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A Longtime 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.

He has helped choose the state's most important judges, and he has negotiated the state's lucrative casino agreements with Indian tribes.

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. Just a partial public accounting of his fees from last year shows that his companies made \$570,000 trying to secure state contracts, or garner tax breaks or block legislation for clients.

Mr. O'Mara is hardly the first Pataki confidant to profit from access to the state's most powerful politician. Indeed, Albany has never had clear boundaries between insider and outsider, and many pivotal players have long found ways to benefit from their government experience.

But few political figures have moved so boldly between the lines as Mr. O'Mara, according to public-interest groups that view lobbying loopholes as one of the state's most glaring shortcomings.

While several Pataki aides have left government to lobby their former colleagues, Mr. O'Mara has remained a high-level Pataki adviser and appointee while working simultaneously as a state lobbyist. In recent years, when he served pro bono as the state's chief negotiator in the thorny matter of Indian land claims, it was common to see him at the Capitol, sweeping into the governor's office like a member of the senior staff.

It was impossible to tell from a distance whether he was there to counsel Mr. Pataki on important matters of state, or to brief him on business vital to his clients, to speak with authority on behalf of the administration or on behalf of those who sought its favor.

Last summer, Mr. O'Mara's dual roles brushed against each other as he negotiated for the state with an Indian tribe that sought to open a casino in Rochester. The negotiations sputtered, but not before the tribe's prime financial backer in the proposal, an upstate shopping mall developer, found himself face to face with Mr. O'Mara, trying to hammer out a deal.

Mr. O'Mara was, and had been for years, the hired lobbyist for the developer's largest competitor, though the developer says he did not realize this at the time.

While there are no indications that Mr. O'Mara has violated any law or lobbying guideline, his activities have drawn criticism from those who seek a higher wall between lobbyists and public servants.

Mr. O'Mara, who declined to be interviewed but agreed to answer written questions, said in two letters to The New York Times that he has worked hard to avoid conflicts. "In a career of almost 50 years in the legal profession," he wrote, "I have acted in accordance with the highest ethical standards."

Critics of New York's lobbying laws, though, say his activities illustrate what is wrong with a system in which, they say, access has become a treasured commodity. "To do business in New York you have to pay a toll," said Assemblyman Richard L. Brodsky, a Democrat from Westchester, "and that toll goes to one of the governor's inner circle."

The Lobbying Climate

It can be difficult to track a lobbyist's activities and fees in New York. Unlike the practice in many other states and in New York City, lobbyists hired to secure state contracts do not need to report their efforts. Only lobbyists for clients who seek to influence state legislation or rules must register with state monitors.

"You really don't know what O'Mara is lobbying for because he often doesn't have to register," said Assemblyman William L. Parment, a Democrat from Jamestown who has been critical of the lobbying system.

Mr. O'Mara said his lobbying is limited and, among his clients this year, only one does not need to register. Public filings with state lobbying regulators indicate that last year Mr. O'Mara's companies earned \$330,000 as the registered lobbyist for two clients. One is a liquor distributor who is trying to block the sale of wine in supermarkets, and the other is a shopping mall developer who is seeking \$630 million in state tax breaks.

In addition, he helped the First Albany Corporation, an investment bank, secure financing deals from several state agencies for a fee of \$240,000, an activity for which he did not have to register but that was disclosed in the company's securities industry filings. Nor did he have to register as a lobbyist for

Motorola, which paid him an undisclosed amount for help with its unsuccessful bid to win a \$1 billion state wireless radio contract.

Mr. O'Mara said he supports efforts to require disclosure of all lobbying efforts, including those involving state contracts. But recent attempts to amend the lobbying laws have failed. In 2003, Mr. Pataki did order state agencies and authorities to begin recording their contacts with lobbyists. But the agencies do not track how much lobbyists are paid, and they do not distribute the information they collect.

