

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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FAX COVER SHEET

This fax transmission consists of a total of 9 page(s) including this cover page. If you have not received all the pages, please call (914) 421-1200.

DATE: 12/26/97 TIME: 12¹⁵ pm FAX #: 694-5018

TO: Phil Reisman - Bruce Goldy

RE: O'Rowke's judicial qualifications

FROM: ELENA RUTH SASSOWER, Coordinator

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MESSAGE: FOR IMMEDIATE ATTENTION:
Shall I deliver the O'Rowke
letter without you?
Please advise !!

Enclosed is the final letter
ready-to-go

CENTER for JUDICIAL ACCOUNTABILITY, INC. is a national, non-partisan, non-profit citizens' organization documenting how judges break the law and get away with it.

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BY HAND

December 26, 1997

Andrew O'Rourke, County Executive
County Office Building
148 Martine Avenue
White Plains, New York 10601

RE: The Public's right to substantiation of the "highly qualified" rating conferred upon you by the State Judicial Screening Committee for appointment to the Court of Claims

Dear Mr. O'Rourke:

According to Governor Pataki's December 12, 1997 press release announcing your appointment to the Court of Claims, the State Judicial Screening Committee rated you "highly qualified".

Since the Governor's Executive Order #10, which established the State Judicial Screening Committee, *expressly* requires it to conduct a "thorough inquiry" *before* rendering such rating, you should feel confident that the questionnaire you completed for that Committee -- if, in fact, you did complete one -- would withstand *independent* scrutiny.

Assuming you completed a questionnaire, the Center for Judicial Accountability, Inc. (CJA) asks you to waive confidentiality and provide us with a copy. We are not averse to your limiting disclosure to that portion of the questionnaire that would be comparable to the "public" portion of the questionnaire you completed for the U.S. Senate Judiciary Committee in 1992 when you sought a federal judgeship. Alternatively, we ask you to disclose which cases, if any, you identified for the State Judicial Screening Committee in response to their presumed inquiry into cases you handled as a practicing attorney. We also request copies of any briefs or other documents which you provided the State Judicial Screening Committee in connection with such question.

Should you be unwilling to avail yourself of this opportunity to demonstrate your legal qualifications to the Public -- which will be paying your judicial salary and whose fate, individually and collectively, will be in your hands -- we ask, at minimum, that you disclose a copy of the State Judicial Screening Committee's questionnaire in blank which you completed -- if you did.

Needless to say, we would welcome *any* information that might substantiate the "highly qualified" rating you received from the State Judicial Screening Committee. To date, we have been unable to obtain the committee report on your qualifications, notwithstanding Executive Order #10, ¶2d makes such report "available for public inspection" "upon the announcement by the Governor of [the] appointment". Announcement of your appointment is already two weeks old. We have even been unable to obtain a blank copy of the Committee's questionnaire.

As you know, six years ago, after you were nominated for a federal judgeship, CJA's predecessor local group, the Ninth Judicial Committee, examined your qualifications. We did this by investigating and analyzing your written responses to the "public" portion of the questionnaire you were required to complete for the U.S. Senate Judiciary Committee. Our findings were embodied in a 50-page critique -- which we submitted to the U.S. Senate Judiciary Committee in May 1992. The centerpiece of that critique was our analysis of your response to the Committee's most pivotal question for determining the legal competence of a judicial candidate, such as yourself, with *no* prior judicial experience: the question requiring you to describe your "ten most significant litigated matters which you personally handled". Our critique also highlighted your response to the Committee's question which asked about conflict of interest.

As to your "ten most significant litigated matters which you personally handled" -- you responded with only three cases. Your stated reasons for not presenting a full complement we showed to be sham. As to those three, our investigation of the *actual* case files and our interviews of those having *first-hand personal knowledge* revealed that your description of the cases -- and your participation therein -- was, over and over, false and misleading and that the true facts exposed you as an "incompetent and unethical practitioner" when you practiced law -- which was not for nearly a decade. On the conflict of interest question, we showed that your response demonstrated your "insensitivity to ethical concerns" -- an insensitivity exemplified by your handling of one of the three litigated matters you described as among your "most significant". Indeed, it was a litigation which you yourself generated by your professional incompetence and insensitivity to "conflict of interest"!

Based upon your responses to these and other questions, we concluded -- and supported our conclusions with over 60 exhibits -- that you were "thoroughly unfit for judicial office". Additionally, we concluded -- likewise evidentially supported -- that the favorable ratings you received from the American Bar Association and the Association of the Bar of the City of New York -- bare-bones ratings *unaccompanied by any report* -- were *not* the product of any meaningful investigation. Indeed, we "pierced the veil of secrecy" that shrouds the ABA and City Bar's judicial screening processes. By comparing their blank questionnaires with that of the U.S. Senate Judiciary Committee, our critique demonstrated that their questions were similar, if not identical. Consequently, in critiquing your publicly-available responses to the Senate Judiciary Committee's questionnaire, we were also critiquing the not-publicly-available responses you presumably had given those organizations.

