/04
New York Sun

Technically, Lieutenant Governor Donohue Is In Charge By WILLIAM F. HAMMOND JR

....Governor Pataki travels in Europe for the next 10 days....A spokesman for the governor, Todd Alhart, repeated what has been the administration's position on the issue during Mr. Pataki's many out-of-state trips. "Whether the governor is in Washington or any other place, he is still the Governor,"....

An expert on the state constitution at Albany Law School, Vincent Bonventre, said he supported the administration's view. He said it's clear from the context that the framers [of the state constitution]- whose fastest means of travel was horses - assumed that a governor who was outside the state would be "unable to discharge" his powers and duties.

Nowadays, "if anything really did arise which required the governor, he could just fly right back," Mr. Bonventre said. "It seems to me he's fully capable of discharging his duties. ..."

"If he couldn't make it back and something had to be acted upon, then I think there'd be a much better case that the lieutenant governor could act in his stead," he said. "But just being outside the border of the state is hardly what the constitution is talking about."

December 17, 2004
Albany Time Union

Court Backs Pataki Power By Michelle Morgan Bolton

In a sharply divided opinion, the state's highest court ruled Thursday that Gov. George Pataki has more power over the state budget than the Legislature, further fueling the ongoing disagreement between the legislative and executive branches....

What's unprecedented, Albany Law School professor Vincent Bonventre said, is that the panel's junior member, Robert S. Smith, wrote the majority opinion while Chief Judge Judith S. Kaye went out on a limb with her dissent in a case that has political and constitutional ramifications.

"I wish it had gone the other way, but I'm thrilled the court is once again writing sharp, definitive legal opinions," Bonventre said. "At least they didn't make nice-nice and come out with some piece of garbage."

11-24-2004
The New York Law Journal

Dissents Suggest Changing Dynamic By John Caher

A divisive Court of Appeals yesterday reversed two criminal convictions, overturned rulings of both downstate appellate divisions and managed to reach consensus in only one unsigned memorandum....

Albany Law School Professor Vincent M. Bonventre, a former clerk at the Court, said it appears that the more liberal and centrist judges are being pushed further to the left by the conservatives.

Mr. Bonventre said that in the cases decided yesterday, if there was a result that could be characterized as liberal, Chief Judge Kaye and Judges Bundy Smith, Ciparick and Rosenblatt voted together for that result in every case.

Perhaps more interesting, Mr. Bonventre said, is that two of the most conservative judges, Judges Read and Graffeo, both wrote decidedly liberal opinions yesterday.

Judge Graffeo wrote a strong civil rights opinion involving transsexuals, prompting a dissent from Judge Read. Judge Read wrote a seemingly liberal opinion in a juvenile delinquency case, sparking a dissent that Judge Graffeo joined.

"You've got this block of four fairly liberal voters, and three conservatives who can't agree on when they should dissent or vote conservatively," Mr. Bonventre said.

November 29, 2004
The Journal News

Appeals ruling casts shadow on murder convictions By JONATHAN BANDLER

....Last month, Kenneth Payne walked out of an upstate prison a free man after his 2000 murder conviction was overturned by the Court of Appeals, the state's highest court....It was a further narrowing of the cases for which a depraved-indifference murder charge is appropriate....

Albany Law School professor Vincent Bonventre suggested the state Legislature should "go back to the drawing board" on depraved murder. He and Pittari said the Payne ruling was particularly significant because its author, Justice Albert Rosenblatt, is a former Dutchess County district attorney who was tapped for the court because Gov. George Pataki expected him to be a "law and order" conservative.

"The Payne decision puts a final nail in the coffin of most (depraved-murder) prosecutions," Bonventre said. "It's just an awful law; it's terrible. It was supposed to be reserved for cases of people who are so sick, so inhumane, that they are just as bad as intentional murderers." Instead, he said, it has become a fallback position for prosecutors and indistinguishable from reckless manslaughter.

11-01-2004
New York Law Journal

N.Y. Judge Says Speech Limits on Judicial Candidates Deprive Voters of Information By John Caher

....Supreme Court Justice Thomas J. Spargo, who is under investigation for violating the speech-restrictive provisions in the Code of Judicial Conduct, told an Albany Law School audience that citizens cannot be true participants in a democracy if candidates are prohibited from expressing their opinions....The judge participated in a symposium....on Issues Facing the Judiciary [that] was sponsored by the Albany Law Review....

In opening remarks, Albany Law School Professor Vincent M. Bonventre said that judges and restrictions on their speech can conceal but not eliminate factors such as political ideology and personal values. He suggested it may be healthier if judge's viewpoints are open and obvious rather than hidden from public view.

"A judicial robe is not an ideological lobotomy," said Bonventre, faculty advisor to the Albany Law Review. "Justice [Antonin] Scalia goes to the Federalist Society and says this right-to-die stuff is absolute nonsense. Well, let's imagine he didn't say that to the Federalist Society. We know he believes it anyway. So what is the difference?"

10/26/2004
Albany Times Union

New venom injected in DA race By MICHELE MORGAN BOLTON

Just when you thought the race for Albany County district attorney couldn't get any meaner, nastier or uglier, it did....

[David] Soares made his law license application available to the Times Union...it didn't contain [any reference to the name Soares was given at birth in Brava, Cape Verde, West Africa -- which is Paulo David Soares -- something [Paul] Clyne says is dishonest.

What to make of it all? Any lawyer who lies on a bar application is subject to discipline, including revocation of the law license, said Albany Law School ethics professor Vincent Bonventre.

"In this case, the question is, 'Was there dishonesty?' " Bonventre said. "It's not only subject to interpretation, but what Soares was thinking at the time."

Soares said Sunday his name has always been Paul David Soares, whether it was written in Portuguese or English.

"Did he mean to be deceitful? It doesn't sound like it," Bonventre said. "My own thought is, this is not a lie at all. It seems like a big to-do about nothing that is, frankly, almost embarrassing."

October 21, 2004
New York Newsday

Case reargue a struggle BY ROBIN TOPPING

Suffolk prosecutors have an uphill fight as they try to go back to the state Court of Appeals and reargue a decision that will likely result in the release of a man because he was convicted of the wrong murder charge....The court ruled prosecutors should only have charged Kenneth Payne with intentional murder because he shot a man at point-blank range and clearly intended to kill him....

A motion to reargue means going back to the same court and trying to persuade judges to reverse themselves. Experts say, generally, chances of success are remote. "The chances of winning are infinitesimal because you are saying to the court, 'You made a big mistake and now I want you to admit your whopper,'" said Vincent Bonventre, a professor at Albany Law School who is a Court of Appeals scholar. "Usually consideration of the motion is perfunctory."

9/16/2004
Schenectady Gazette

Voters liked reform agenda-Soares upsets DA Paul Clyne By SARA FOSS

....A political newcomer, [David] Soares delivered a stunning blow to Albanys political establishment when he defeated incumbent Albany County District Attorney Paul Clyne in Tuesdays Democratic primary....

"If you look at the job Clyne has done as district attorney, there isn't much to complain about," said Vincent Bonventre, a professor at Albany Law School. "Hes been very, very competent. But this other kid brought a lot of excitement to the race."

9/16/2004
Albany Times Union

Soares won in altered county By MICHELE MORGAN BOLTON

David Soares brought a struggling Democratic machine to its knees Tuesday in a primary upset that roared through Albany County....The young Democrat from Bethlehem stole the nod for district attorney from a one-term incumbent with 20-years' experience, beating Paul Clyne 3 to 1 in his own hometown....

Albany Law School professor Vin Bonventre said criticism that Soares' lack of experience will hamstring him, if elected, is not necessarily true. Soares can succeed if he exhibits leadership and can set priorities and policy, he said.

"This guy is very, very appealing, according to a lot of my students, and the increasingly reform-minded Democrats in the county," said Bonventre.

9/16/2004
Albany Times Union

Law Beat -Notable ranking

Albany Law School and the students and faculty affiliated with the Albany Law Review are celebrating.The publication was ranked 36 out of more than 900 legal periodicals for the number of times it was cited. The extensive survey was conducted by Washington & Lee Law School....

In this regard, we rank with the top-tier law schools, no question about it," said Professor Vincent Bonventre, faculty adviser to the Albany Law Review. "I think this is a harbinger of what is ahead for Albany Law School as a whole. There are really changes around here. When you look at the (schools) that beat us, we are in fantastic company -- Harvard, Yale, Columbia, Stanford and Michigan."The Law Review was the nation's first student-edited publication, beginning in 1875, Bonventre said.