Critics say that lobbyists with access, like Mr. O'Mara, draw clients even if they lose some of the time. In the case of the radio contract, it was won by a client of former Senator Alfonse M. D'Amato, a lobbyist who enjoys his own entree with the Pataki inner circle, and who sometimes works as a partner with Mr. O'Mara.

Mr. O'Mara usually lobbies under the banner of his Elmira law firm, Davidson & O'Mara. But he represents two clients -- one lobbying and one not, he said -- under the name D&O Consultants, a partnership he has with Mr. D'Amato. Long before he met Mr. Pataki, Mr. O'Mara helped to coordinate campaigns and select federal judges for Mr. D'Amato during his three terms in the Senate. They are good friends and their partnership lists its mailing address and phone number as the Park Avenue office from which Mr. D'Amato directs his other lobbying business, Park Strategies.

Adviser to the Governor

Mr. O'Mara, gray-haired and 71, carries himself with the quiet authority of a man who has been both a state judge and a district attorney. He is widely viewed as one of the more powerful Republicans in upstate New York, but he seldom draws attention to himself.

His two homes, a colonial on three acres outside Elmira and a beach house on Lake Ontario, are far from the spotlight. His decision several weeks ago to step down after finishing his work as the state's Indian land claim negotiator hardly made a ripple, even though he was the primary architect for a sweeping settlement that may well bring five casinos to the Catskills.

Yet, since 1994, when he played a role in Mr. Pataki's first campaign for governor, Mr. O'Mara has developed into his vital adviser, one who is often entrusted with important political and governmental tasks.

It was Mr. O'Mara who was chosen by the governor to lead the deregulation of the state's energy industry as chairman of the state's Public Service Commission in the late 1990's. And when federal authorities investigated allegations that members of the Pataki campaign had promised parole favors for campaign contributions, Mr. O'Mara helped the campaign coordinate payments to lawyers for those staff members who were questioned.

In accepting the governor's land claim post, Mr. O'Mara took on a dispute over the ownership of former Indian lands that had defied resolution for decades, one with a potentially tremendous impact on New York's development as well as the bank accounts of all who would gain casino rights.

In thanking Mr. O'Mara for his six years of work last month, Mr. Pataki said: "The fact that we stand at the threshold of resolving each of the major Indian land claims in New York State is a testament and credit to his leadership."

For years, the governor has also asked Mr. O'Mara to direct panels that recommend candidates for federal appointment and help pick the judges for the Court of Appeals, the state's highest court.

"He's probably had more positions than anyone since Bob Moses," said Assemblyman Parment.

James M. McGuire, a State Supreme Court justice in Queens and Mr. Pataki's former counsel, said Mr. O'Mara, an established name in Albany, did not need Pataki appointments to bolster his lobbying clout. "Does anybody really think that John O'Mara really needed to spend all those hours on Indian land claims just to get more lobbying clients?" he asked.

Mr. Pataki, who did not respond to a request for an interview for this article, has also appointed two of Mr. O'Mara's children to state jobs: Thomas, to serve a year in 1999 as Chemung County district attorney, which paid \$119,000, and Ellen, to a seven-year post as a \$68,000-a-year commissioner of the Workers' Compensation Board.

Last year, when Thomas O'Mara ran successfully for the Assembly, the governor lent his name as host to a \$1,000-a-head Manhattan fund-raiser that drew several dozen business leaders to an event for the fledgling Chemung County candidate.

The party, at a Park Avenue office building, only reinforced the image that Mr. O'Mara travels in circles where the political, the social and the commercial routinely intersect. It was held in a banquet space in the building, which is owned by Peter S. Kalikow, a friend of Mr. D'Amato's whom the governor made the chairman of the Metropolitan Transportation Authority. Mr. O'Mara and Mr. D'Amato have both lobbied the agency. They also house their lobbying business in the same building, upstairs in Mr. D'Amato's 25th-floor office just down the hall from Mr. Kalikow's own.

Four months after the event, campaign filings indicate, no one had reimbursed Mr. Kalikow for the party. Event organizers said the bill from Mr. Kalikow had been misplaced and would soon be paid.

Assemblyman Brodsky and others contend there is a certain clubbiness to lobbying in Albany that gives rise to the perception that it has increasingly become an insider's game, open to only a few. Bradford Race, Mr. Pataki's former chief of staff, disputed that view, asserting that the governor has never been shy about saying no, even to a close adviser like Mr. O'Mara. "We said no a hell of a lot

more than we said yes," Mr. Race said.

In answer to questions for this article, Mr. O'Mara wrote that he has been careful to avoid conflicts by seeking guidance from the state's Ethics Commission. Governors, he said, have long taken advice from people who have had unrelated business with the state. He cited a 1996 opinion by the commission that, ruling in the case of another state appointee, said a person who lobbies the governor is not necessarily prohibited from also serving the governor in an appointed role.

"The work," Mr. O'Mara said in a Feb. 11 letter, "which I did as a negotiator for the state in the lawsuits involving Indian land claims is unrelated to and involves a completely different matter having no connection to the limited lobbying which I have done."

A Casino Proposal

In one instance, though, Mr. O'Mara's lobbying pursuits and his work on behalf of the state intersected. It happened last year in the debate over whether New York should allow an Indian tribe, the Seneca-Cayugas, to build a casino in Rochester.

During the negotiations with Mr. O'Mara, the Seneca-Cayugas, now based in Oklahoma, considered dropping their claim to ancestral lands in New York in exchange for gambling rights at a \$500 million Las Vegas-style complex.

Many tribes have pursued claims that land was wrongfully taken from them by the state, and the financial damages from the lawsuits threaten to be staggering. The Seneca-Cayugas, for example, have already been awarded part of a \$247 million judgment. Over the long term, though, many tribes believe gambling profits will exceed the one-shot revenues from a land claim.

In the case of a Seneca-Cayuga casino, Mr. O'Mara's negotiating team offered the tribe the exclusive rights to run video lottery terminals in the area around Rochester in exchange for a percentage of the proceeds, according to a June 8 letter to the tribe. Later that day, however, the state sent another letter, making it clear that the rights may not be entirely exclusive.

The letter carved out a potential exception for the Rochester Fast Ferry, which was seeking state permission to put lottery terminals on its high-speed boats, which ran between Rochester and Toronto. If the ferry received state permission, the letter indicated, the tribe would still have to pay the state for the "exclusive" rights, even though it was no longer the only local gambling operator.

The ferry company had a powerful patron shepherding its gambling bid: Mr. D'Amato, who had been hired for \$10,000 a month to represent it. Thus, while the tribe was negotiating with Mr. O'Mara as a representative of the state, his sometime lobbying partner was pursuing the gambling interests of a potential competitor. Without the exception, Mr. D'Amato's client might have been locked out of the

local gambling business: the state would have already promised the tribe exclusivity.

Mr. O'Mara, who said he did not know of Mr. D'Amato's role, said the exception was necessary to protect the state's share of the casino revenues in the event the Legislature passed the ferry bill anyway.

Ultimately, both the ferry's bid for gambling and the casino concept faltered. The ferry's bid stalled in the Assembly, and the company, citing high operating costs, suspended service several months ago. The ferry company's founder, Dominick Delucia, who contributed \$2,000 last year to the political campaign of Mr. O'Mara's son, did not respond to requests for comment. Mr. O'Mara said neither he nor his son had solicited the contribution.

Mr. D'Amato said he had no idea the ferry had arisen in the casino negotiations.

Prospects for the casino in Rochester have also faded, because of local opposition. Had the talks continued, though, Mr. O'Mara might have faced an awkward situation. The tribe's chief financial backer on the proposal, Thomas Wilmot, is also a leading opponent of the domed Syracuse mall being proposed by one of Mr. O'Mara's largest lobbying clients, Pyramid Management. In fact, Mr. Wilmot has spent more than \$300,000 on his own lobbyists who have sought, among other things, to block people like Mr. O'Mara from getting Pyramid the \$630 million in state tax breaks it seeks.

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."