9/16/2004
Schenectady Gazette

Voters liked reform agenda: Soares upsets DA Paul Clyne By SARA FOSS

....A political newcomer, Soares delivered a stunning blow to Albanys political establishment when he defeated incumbent Albany County District Attorney Paul Clyne in Tuesdays Democratic primary....

"If you look at the job Clyne has done as district attorney, there isn't much to complain about," said Vincent Bonventre, a professor at Albany Law School. "He's been very, very competent. But this other kid brought a lot of excitement to the race."

....Although only the state Legislature can change the Rockefeller drug laws, Soares could make a difference if elected, Bonventre said. The only real support for the laws comes from the states district attorneys, although a handful of prosecutors have come out against them, he said. "If you get an increasing number of district attorneys against the Rockefeller drug laws, theres no longer any support for the law," he said.

As district attorney, Soares would be able to instruct his assistants to "charge down" in drug cases where the sentence would be unreasonably harsh, Bonventre said.

August 04 2004 -1
NY SUN

JUDGE RAISES THE ANTE BY NAMING 3 MASTERS IN SCHOOL FUNDS CASE By JULIA LEVY

Pataki Vows To Try To Break Impasse in the Legislature

The judge in the long-running school-funding case yesterday upped the ante, giving three special referees 120 days to recommend how the state should provide New York City schoolchildren with the sound basic education the state constitution says they deserve....

An Albany Law School professor, Vincent Bonventre, called the governor's argument that the court shouldn't devise legislative solutions "absolutely absurd," and said, "It is surely the court's job to tell the governor and the Legislature what the constitution requires."

He said the referees might devise one or many constitutional solutions to the school funding question — but he said one seems more likely because "there's got to be a bit of impatience on the part of the court right now because the governor and the Legislature have been fighting this for years."

August 04 2004
New York Law Journal

On a Court Where Consensus Dominates, Divisions Begin to Emerge by John Caher

Philosophical distinctions among the Court of Appeals judges appeared to grow more pronounced over the past year, with the judges allied more distinctly than in prior sessions....

In LaValle, a 4-3 Court struck down a key provision in the capital punishment statute, effectively rendering the death penalty unenforceable....

"When you get a case like that, they come home to their true philosophies," said Vincent M. Bonventre, a former Court clerk and Albany Law School professor who has tracked the tribunal for several years....

"Kaye has come home," said Mr. Bonventre. "Her voting is much more like it used to be. There are several cases where she is in dissent for the criminal defendant, and we haven't seen that in seven or eight years."

Like several others, Mr. Bonventre said Robert Smith remains something of a wild card. While Judge Smith has generally shown a conservative, perhaps even libertarian, streak, he is independent and willing to dissent, even if he is alone in his opinion.

"I think like with Rosenblatt, Pataki can't be sure what he's got in Robert Smith," Mr. Bonventre said. "I think the guy is too bright. I think the guy is going to grow as he is on the court, and I don't know where he will end up."

July 15, 2004
Daily Freeman

Ruling Not End To Gay Nuptial War By Jesse J. Smith

...gay marriage supporters celebrate the dismissal of criminal charges against two Unitarian ministers who presided over the weddings of 13 homosexual couples here.

On Tuesday, New Paltz Town Justice Judith Reichler dismissed misdemeanor charges of solemnizing marriage without a license against Revs. Kay Greenleaf and Dawn Sangrey, arguing that denying marriage licenses to homosexual couples is unconstitutional....

Albany Law School professor Vincent Bonventre said that, cutting through all of the rhetoric from both sides of the issue, it's difficult to see how a New York state court could rule against granting marriage rights, but added that the issue goes beyond legalities.

"As a pure legal matter, it is very, very difficult to say that a prohibition on gay marriage is consistent with constitutional guarantees of equal protection," said Bonventre, who pointed out that homosexuals and heterosexuals are treated equally in nearly every facet of state law except marriage.

"On the other hand, courts don't and can't decide a question of this magnitude purely on the basis of legalities," he said. "They can't just say, to hell with the people and to hell with their representatives if they don't agree with it."

June 29, 2004
Times Union (Albany)

DA seeks death penalty in Troy killing By Tim O'Brien

Less than a week after the Court of Appeals tossed out the state's death penalty statute, Rensselaer County District Attorney Patricia DeAngelis said Monday she intends to seek it against two men charged with killing an informant....DeAngelis thinks the state Legislature can fix the law in time for her to pursue capital punishment

"The odds are that she'd lose, but she's got an argument there," said Vincent Bonventre, professor at Albany Law School. "She can certainly try to go forward. I suspect the trial judge would rule it's not permitted because there is no functioning death penalty in the state right now."

...Defendants cannot be charged if the act they committed was made a crime after the fact, Bonventre noted. If the Legislature makes a crime more serious or makes punishments tougher, a person who committed the crime before those changes cannot be subject to the stronger penalty....

"The federal and state constitution does not allow an individual to be tried under a criminal statute that was not in effect," Bonventre said. "She is pretty insistent and energetic and imaginative, and it is possible both the trial judge and the Court of Appeals could rule that the change of the statute does not change the guilt or innocence. She's got a very interesting argument, and I don't doubt if she goes forward with it, this could be an issue that goes to the Court of Appeals."

06-28-2004
New York Law Journal

Death Case Jury Instruction Sought to Cure Flaw in Law By Tom Perrotta

Before a Queens jury began to deliberate on whether John Taylor deserved to die for the execution-style murder of five Wendy's employees, the trial judge issued an unusually detailed instruction.... "In this case," the judge said, the maximum sentence I...would almost certainly impose...means the defendant would become eligible for parole, but only after he had served 175 years in jail."

....Last week, the Court of Appeals...4-3 ruling put the state's death penalty on hold until the Legislature addresses the law's flawed provision, and seemingly invalidated the death sentences of three other men who are awaiting review by the Court, including Mr. Taylor.

Vincent M. Bonventre, a professor at Albany Law School who closely follows the Court of Appeals, said Mr. Taylor's case presented an interesting scenario but will most likely be resolved in favor of the defendant.

"As a purely practical matter, the judge certainly avoided the kind of problems the Court found in the statute," he said. "The problem, of course, is that's not what the statute required. The statute as it was written was invalid. Even if the judge avoided the coerciveness, he did so operating under a statute that the Court declared invalid."

Mr. Bonventre said that Mr. Taylor's case could result in another divided ruling by a Court grappling with a statute that has not resulted in an execution since it was reenacted in 1995.

"I suspect that if this continues up to the Court of Appeals, it will be another 4-3," he said.

June 26, 2004
NYTimes

Court Roster Will Decide Future of Death Penalty By WILLIAM GLABERSON

Disappointed supporters of capital punishment lashed out on Thursday at a ruling from the state's highest court that effectively suspended the state's death penalty. The judges in the court's 4-to-3 majority, they said, showed that they were out to sabotage capital punishment and would never approve an execution....Even if the Legislature moves quickly to repair the flawed jury instructions cited by the court, lawyers say it could be half a dozen years or more before the court again faces the prospect of an execution....

"Whether the amended death penalty statute survives is absolutely going to depend on who the next governor is," said Vincent M. Bonventre, an Albany Law School professor who studies the court.

06-25-2004
New York Law Journal

Court Voids State's Death Penalty 4-3 By John Caher

The Court of Appeals yesterday effectively shot down New York's death penalty law. A 4-3 decision found unconstitutional the statutory requirement that jurors in the penalty phase be told that a deadlock will make the defendant eligible for parole some day....

Here, the majority explicitly rejected the U.S. Supreme Court's holdings in two 5-4 cases, *California v. Ramos*, 463 US 992 (1983) and *Jones v. U.S.*, 527 US 373 (1999), and found that the New York Constitution requires higher due process protections.

"You've got a Court that is deeply divided over whether the death penalty ought to be given the strictest imaginable scrutiny," said Albany Law School Professor Vincent M. Bonventre. "You've got three of them [Judges Smith, Graffeo and Read] who believe the sentences ought to be scrutinized, but not nearly as much as the four in the majority."

June 25, 2004
GANNETT NEWS SERVICE

Court strikes down part of death penalty By ERIKA ROSENBERG

The state's highest court struck down part of New York's death-penalty law yesterday in a decision that is likely to spare the lives of four killers and nine other defendants....

"The death-penalty statute today is kaput," said Albany Law School professor Vincent Bonventre. "Before there's a death-penalty statute on the books that can be applied, the Legislature's got to repair this."

...Bonventre said the law was full of flaws for death-penalty opponents to target.

"This death-penalty statute is just dreadful," he said. "It just creates a field day for judges who are opposed to the death penalty, and attorneys."

June 25, 2004
New York Sun

NEW YORK COURT KILLS KEY PART OF DEATH LAW By WILLIAM F. HAMMOND JR.

Murderers no longer face the death penalty in New York now that the state's highest court has found a provision of the 9-year-old capital punishment law to be unconstitutional....

A professor who studies the Court of Appeals, Vincent Bonventre of Albany Law School, said he's not surprised the court ruled against the "screw scheme" in the current law.

"It doesn't seem to make any sense," Mr. Bonventre said. "If the jurors had a choice - death, life without parole, life with the possibility of parole...then it would probably be okay."

June 18, 2004
The Times Union

New rules ease many trials of jury duty By MICHELE MORGAN BOLTON

Jury duty is about to get easier for the 2 million New Yorkers called to service each year.

The state's chief judge announced a series of reforms Thursday....

"This is certainly going to help eliminate or reduce the inconvenience of being called for a jury," said Vincent Bonventre, an Albany Law School professor of criminal law. "For most people, other than traffic court, this is their contact with the law."

"And then we have them sitting around like idiots, doing nothing, and wondering, 'Will I be picked? Will I not be picked? Will I have to come back tomorrow?' " Bonventre mused.

June 13, 2004
The Troy Record

Selection of judges challenged By James V. Franco

...The people never get a direct voice because there is no primary, and candidates have no chance of winning without party support...according to a federal lawsuit...filed by the Brennan Center for Justice at New York University....But many knowledgeable people say a primary is not the ideal way to ensure candidates have a fair shot....

Albany Law School Professor Vincent Bonventre gave the following example: If two judges square off and one campaigns on what a good judge is supposed to do - like be impartial, even-tempered, protect a defendant's rights and impose fair sentences - the candidate will likely, in today's climate, lose to the "tough on crime" judge who simply promises to throw all drug dealers behind bars....

Bonventre said a screening committee would work if it was objective and apolitical, but he agreed there is simply no perfect way to select or elect judges. Both methods, by election like county, city and town court judges, or by appointment like jurists on the Court of Appeals, have their drawbacks.

For example, a good judge, Bonventre said, is fair, tolerant, impartial, intelligent and honorable - not necessarily the characteristics needed to win an election. And, after a screening committee generates a list of qualified judges to serve on the state's highest court, it would probably include the name of the person the governor wants appointed, Bonventre said.

"There is just no real fail-safe method of ensuring quality on the judiciary," Boneventre said. "If party bosses give a damn about the courts, you get honorable, fair, intelligent judges. If you don't, you have benches filled with party hacks. ... Right now, we have a combination of the two."

April 28, 2004
The New York Sun

High Court To Consider Bond-Sale Case By WILLIAM F. HAMMOND JR.

Attorneys for Governor Pataki and Mayor Bloomberg will face off today at the state's highest court in a final showdown over a costly plan to refinance part of New York City's debt....

A professor at Albany Law School who follows the Court of Appeals, Vincent Bonventre, said the governor's role in appointing half the judges could give his side an edge.

"Maybe it shouldn't but it almost certainly does," Mr. Bonventre said. "Some of these people have worked for the governor, know the governor very well. It would be strange if they didn't have legal and political sympathies for him and his political positions."

April 25, 2004
New York Newsday

Death row dichotomy: Court of Appeals will hear three cases BY ROBIN TOPPING

...Already, the Court of Appeals has struck down death sentences in the three capital cases it has considered, but the rulings have been on limited legal grounds that disclose little about the court's more complete view of the death penalty....Such decisions have frustrated state lawmakers hoping to see the new statute put to work....

"A lot of politicians are complaining the court has been stretching to overturn the death sentences, I agree," said professor Vincent Bonventre, who teaches death penalty law at Albany Law School....

"I think what the court has done has been arguable, but it has been erring on the side of overturning the death penalty . . . on the other hand, it has been erring on the side of upholding the convictions in these cases."- Law professor Vincent Bonventre

April 9, 2004
Albany Times Union

Charge dropped in drunken baby case

Glens Falls-- Judge rules endangerment law doesn't apply to unborn by JORDAN CARLEO-EVANGELIST

The child endangerment charge against a city woman accused of drinking and brawling just hours before she gave birth to a legally drunk baby boy last September was dismissed Thursday on grounds that the law was never intended to protect unborn children....

But at least one Capital Region legal expert said that Krogmann's "narrow" interpretation of the law might have been prompted by the thorniness of the issue: namely, extending rights to an unborn child.

"It seems to me that with a little legal creativity the judge could have upheld the charge," said Vincent Bonventre, a professor of criminal law at Albany Law School.

There's no other instance where someone would not be culpable for the effects of a crime that did not become apparent until after it was committed, Bonventre said. For example, if someone were to tamper with a car's air bag, he or she wouldn't be less guilty if it were a year before someone was injured as a result, he said.

But Bonventre said he understood why Krogmann so closely hewed to the letter of the law. The rights and protections afforded fetuses have been an even more controversial issue in recent weeks since Congress passed -- and President Bush signed -- a bill making it a crime to harm a fetus while assaulting a pregnant woman....

"This kind of a charge has all kinds of implications for the kind of protection that's going to be given to the fetus, and therefore necessarily the kind of restrictions that are going to be put on the pregnant woman," Bonventre said. "There's all kinds of implications for pro-lifers, pro-choice advocates, and women's rights."

He also said Krogmann faced the reality that the Legislature had probably never intended the law to apply to a fetus because it had never imagined this type of crime. It was that notion on which Gilligan's attorney, Robert E. Kelly, said he built his case.

April 8, 2004
The New York Sun

ACLU Challenges N.Y.'s Same-Sex Wedding Prohibition By DANIELA GERSON

New York's refusal to sanction gay marriage violates the equal protection, privacy, and due process provisions of the state's constitution, according to a suit filed in state court yesterday by the American Civil Liberties Union....

A professor who studies the Court of Appeals, Vincent Bonventre of Albany Law School, said the addition of the ACLU improves the overall chances for a positive resolution.

"The New York Court of Appeals, at least on the larger issues, has always been on the side of the movement of history," Mr. Bonventre said. "I think in that sense the judges of the current court, even though it's a rather conservative and cautious court, will take seriously the historic stature of their institution."

March 23, 2004
Associated Press (Newsday, NY; others)

Gender-neutral supporters surprised at gay marriage application By JOEL STASHENKO

The chief sponsor of a 2001 statewide referendum that took gender specific language out of New York's constitution says she is surprised to see the amendment now being used to promote gay marriage....

Vincent Bonventre, an Albany Law School professor, said a strong argument can be made supporting the legality of gay marriages in New York and that the 2001 amendment could be a factor as judges consider the question. It doesn't matter, he added, if sponsors did not anticipate its application to the same-sex couple debate three years later.

"When the Equal Protection clause of the constitution was adopted, nobody contemplated that it would be applied to ensure equality for women," Bonventre said. "Nobody contemplated that it would be applied to ensure quality for immigrants."

Bonventre said the strongest argument that proponents of gay marriages have is that to deny them status as a legal couple violates the constitutional protection against being discriminated against by gender.

"The prohibition really violates gender equality because men are allowed to marry women, but women aren't allowed to marry women," Bonventre said. "Women are allowed to marry men, but men aren't allowed to marry men. The prohibition illegally reinforces gender roles."

March 19, 2004
Albany Times Union

Suit challenges how judges are selected By Elizabeth Benjamin

New York's method of selecting state Supreme Court candidates is unconstitutional and violates the rights of voters and candidates because it locks out all but political insiders, according to a lawsuit filed Thursday in federal court in Brooklyn...The suit was filed against the state Board of Elections and its four commissioners by the Brennan Center for Justice at the New York University School of Law....

Vincent Bonventre, a professor at Albany Law School, said he agrees with the lawsuit's premise that the way judges are selected in New York needs to be changed.

"They are rigged and a total farce," he said. "The problem isn't just downstate, it's upstate as well. It's completely contemptible and it needs to be fixed."

But fixing the system cannot be done by the courts, Bonventre said, unless there is an allegation of criminal activity in the judicial selection process similar to what Norman has been accused of.

"To a large extent, this is a political matter not a legal matter," Bonventre said. "The system being what it is, (the selection of Supreme Court candidates) is not violating the law."

March 16, 2004
Poughkeepsie Journal

Cases enter legal arena as church and state issue

A debate over same-sex marriages appeared to morph into a debate over the separation of church and state as two ministers were charged Monday with 13 counts of marrying gay couples in New Paltz 10 days ago....

Instead of government encroaching on religious life, it appears the ministers have jumped into the public policy debate with their actions, said Vincent Bonventre, a professor at Albany Law School.