Mr. O'Mara said he did not believe his business relationships with Pyramid or Mr. D'Amato had created any conflicts. "I do not believe there was a conflict with respect to Mr. Wilmot," Mr. O'Mara wrote in a Feb. 17 letter, "and if he did he never suggested in any manner that such was the case."

Mr. Wilmot said he did not learn until after the negotiations had faltered that Mr. O'Mara also represented his competitor as a lobbyist, but said he had been treated fairly. He did not, for example, view gaming on the ferry as a threat to his casino plan, he said.

A representative of the Seneca-Cayuga tribe, Scott Wood, said he knew Mr. O'Mara represented Pyramid as well as the state, but said the tribe was not concerned.

"Our inside sources," Mr. Wood said, "told us that Judge O'Mara was a man of character and that he had been given the assignment by the governor, and that he was someone who could set any concerns aside and do his job. And I have always found him in his meetings to be very honest and forthright."

The tribe is now seeking to build a casino, not in Rochester, but in the Catskills, one of the five

proposed. Mr. Wilmot, who has not been mentioned in connection with that plan, said he is still trying to become part of one of the deals.

Lobbying Times Three

Articles in this series examine the growth of lobbying in an era of divided New York State government. The series is online at nytimes.com/nyregion.

Photos: John F. O'Mara, shown in 1996, says he avoids conflicts of interest. (Photo by Steve Jacobs/Times Union)(pg. A1); John O'Mara, right, in January with his son, Assemblyman Thomas F. O'Mara, and grandchildren Caroline, 7, and Thomas Jr., 3. (Photo by Jim McKnight/Associated Press) (pg. B6)

Chart: "More Than a Decade of Service"

John F. O'Mara's experience helping George E. Pataki and as a state lobbyist:

MID-1994 -- Southern Tier coordinator for Mr. Pataki's first campaign for governor.

NOV. 1994 -- Named a member of the governor-elect's transition committee.

JAN. 1995 -- Named special counsel to the governor, a job in which he helps in initial talks on the state's death penalty.

FEB. 1995 -- Appointed by the governor to the Public Service Commission. Made chairman in December. Ultimately oversees deregulation of New York's energy industry.

NOV. 1997 -- Appointed by the governor to the Commission on Judicial Nomination, which helps choose candidates for the state's highest court.

APRIL 1998 -- Steps down as chairman of the Public Service Commission.

Sometime after APRIL 1998 -- His law firm begins to lobby for Eber Brothers, a liquor distributor.

1999 -- Adviser to Friends of Pataki, the governor's campaign committee, during federal investigation into allegations that campaign staff members had promised parole favors to political donors.

FEB. 1999 -- Hired as a paid consultant to help the Pataki administration negotiate settlements with Indian tribes in land claim lawsuits.

OCT. 1999 -- Hired by First Albany Corp. as a consultant to obtain municipal securities work and other business opportunities in the state.

2000 -- Becomes lead negotiator for Governor Pataki on land claim and Indian gaming issues. Performs the work without charge.

MARCH 2001 -- Named by Governor Pataki to be chairman of the governor's panel that reviews candidates for United States attorney and federal judicial spots.

SPRING 2001 -- Hired by Motorola as a consultant in an effort to win a state contract to build a statewide wireless communication network.

AUG. 2001 -- Steps down after several years as the governor's appointee to the state Court Capital Facilities Review Board.

AUG. 2001 -- Hired along with Alfonse M. D'Amato, as D & O Consultants, by the Pyramid Company to lobby in Albany.

Sometime in 2001 -- His law firm is hired by Niagara Mohawk Power Corp. to be its lobbyist.

FEB. 2005 -- Resigns as the state's chief Indian land claim negotiator. Retains his posts on the Commission on Judicial Nomination, the state's Federal Judicial Screening Committee and the St. Lawrence Seaway Commission.

(Sources by Records of the New York Temporary State Commission on Lobbying and other state records; interviews with state officials and correspondence with Mr. O'Mara.)(pg. B6)