"They're not only acting as ministers, they're acting as state-authorized officials," Bonventre said. "If clergy want to perform religious marriages, they're perfectly free to do that. In terms of saying, 'We're doing this as state officials and performing a state marriage,' they really are now entering into the realm of government."

....Bonventre also wondered whether such an aggressive prosecution was necessary. The county or state won't recognize the marriages as legal, so there would be no harm, he said.

"Ultimately, the Court of Appeals, our highest court, is going to have to decide the question of whether or not New York can deny marriage to a couple solely on the ground that they're same sex," Bonventre said. "That's going to render all these other issues academic."

March 3, 2004
Poughkeepsie Journal

Experts: Laws 'gender neutral' Professor: License not needed to be legally married by Larry Fisher-Hertz

Government officials are contending same-sex couples in New York can't get married, but some legal experts said Tuesday the laws on marriage are far from clear....

"Legislators who enacted the state's Domestic Relations Law 100 years ago were clearly thinking in terms of marriage between a man and a woman," said Vincent Bonventre, a professor at Albany Law School. "But a lot has changed since then."

Bonventre said he knew of no definitive case law that specifically prohibits gay or lesbian couples from being legally married.

"If there are courts that have held that marriage is only between a man and a woman, it's not anything recent, and it's certainly not from the Court of Appeals," he said.

State Department of Health officials apparently disagree. The agency issued a memorandum Friday to all town and city clerks in the state advising them not to issue marriage licenses to same-sex couples....

Bonventre said he knew of nothing in the law that required couples to obtain a license in order to be legally married.

"You get a license for much the same reason you get diplomas from your college or high school when you graduate," he said. "It memorializes the act, but the piece of paper isn't the actual, legal operation of the law. The action is -- in the case of marriage, that's a ceremony performed by a duly authorized person, such as a village mayor."

March 2, 2004
The New York Sun

N.Y. Goes Down Massachusetts's Path on Gay Marriage by WILLIAM F. HAMMOND JR

New York is headed for a Massachusetts-style resolution of the gay marriage issue, with a panel of appointed judges ultimately deciding whether homosexual couples should have the right to wed in the state, legal experts said yesterday....

A professor who studies the Court of Appeals, Vincent Bonventre of Albany Law School, said it has become more cautious in recent years. "I'm sure that this current Court of Appeals does not want to be deciding such a socially, culturally revolutionary question," he said.

The state's Domestic Relations Law - which prohibits incestuous marriages, bigamous marriages, and underage marriages - says nothing about the parties to a marriage being of opposite sexes.... Mr. Bonventre said authors of the law did not intend to permit gay marriages. But the authors of the 14th Amendment also did not intend for it to prohibit discrimination against women.

"No matter what the courts do, they're going to be activists in a sense," Mr. Bonventre said of the gay marriage issue. "They can't run and hide from making a decision."

Feb. 27, 2004
MSNBC.com

Expert says gay marriages are legal -By Bill Lambdin

Albany....Mayor Jason West conducted 21 same-sex marriage ceremonies....

A local expert on the courts and the state constitution says the New Paltz mayor is within his rights. According to Albany Law Professor Vincent Bonventre, if a duly authorized official like West marries a same-sex couple, they're married whether they have a marriage license or not.

"It doesn't seem to make any difference whether they have a piece of paper that says you are married. Under New York State law a mayor of a village or a city is permitted or has the authority to marry two adults. So they're married," Bonventre said.

....Just as in neighboring Massachusetts, New York's constitution and laws neither sanction nor disallow same sex marriages. So the same legal logic that led to the process in Massachusetts could be applied here if the judges wanted to.

However, Bonventre points out that is not usually the way things work. "Courts usually don't lead the pack. Courts usually wait to take their lead from the democratic branches," he said.

Feb. 26, 2004
Associated Press

(Boston Globe, NY Newsday, Atlanta Constitution, San Francisco Chronicle, WNBC (NY), New York Daily News, the San Jose Mercury News, the Sarasota Herald-Tribune, and *The UK Guardian*)

N.Y. Village Mayor to Marry Gay Couples by MICHAEL HILL

ALBANY, N.Y. - The 26-year-old mayor of a progressive college village in the Hudson Valley says he'll begin performing gay marriages Friday, calling it "my moral obligation."

New Paltz Mayor Jason West, who won office last year on the Green Party line, said he intends to marry at least four same-sex couples at a private bed and breakfast....

Vincent Bonventre, a professor at Albany Law School, said nothing in New York law explicitly prohibits same-sex weddings, but that the framers "clearly were contemplating opposite-sex marriages."

February 25, 2004
Times Herald-Record (Middletown, NY)

County caught in ethics squabble - By Brendan Scott

Orange County officials probably didn't break any ethical rules by continuing to defend themselves from two slip-and-fall cases brought by the county attorney's husband, according to interviews with several legal experts.... "Does it pass the smell test?" [Columbia Law School professor Bill Simone] said. "I'd say yes."

Albany Law School Law professor Vincent Bonventre agrees, but he admits the situation pushes the envelope. "Is it absolutely ethically required that the county attorney step aside? No," Bonventre said. "Could a judge reasonably conclude that it's too close for comfort? I wouldn't be surprised."

February 22, 2004
NY Times

With Albany Mum on Same-Sex Marriage, New York Gay Advocates Look to Courts -by AL BAKER

....Of course, should a case reach the Court of Appeals, the state's highest court, it would be received by a bench far more conservative than it has been in the last two decades, said Vincent M. Bonventre, a law professor at Albany Law School.

"That is why groups that represent gay rights are very

hesitant to bring a challenge in New York courts for civil unions or gay marriages," Mr. Bonventre said. "Because they don't trust this court to be willing to do what it might have done in the past."

February 18, 2004 - 2
Albany Times Union

Point of law sparks woman's crusade - ELIZABETH BENJAMIN

Armed with little more than a home computer and righteous indignation, June Maxamhas been fighting for several years to have many of the state's roughly 3,300 judges removed from their posts because she believes they did not properly file their legally mandated oaths of office....

Albany Law School Professor Vincent M. Bonventre said it's highly unlikely the state's highest court would vacate hundreds of decisions -- even if the judges who made them hadn't met their oath requirements. "This is really more of a ministerial matter," Bonventre said. "If the statutes were applied literally, it would upset far, far too many things. I can't imagine the Court of Appeals allowing that to happen."

....But Bonventre deemed Maxam's quest "perfectly viable."

"We have so many laws on the books that there's no way anybody can know all the laws they're supposed to be obeying," Bonventre said. "But, that said, ignorance of the law is no excuse."

February 18, 2004
Albany TimesUnion

In cop's killing, a test for the DA - By CAROL DeMARE

District Attorney Paul Clyne, who is philosophically opposed to capital punishment, faces the biggest challenge of his career with the death of a beloved police officer....

Vincent Bonventre, Albany Law School professor, said that Clyne's facing re-election could weigh on his decision.

"All politicians, including district attorneys ... face pressure from what the public desires, what's popular," Bonventre said. "If there's any aspect ... that's very popular, it's the death penalty for those who kill police officers, because they're viewed as our protectors, and if they're not protected than we're in pretty bad shape. There's not much popularity for mercy for cop killers."

January 23, 2004
The New York Times

Conflict Seen After Slaying of a Witness -by WILLIAM GLABERSON

A defense lawyer for a Bedford-Stuyvesant man charged with killing a witness to a murder has accused the Brooklyn district attorney's office of a conflict of interest and asked a judge to appoint a special prosecutor for his case...

If the judge determines the prosecution's personal interest is going to interfere with the prosecution's role of seeking justice, the judge may and probably will remove the prosecutor," said Vincent M. Bonventre, an Albany Law School professor.

2003

December 8, 2003
The New York Sun

Delaying the Death Penalty - WILLIAM F. HAMMOND JR.

The Court of Appeals' 4-2 decision last month to void the death penalty for John F. Cahill III - a Syracuse man who beat his wife with a baseball bat then fatally poisoned her at the hospital - enraged people who support capital punishment and gratified those who oppose it.....

A professor of law at Albany Law School who studies the Court of Appeals, Vincent Bonventre, said that judges commonly - and quite properly - avoid making sweeping pronouncements, such as declaring whether a law is constitutional or not, when they can decide a case on mundane, technical grounds.

Eventually, however, a more clear-cut case of capital murder will make its way to the high court, and the judges will have no choice but to rule on constitutional issues. And the issue most likely to make or break the death penalty in New York is uneven enforcement, he said.

"No matter how the court answers that, it's making law," Mr. Bonventre said. "There's no provision in either the state or federal constitution that answers that directly....If they say this geographical randomness is perfectly fine, they're making law. If they say geographical randomness violates due process, they're making law. They can't get away from it."

December 5, 2003
The New York Sun

Appeals Court Nominee To Face Tough Questions - WILLIAM F. HAMMOND JR. Staff Reporter of the Sun

Governor Pataki's latest nominee to the Court of Appeals, Robert Smith of Manhattan, can expect pointed questions from senators of both parties at his confirmation hearing next month. Leading Republicans on the Judiciary Committee said yesterday they want to learn more about Mr. Smith's position on the death penalty...

Questioning a nominee about controversial topics is "extremely unusual," said an Albany Law School professor who studies the court, Vincent Bonventre. "Usually Senate confirmation is a rubber stamp in New York."

Mr. Bonventre said the scrutiny is "perfectly appropriate." "The senators...and the public ought to know what this many stands for," he said. "Not necessarily how he would rule in a particular case, but we ought to know the kind of judge he says he's going to be."

November 30, 2003
The Post-Standard (Syracuse, NY)

STATE YET TO EXECUTE ANYONE UNDER LAW; OFFICIALS DEBATE WHY NO ONE HAS BEEN KILLED UNDER REINSTATED DEATH PENALTY. -By Frederic Pierce

Since New York reinstated the death penalty in 1995, prosecutors have put seven people on the state's death row. Two, including James "Jeff" Cahill, the Spafford man who fatally poisoned his wife in her University Hospital room, were spared lethal injection by the state Court of Appeals....The court voted 4-2 Tuesday to toss out Cahill's first-degree murder conviction....

"This has been a fairly conservative, pro-prosecution court, but when it comes to the death penalty, they start scrutinizing every little thing," said Vincent Bonventre, an appeals court expert at Albany Law School. "It does seem that they're just finding anything to throw out a death sentence."

....On the burglary theory, the majority said the fact that Cahill entered his wife's room to poison her didn't represent a second crime, just a means to accomplish his wife's killing.

"It's not really logical to say that he killed her in order to further the felony of sneaking into her room to kill her, but that's what the law makes prosecutors do," Bonventre said. "It's not a well-drafted statute...."

"The statute essentially creates 62 different death penalty laws because every district attorney has discretion to seek the death penalty and there's absolutely no criteria for deciding whether to seek it," Bonventre said. "This court is a very, very cautious court, and I'm not surprised they didn't address it. They have a reputation for avoiding as much controversy as they can."

....Albert Rosenblatt, whom Pataki appointed in 1998, was the only Republican who voted to overturn Cahill's death penalty.

Conversely, Republican judges Victoria Graffeo and Susan Phillips Read - both Pataki appointees - have been overwhelmingly pro-prosecution, Bonventre said.

The court's three Democrats have also been fairly pro-prosecution but are more sympathetic to groups that oppose the death penalty, Bonventre said.

November 11, 2003
Buffalo News (New York)

EDITORIAL JUDICIAL PLUM/ POLITICS TRUMPS QUALIFICATIONS IN COURT OF APPEALS APPOINTMENT

Robert Smith may make a fine judge, but the Manhattan lawyer has never worn a judicial robe. That peculiar fact, together with his record as a generous contributor to Gov. George Pataki and other Republicans, should make his appointment to New York's highest court a troubling matter to anyone in the state...

Pataki, it should be said, did nothing procedurally inappropriate. He was required to select a name from a list drafted by the state's Judicial Nominating Commission, and at least one expert court-watcher, Albany Law School professor Vincent Bonventre, observed that while the selection of Smith "certainly looks bad," the nominee is not without merit. Political contributions and lack of judicial experience aside, Smith is "head and shoulders above any basic standard" for nomination to the court, he said.

November 7, 2003
The New York Sun

EDITORIAL - Mr. Smith Accedes

Governor Pataki's appointment of Robert Smith to the state's highest court, the Court of Appeals, is welcome news.....

No wonder that even a liberal critic of Mr. Pataki's past court appointments, Vincent Bonventre of Albany Law School, said of Mr. Smith: "If the Court of Appeals was filled with people of his apparent caliber, we'd have the strongest court in the country."

November 5, 2003, FINAL EDITION
Buffalo News (New York)

LOCAL JUDGE BYPASSED FOR STATE'S HIGHEST COURT BY TOM PRECIOUS; News Albany Bureau - ALBANY

Gov. George E. Pataki has passed over a Western New York judge for a vacancy on the state's highest court, picking instead a New York City lawyer with no judicial experience who has been a major campaign contributor to the governor.

Justice Eugene F. Pigott Jr., presiding justice of the Appellate Division of State Supreme Court in Western New York, had been considered the front-runner....

In a surprise to the state's legal community, the governor chose Robert S. Smith, a Republican lawyer who lives on Manhattan's upper West Side....

Vincent Bonventre, an Albany Law School professor and longtime Court of Appeals monitor, said, "It certainly looks bad" that Pataki, "who already has a reputation for appointing cronies and partisans, has tapped someone who has been such a heavy contributor to his campaign and other GOP candidates. But he said Smith's credentials make him "head and shoulders above any basic standard for what qualifies for the Court of Appeals."

The contributions "don't make him any less qualified for the court," Bonventre said.

The court watcher said that while he thought Pigott had been the front-runner, the Grand Island judge's reputation may have kept Pataki from nominating him.

"He has a reputation for being independent, being his own person, speaking his mind. Those aren't necessarily the qualities that either the governor or chief judge prize on the court," Bonventre said.

November 5, 2003
The New York Sun

BIG GOP DONOR IS NOMINEE TO STATE'S HIGH COURT - WILLIAM F . HAMMOND JR .

Governor Pataki's latest nominee to the state Court of Appeals, Robert Smith, is an elite Manhattan lawyer who graduated first in his class at Columbia Law School and went on to argue cases before the U.S. Supreme Court. He also happens to be an unabashed conservative who has recently done legal work for the governor and donated more than \$180,000 to Republican causes in the past five years....

But a liberal critic of the governor's past court appointments, Vincent Bonventre of Albany Law School, called Mr. Smith an "exceptional" choice, regardless of his political activity.

"He's a top-notch, top-flight litigator, "Mr. Bonventre said. "If the Court of Appeals was filled with people of his apparent caliber, we'd have the strongest court in the country.... Even if this individual is a donor or a contributor, even a friend, he's got a record and a background that's just extraordinary."

Mr. Pataki's choice came as a surprise to Mr. Bonventre and other court watchers...."He's not one of the usual suspects," Mr. Bonventre said. "All I have to say is: Hallelujah."

November 5, 2003
The Times Union (Albany, NY)

Pataki selects donor for jurist -By Michael Gormley; Associated Press

Republican Gov. George Pataki On Tuesday Nominated A Major Campaign Donor, Manhattan Lawyer Robert S. Smith, For A Seat On The Seven-member State Court Of Appeals....

Albany Law School Professor Vincent Bonventre, An Expert On The Court Of Appeals, Said The Political Donations From Smith Are "Going To Underscore The Perception That The Governor Is Supporting Partisans."

"But If You Look At This Guy's Background, His Education, His Experience, He Just Seems Like An Extraordinary Choice For The Court," Bonventre Added.

"He's Not My Politics, But I'm Thrilled," Bonventre Said. "This Is A Guy Who Has Argued And Won Landmark Cases ... This Is A Topflight Lawyer, A First-rate Litigator ... I Read His Oral Arguments At The Supreme Court And He Is Very Good."

November 5, 2003
Newsday (New York)

City Lawyer Tapped For Top NY Court -By Jordan Rau and Andrea Baker

Gov. George Pataki nominated to the state's highest court yesterday a nationally known Manhattan litigator who has been a generous campaign donor to the governor....Robert S. Smith....

"It certainly doesn't help the perception that Pataki has been appointing partisans, but it seems to me that that shouldn't detract from the fact that this guy really has a great deal of merit," said Vincent Bonventre, an Albany Law School professor. "By every indication, he is an exceptional litigator at the highest level."

November 5, 2003
Daily News (New York)

GOV TAPS DONOR CHUM FOR SPOT ON TOP BENCH -BY JOE MAHONEY

A Manhattan lawyer who has been a generous donor to the Republican Party was tapped by Gov. Pataki yesterday to fill a vacancy on New York's highest court.
Robert Smith... would get the seat vacated by Richard Wesley if confirmed by the state Senate.....

Those who track the seven-member court said Smith, a graduate of Columbia Law School and former partner in the firm of Paul Weiss Rifkind Wharton & Garrison, is a highly capable lawyer who should shine on the bench.

"His politics aren't mine, but this guy is a topflight litigator who is eminently qualified for the court," said Albany Law School Prof. Vincent Bonventre.

November 5, 2003
New York Law Journal

Pataki Nominates Smith for Top Tribunal;
A Surprise Choice, New York Litigator Is Only Second Non-Judge Selected for Court of Appeals - by JOHN CAHER

Governor George E. Pataki yesterday nominated Manhattan attorney Robert S. Smith for the Court of Appeals, marking only the second time in the history of appointive selection that a non-judge has been selected for the state's highest court....

Albany Law School Professor Vincent M. Bonventre called Mr. Smith "a top-flight national litigator." Mr. Bonventre was among many court watchers who predicted the governor would select Justice Pigott. Yesterday marked the first time in at least eight years where Mr. Bonventre guessed wrong.

"I really like the fact that he is not one of the usual suspects," he said. "If the governor wanted to show that I and the other court watchers don't know what the hell we are talking about, hallelujah. ...I am very happy to have someone this good on the Court."

November 5, 2003
The New York Times

Lawyer, Not Ideologue -- Robert Sherlock Smith - AL BAKER

..."I guess I sort of changed my views, to some degree," Mr. Smith, 59, said Tuesday, a day after Gov. George E. Pataki tapped him to fill a vacant seat on the Court of Appeals....He said he did not know what he thought of the death penalty, though he has twice argued pro bono against it on behalf of convicted murderers in capital punishment cases that reached the United States Supreme Court...."I am not entirely sure what my own views are."

To Vincent M. Bonventre, an Albany Law School professor, Mr. Smith's independent outlook is surprisingly refreshing. "Anybody that does not have schizophrenic views on the death penalty is dangerous," Mr. Bonventre said.

Mr. Smith has never been a judge, so there is no record of his ruling in cases. And while most analysts said Tuesday that they knew little about Mr. Smith's philosophy, Mr. Bonventre called him a "stealth" candidate whose lack of experience on the bench should not be held against him.

"This fellow is eminently qualified," said Mr. Bonventre. "And he is not my politics, and I don't mind criticizing the governor. But, whatever the reasons the governor chose this guy, he's just someone who is loaded with the kind of merit you want for the high court."

November 5, 2003
The New York Times

Pataki Puts Nonjudge on Court of Appeals - By JAMES C. MCKINLEY Jr.

Gov. George E. Pataki nominated a Republican trial lawyer from Manhattan on Tuesday to fill a vacancy on the state's highest court....Mr. Pataki's decision came as a shock to law professors and others in legal circles who watch the Court of Appeals....

"Smith really was the stealth candidate through this whole thing," said Prof. Vincent M. Bonventre, a law professor at the University of Albany who wrote his dissertation on the court

November 7, 2003

CORRECTION:

An article on Wednesday about the appointment of Robert S. Smith to fill a vacancy on the New York State Court of Appeals misstated the affiliation of Vincent M. Bonventre, who commented on the appointment. He is a professor at Albany Law School of Union University, not at the University of Albany....

October 24, 2003

Poughkeepsie Journal (Poughkeepsie, NY) - Gannett News Service

Court of Appeals pick deserves more notice -By Yancey Roy

Gov. George Pataki must select the next judge for the state's highest court by Nov. 15...The deck was stacked, some complained. That might be why only one of the 60-odd judges at the mid-level tier of the court system applied, skeptics said.....

"It's one thing for a chief executive to be appointing the kinds of judges he wants -- it's another to be choosing cronies," Albany Law Professor Vincent Bonventre had said before the nominees were named. "The selection of judges has always been political. But it's gotten narrowly partisan."

After all this hoopla...the Commission on Judicial Nomination, the panel that screens candidates, didn't include McGuire as one of its seven nominees it submitted to the governor....

"It may well be that McGuire was a casualty of the backlash," Bonventre said.

October 16, 2003

The New York Sun

A Top Contender Is Missing From List of Candidates for High Court By William F. Hammond Jr

Governor Pataki will have to go outside his inner circle in filling a vacancy on the state's highest court, since his former general counsel, James McGuire, was not on the list of candidates presented to him yesterday by the Commission on Judicial Nominations..

The omission of Mr. McGuire suggests the Commission on Judicial Nominations is "asserting its independence" from Governor Pataki, according to a veteran court watcher, Professor Vincent Bonventre of Albany Law School.

The bipartisan commission, which is jointly appointed by the governor, Chief Justice Judith Kaye, and legislative leaders, has been widely criticized for helping Mr. Pataki fill the high court with friends, colleagues, and political allies - leading to the impression that the selection process was "fixed" and discouraging highly qualified but politically inactive legal minds from applying, Mr. Bonventre said.

"McGuire happens to be a crony of Pataki," he said. "It may be that he's just a casualty of the commission saying, 'Hey, don't believe it. We don't just do the governor's bidding.'"

October 16, 2003

The Associated Press

High court nominee list missing expected candidate -By Joel Stashenko

Gov. George Pataki will fill a vacancy on the state's highest court from a list of seven candidates recommended Wednesday by a state commission.

Unexpectedly, former Pataki counsel James McGuire was not on the list.

Albany Law School Professor Vincent Bonventre had speculated that McGuire would have stirred up the Court of Appeals, and perhaps rebelled against the tendency of the court under Kaye to render unanimous or near-unanimous rulings. Bonventre said that pattern of seeking consensus on the court resulted in "fudged over" rulings and did not promote bold judicial scholarship in the court's rulings.

October 12, 2003
Gannett News Service, Albany Bureau

Interest in state Appeals Court judgeship low - By Yancey Roy

One might think a vacancy on New York's top court would draw dozens of applicants from the state's midlevel tier of judges. Not so.... That apparently is because many suspect the deck is stacked.... The head of the New York City Bar Association begged people to apply in a newsletter article headlined with the lottery slogan, "Hey, you never know."

"How pathetic," said Vincent Bonventre, an Albany Law School professor and a longtime observer of the Court of Appeals, the state's highest court.

"Here we are, pleading with New York lawyers to apply for a position on such a great tribunal," Bonventre said. "I think it represents the depths to which the selection process has sunk."....

January 13, 2003
New York Law Journal

Top Contenders Emerging For Federal Bench - By Daniel Wise

The Bush administration has settled upon New York Court of Appeals Judge Richard C. Wesley as its choice, subject to the completion of a Federal Bureau of Investigation background check, to fill a vacancy on the U.S. Court of Appeals for the Second Circuit, sources report...

Judge Wesley has been a staunch conservative on criminal issues, but less so, though still on the conservative side, in cases where individuals are asserting claims against the government, said Albany Law School Professor Vincent Bonventre, who recently completed a doctoral dissertation on the Court of Appeals.

An analysis of Judge Wesley's voting record during his first five years on the Court of Appeals shows him in criminal cases to be "very conservative on a conservative court," Mr. Bonventre said.

The judge sided with the defense in 13 percent of the criminal cases the court decided between 1997 and 2001, while the court as a whole ruled for the defense 26 percent of the time. In civil cases involving a clash between the individual and the government, Judge Wesley sided with the individual in 38 percent of the cases, while the court's record was 26 percent, according to Mr. Bonventre's study....

January 7, 2003
The Times Union (Albany, NY)

Pataki's pick for court sets precedent by James M. Odatu

Gov. George Pataki on Monday appointed his fourth judge to the seven-member Court of Appeals, naming Court of Claims Judge Susan P. Read....

Her appointment also solidifies the court's tilt to the right, said Professor Vincent Bonventre of Albany Law School.

"She would not have been appointed if they thought she was a liberal," Bonventre said. "The real significance to this is that Pataki has now appointed the majority of the court, it almost certainly preserves the court's current conservative leanings."....

January 7, 2003
New York Law Journal

Read Tapped for Court of Appeals -By John Caher

With his selection yesterday of Court of Claims Presiding Judge Susan Phillips Read for the Court of Appeals, Governor George E. Pataki apparently made national history as the first governor to create an appointive high court with a majority of women.....

Vincent M. Bonventre, an Albany Law School professor and expert on the Court of Appeals, said Judge Read is unlikely to shift the panel jurisprudentially, and more likely will further strengthen its conservative core.

"Now that Pataki has appointed a majority of the court, the conservative direction that the court has taken in the last few years will probably be stabilized and solidified," said Mr. Bonventre. However, he noted that judges mature and evolve over time, and there is no accurate way to predict Judge Read's future jurisprudence or her impact on the Court....

January 7, 2003
The New York Times

Pataki to Name Ex-Adviser To State's Highest Court - By AL BAKER

Gov. George E. Pataki said yesterday that he would appoint Susan Phillips Read, presiding judge of the State Court of Claims and a former top legal adviser to him, to the state's highest court, the Court of Appeals....

"The fact that there is now a majority of Pataki appointments means that the court's recent shift in a conservative direction is going to be preserved," said Vincent M. Bonventre, an Albany Law School professor who received his Ph.D. in public law from the University of Virginia last fall; his dissertation was a study of the state's Court of Appeals. "It is much more unlikely that the court is going to return to the liberal jurisprudence, which characterized it several years ago."

...."The fact that she has not been on a court that handles criminal cases or civil liberties cases," Mr. Bonventre said, "makes it very difficult to try to determine what her jurisprudence might be."

2002

December 2, 2002
The New York Sun

The Court of Appeals Rubber Stamp - By William F. Hammond

....In contrast to Washington — where the process of vetting judicial nominees is lengthy, public, and notoriously politicized — Albany has a tradition of rubber-stamping the governor's choices for the bench... And that, according to the critics, results in a mediocre Court of Appeals.

"There's more legal talent in New York State than anywhere else on the planet, and overwhelmingly that legal talent doesn't even bother to apply," said a law professor who studies the court, Vincent Bonventre of Albany Law School. "They recognize

they have virtually no chance, regardless of how extraordinary they are as lawyers or how good they would be as judges, unless they're politically connected."

Messrs. Bonventre and Schulz point to the meteoric rise of Mr. Pataki's most recent appointee to the Court of Appeals, Victoria Graffeo, to illustrate their point. ..."She's an upstate, Republican, Italian-American woman," Mr. Bonventre said. "That's why she got it. That doesn't mean she's not good. But that's why she got it."

....For more than a century, members of the Court of Appeals were elected rather than appointed. But that changed in 1977, when voters approved a constitutional amendment to adopt what was called a "merit-based" system for picking judges on the top court.

"It has certainly accomplished one of its goals, and that is to remove the judges from the election campaign circuit — TV ads, campaigning like politicians do, making promises either explicitly or implicitly, spending a lot of money," Mr. Bonventre said. "So the process at least looks a lot more respectable and looks a lot more meritorious. But anybody that thinks the system is devoid of politics has their head in the sand. And anybody that thinks we have a pure merit system is deluding themselves."

December 2, 2002
New York Law Journal

Self-Described 'Centrist' at Court of Appeal Retires -By John Caher

When Howard A. Levine was an Appellate Division justice, clerks at the Court of Appeals use to joke that it was a relief to see an appeal of a case where he had written the majority or dissenting opinion. Then, they said, their job was easy: just follow Judge Levine....

"Levine was at the top of the state judiciary for a long time. Even when he was at the Appellate Division it was clear that he was as good an appeals court judge as there was in this state," said Albany Law School Professor Vincent M. Bonventre, a court scholar and former Court of Appeals clerk....

"His record over the years has largely been pro-prosecution in criminal cases and largely pro government in civil cases, but he among the judges has really been difficult to pigeonhole because he has been willing to break away from the pack and break away from any pattern," Mr. Bonventre said. Judge Levine is not going to defer to the government when it fails to act in a reasonable way, said Mr. Bonventre, adding, "He is just an outstanding judge and I think everyone will miss him - liberals, conservatives, centrists."

July 25, 2002
New York Law Journal

Court Observers See Gradual Shift From Solidarity to Individualism - By John Caher

....The judges are almost always in unanimous agreement. And even when the most prolific dissenter, Judge George Bundy Smith, broke with his colleagues, he did so diplomatically and respectfully. (A recent survey by Professor Vincent M. Bonventre of Albany Law School shows that for the period 1997-2001, Judge Smith wrote 23 opinions separate from the majority. The other six judges wrote a total of 21.) The vitriol that has become so common in U.S. Supreme Court opinions is virtually unheard of on Chief Judge Kaye's Court.

Professor Bonventre, who regularly examines the Court and the voting records of its members, concludes in his most recent analysis that the judges are continuing to pursue the right-of-center path they have followed for a number of years.

The professor and student co-author Kelly M. Galligan say in an article for the Albany Law Review that a study of the Court's decisions for 2000 and 2001 suggests the judges were inclined to decide narrowly "cases that present controversial or significant questions." The authors said voting records indicates that Judge Smith is the only true "liberal" on a Court with one very conservative judge (Victoria A. Graffeo), four conservative judges (Richard C. Wesley, Albert M. Rosenblatt, Carmen Beauchamp Ciparick and Howard A. Levine) and one moderate conservative (Chief Judge Kaye)....

July 10, 2002
Buffalo News (New York)

ISSUE OF CONSTITUTIONALITY AVOIDED AS COURT VACATES A DEATH SENTENCE BY TOM PRECIOUS

The decision by the state's top court Tuesday to spare a convicted killer's life, leaving unresolved key questions about the legality of New York's death penalty, surprised few lawyers and scholars.....The court voted, 6-1, to vacate the death sentence of convicted killer Darrel Harris....

"Customarily, judges don't address major, social and political issues unless they absolutely have to. And this happens to be a very, very cautious court," said Vincent Bonventre, an Albany Law School professor and one of the keenest observers of the state's highest court. He said the court was careful to avoid "not a whiff of a suggestion" about whether the 1995 law is constitutional....

July 10, 2002
New York Law Journal

Death Law Advocates Buoyed by Ruling - By Tom Perrotta

Although the Court of Appeals yesterday spared the life of Darrel K. Harris, supporters of the death penalty found reason to be pleased with the Court's logic....

Albany Law School Professor Vincent M. Bonventre, a longtime Court analyst, said there was no reason for the Court to venture beyond the issues it needed to address to resolve this appeal. However, he questioned why the panel ruled solely on federal constitutional grounds.

"We are dealing with the New York death penalty and the New York statute," Professor Bonventre said. "If the New York high court thinks it is unfair to subject an individual to the death penalty solely because he exercises his constitutional rights, why don't they just say so as a matter of New York law? How bold would it be to say, 'In New York, we won't tolerate that kind of inequity.'"

Additionally, Professor Bonventre said the chasm between the majority and the dissent by Judge George Bundy Smith may be far broader than it appears at first glance.

"The disagreement between the majority and dissent really covers every issue," he said. "[Judge] Smith is saying that in a death penalty case there has to be heightened scrutiny for everything and he and the majority seem to disagree on that."

July 10, 2002
The New York Times

First Death Sentence Imposed Under '95 Law Is Overturned - by JAMES C. MCKINLEY Jr.

....The Court of Appeals, in a 6-to-1 opinion, avoided answering the larger question of whether the death penalty violated the State Constitution's ban on cruel and unusual punishment....

Vincent M. Bonventre, a professor at Albany Law School who follows the court, said the judges appeared to be following the time-honored judicial technique of focusing on an issue that can decide the immediate case without reaching the broader questions.

He said the death-row appeals now in the works would eventually force the court to take a look at the bigger picture. "The statute is either discriminatory and arbitrary or it's not," he said. "How long are we going to go as a state until we get a final answer?"

June 4, 2002
New York Law Journal

U.S. Judge Sharply Critical Of State High Court Rulings -By Tom Perrotta

Sharply criticizing several New York Court of Appeals rulings as vague, a federal judge has...ruled that Brian Jones' equal protection rights were violated when he was convicted and sentenced under depraved indifference murder rather than the less harsh reckless manslaughter....

Vincent M. Bonventre, a professor at Albany Law School and a Court of Appeals scholar, said Judge Brieant was wrong to not see the distinction between "grave risk of death" and "substantial risk of death."

"Is there confusion? Yes," Mr. Bonventre said, commenting on the state court's rulings. "But to say that there is no distinction between the two, I just think that is wrong."

May 7, 2002
Buffalo News (New York)

DEATH SENTENCE IN STATE COURT BY TOM PRECIOUS

....Many legal scholars believe the court will not issue a firm ruling on the constitutionality of the 1995 death penalty statute....That belief won greater credibility Monday, based on the line of questioning in court....

"The court has pulled back its horns and become much more timid and narrow in its rulings," said Vincent M. Bonventre, a professor at Albany Law School and a longtime observer of the Court of Appeals.

He said the court, burned by years of criticism by politicians and newspaper editorials that it was soft on crime, has become gun-shy about deciding major issues of the day, preferring instead to focus on narrow rulings.

The problem, he said, is that judges, lawyers and the public are awaiting the definitive word on whether New York is a death penalty state.

"They know they're under the spotlight. They know if they decide the case a certain way, they will come under very harsh criticism. The easy way out, which may also be the conventional way out, is to dispose of this case on narrow, legal grounds," Bonventre said....

May 5, 2002
Poughkeepsie Journal (Poughkeepsie, NY) - Gannett News Service

State's high court could decide fate of death penalty - By Yancey Roy

"I would say the chance is nil that the court will invalidate the death penalty," said Vincent Bonventre, an Albany Law School professor who has studied the Court of Appeals and says it tends to make narrow rulings.

"I also find it hard to believe that (Chief) Judge Judith Kaye will allow an execution on her watch," Bonventre said, noting that Kaye in 1984 wrote an opinion that shot down the state's previous death penalty law.

May 5, 2002
The New York Times

For Death Penalty, a Day of Reckoning; Appeal of Revised Law Tests New York's Highest Court -By WILLIAM GLABERSON

....The case is landing before a court that has become increasingly favorable to prosecutors and unified in the wake of harsh criticism from Gov. George E. Pataki and others in the mid-1990's....

"This is the day of reckoning," said Vincent M. Bonventre, a professor at Albany Law School, who follows the court. "The disagreements that are almost always there but don't come to the surface in other cases are going to surface in these cases."

....Partly to blunt criticism that the court protected criminals, several of the judges have seemed to suppress liberal instincts in recent years, Mr. Bonventre and other legal experts said. More decisions appear to be reached by consensus in what some experts see as the judges' effort to present a solid front against critics....

A key to the direction of the court could well be its chief judge, Judith S. Kaye.....Mr. Bonventre, the Albany Law School professor, said she appeared to be a staunch death penalty opponent when she wrote the court's opinion in 1984 striking down the state's last death penalty. "At the time," said Mr. Bonventre, who was a law clerk on the court, "I don't think any death penalty statute was going to get by her."

May 3, 2002
Court TV

Death penalty appeal will set precedents for New York -By Harriet Ryan

....Harris...is the first of the state's six condemned men to take his case to New York's highest court...."It's the first direct Constitutional assault against the death penalty the Court of Appeals has considered," said Vincent Bonventre, a professor at Albany Law School who clerked for two justices and now studies the court.

.... judges and the country are being exposed to reports that say the administration of capital punishment has proved very difficult....The justices, Bonventre said, "are not entirely immune to what's going on out in the public. Certainly, in their conference room, the judges are going to be thinking about and discussing these issues."

...."There are so many non-frivolous errors that are claimed I think it's almost a certainty that the court will find one of them that merits a reversal in sentencing," said Bonventre.

April 16, 2002
New York Law Journal

Tracing the History of Capital Punishment - Pataki's Victory Ends Legislative Logjam On Ultimate Penalty - By John Caher and Julia Mead

....Court scholar Vincent M. Bonventre, a professor at Albany Law School, said it is difficult to predict how any judge will vote. He said voting patterns would imply that Chief Judge Kaye and Judges George Bundy Smith and Carmen Beauchamp Ciparick "in their hearts probably think the death penalty is inhumane and doesn't serve any legitimate purpose."

Mr. Bonventre said "everything we know about [Judge Graffeo] would suggest that she believes in the death penalty as a policy matter and a legal matter."

The professor reads little into the fact that Judge Rosenblatt sentenced Lemuel Smith to death, as he was required to do when Mr. Smith was convicted of killing a prison guard, or that Judge Wesley repeatedly voted for capital punishment when he served in the Assembly. Judge Wesley was not active in the annual death penalty debate in the Assembly and had left the Legislature well before the current bill was drafted. Although Judge Wesley has supported capital punishment as a matter of policy, he has never expressed any public opinion on the viability of the statute now in question.

That leaves Judge Howard A. Levine, a former Schenectady district attorney who Professor Bonventre said could well be a swing vote.

"It seems to me that with the death penalty, the Court is going to be a lot less tolerant of errors that they might otherwise consider harmless," Mr. Bonventre said. "The Court has really done a good job of avoiding controversial issues head on."

With the death penalty, why address all those philosophical issues if they can decide it on narrow grounds? Not only do I think that is the personality of the Court, I also think it is the proper thing for them to do."

Michael Whiteman, former counsel to Governors Nelson Rockefeller and Wilson and a prominent member of New Yorkers for Fairness in Capital Punishment, agreed with Professor Bonventre that the Court will likely be inclined to decide the *Harris* case as narrowly as possible

March 12, 2002
New York Law Journal

Wesley Finds Trend in Modern Research on Court Is Flawed -By John Caher

....Judge Wesley delivered his remarks on the home court of Professor Vincent M. Bonventre, whose research on the Court of Appeals has been criticized by some closest to the Court.

For several years, Professor Bonventre, a former clerk at the Court, has conducted periodic studies in which he examines divided opinions to discern ideological patterns of individual judges while looking primarily to prevailing decisions to track the panel's overall trajectory. The general thrust of Professor Bonventre's recent studies - that the Court has grown less sympathetic to individual liberties and more accommodating to the government and that the voting patterns of some judges has shifted over time - mirrors anecdotal evidence offered by veteran practitioners.

Without mentioning Professor Bonventre by name, Judge Wesley challenged the methodological premise behind much of the professor's scholarship....

Professor Bonventre, and several other scholars who write about various courts, including the U.S. Supreme Court, maintains that dissents usually provide the only window into an individual judge's views. Many scholars contend that a unanimous opinion is often the result of a compromise and that it reveals little if anything of any particular jurist's ideological leanings.

2001

September 5, 2001
New York Law Journal

PERSPECTIVE -Court of Appeals Maintains Even Keel
By Evan A. Davis, President of the Association of the Bar of the City of New York and a partner at Cleary, Gottlieb, Steen & Hamilton.

In 1996 and 1997, political conservatives aggressively attacked the New York Court of Appeals for criminal law decisions that they viewed as too protective of the procedural rights of criminal defendants. Now the Court is being attacked from the left as too pro-prosecution and too pro-business.

According to Albany Law School Professor Vincent Bonventre ("Court Seen as Slow in Expanding Tort Claims, Criminal Defendants' Rights," *NYLJ* July 24), in the years following Governor Pataki's criticism of the Court, its "ideological direction" has changed....

While Professor Bonventre agrees that the Court has a reputation for vigorously safeguarding free speech, he unjustifiably concludes that the reputation is undeserved. In his view the Court's First Amendment jurisprudence is anti-liberal because in defamation cases it protects the press rather than plaintiffs. This idiosyncratic view, however, is not a sound basis on which to fault the Court.

...Why have thoughtful people gone wrong in assessing the Court? First, they are making the mistake of judging a non-ideological court ideologically. While their perspective is from the left, they are making essentially the same mistake as those on the right made several years ago....

2000

November 30, 2000
The New York Times

New Judge Is Welcomed For Top Court In Albany -By LAURA MANSNERUS

...The State Senate approved Victoria A. Graffeo's nomination unanimously, like all but one of the 16 others put before it since 1978, when New York State stopped electing members of the Court of Appeals.... New York settled on "merit selection," intended to steer between election and pure appointment -- and thus away from electioneering and cronyism....

"If anybody believes that the commission puts out a list of seven judges based on some objective criteria of merit, they're deluding themselves," said Vincent M. Bonventre, a professor at Albany Law School who has written extensively about the court....

Because the commission's work is done behind closed doors, it is never clear who is pressing whom. But Professor Bonventre said governors have a way of getting their way. "There may not be partisan discussion" among the members, he said, "but it seems pretty clear that they know what their marching orders are."....

Professor Bonventre offered some defense for the old system. "Virtually anybody will tell you that the court was much stronger when judges were elected," he said, mentioning Benjamin N. Cardozo and Irving Lehman as outstanding jurists. "We haven't had anything like that since we got into this system."....

And Professor Bonventre said the system "takes some of the sleaze out" of the process. "They don't have to go out and campaign with chicken dinners and hot dogs and calzones," he said. "It somewhat helps the dignity of the office."

November 3, 2000
The New York Times

Pataki Selects Judge for Appeals Court He Sees as Lenient - By RAYMOND HERNANDEZ

....The experts describe Justice Graffeo as a moderate who has virtually always joined in the majority opinion of the Appellate Division of the State Supreme Court in Albany. "Governor Pataki's rhetoric has indicated that he wanted a very conservative judge who was very strong on law and order," said Vincent M. Bonventre, an Albany Law School professor who is an expert on the Court of Appeals. "But there is no indication that he is getting that in Justice Graffeo.

"She is obviously a team player, collegial," he added. "There is no indication that she will be as conservative as Judge Bellacosa."....

August 21, 2000
New York Law Journal

OBITUARY -Former Chief Judge Lawrence Cooke -By John Caher

In an article on Judge Cooke on the occasion of his 80th birthday in 1994, Albany Law School Professor Vincent M. Bonventre said that as both an associate jurist and chief, Judge Cooke was the Court's "foremost guardian of individual rights, its most unrelenting opponent of inequity, oppression and inhumanity. He led his colleagues on the Court, and he led the way for state supreme courts throughout the nation, to take their state constitutional guarantees seriously."