In fact, on November 2, 1992, it was stated to us by Ed Tagliaferri, the Gannett news reporter who wrote "*O'Rourke Lists Only Three Cases*", which appeared in that day's newspaper, that you admitted to him that the three cases you gave to the Senate Judiciary Committee were the *very same* ones you gave to the ABA and City Bar -- and the *only ones* you gave them. This is memorialized by our contemporaneous fax to Mr. Tagliaferri, contained as well in our subsequent correspondence with him -- which he never denied or disputed. A copy is enclosed.

Should you wish to deny or dispute what the November 2, 1992 fax states you told Mr. Tagliaferri or that the only cases you gave the ABA and City Bar were these three cases, we invite you to do so. We also invite you to comment upon our critique. In the event you do not have a copy, we will readily transmit one to you.

As recently as December 3rd -- nine days *before* your December 12th nomination and six days *before* you were purported to have been interviewed and approved by the State Judicial Screening Committee -- the public availability of the critique was made known in a Letter to the Editor "*O'Rourke Not Qualified to Serve as Judge*" in the Gannett newspapers. A copy of that published Letter is enclosed, as is our July 17, 1992 Letter to the Editor "*Untrustworthy Ratings?*", published in the New York Times.

Finally, we enclose a copy of Mr. Tagliaferri's most recent Gannett news story about your judicial qualifications -- "*O'Rourke Could Be Wearing Judge's Robes in January*" (12/22/97). That story makes plain that you allayed the State Judicial Screening Committee's concern that you had not practiced law for 15 years by "remind[ing] the committee" that you had been "rated qualified" by the American Bar Association and City Bar when you sought a federal judgeship. In so doing, did you not believe that you had an obligation to let them know about our critique, which exposed those ratings as fraudulent?

We have already notified the Governor's office that we are calling upon Governor Pataki to withdraw your nomination, as well as upon the State Judicial Screening Committee to withdraw its "highly qualified" rating as *not* based on the required "thorough inquiry". That "thorough inquiry" -- and your candor -- would have required the Committee to have contacted CJA's about the critique -- which it *never* did.

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures

cc: See next page

cc: James McGuire, Counsel to the Governor
Nan Weiner, Executive Director, Governor's Judicial Screening Committees
Members of the State Judicial Screening Committee
Senator James Lack, Chairman, State Senate Judiciary Committee
Michael Cardozo, President, Association of the Bar of the City of New York
Jerome Shestack, President, American Bar Association
Joshua Pruzansky, President, New York State Bar Association
Ed Tagliaferri, Gannett
Media



NINTH JUDICIAL COMMITTEE

Box 70, Gedney Station
White Plains, New York 10605-0070
Tele: (914) 997-8105 / Fax: (914) 684-6554

By Fax: 694-5018
6:50 p.m.

November 2, 1992

Mr. Ed Tagliaferri
Gannett Newspapers
1 Gannett Drive
White Plains, New York

RE: "O'Rourke Listed Only Three Cases for Senate"
Gannett: 11/2/92

Dear Mr. Tagliaferri:

This letter memorializes our conversation within the past hour in which you stated that Mr. O'Rourke admitted to you that the only cases he supplied to the American Bar Association and the Association of the Bar of the City of New York were the same three cases as are listed in his response to the Senate Judiciary Committee questionnaire.

You further stated that, according to Mr. O'Rourke, the ABA and City Bar were both satisfied with those three cases--and did not require any further cases to be submitted by him.

If I do not hear from you to the contrary by return fax, I will proceed on the basis that the foregoing correctly reflects your statements to me.

Yours for a quality judiciary,

ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

Janet Dec. 3, 1997

LETTERS TO THE EDITOR

O'Rourke not qualified to serve as judge

Westchester County Executive Andrew O'Rourke has shown bad judgment on privatization, with resultant lawsuits against the county, which will cost taxpayers millions of extra dollars. One error of judgment is excusable, perhaps two, but four?

Having flouted the law in pursuit of an illegitimate end, this attorney is now asking Gov. George Pataki to cash in his political "chip" by giving him a judgeship. Reportedly, the governor is ready to appoint him.

In a well-documented 1992 study of O'Rourke's credentials for a federal judgeship, the Center for Judicial Accountability Inc. found him unqualified. Asked to list 10 cases he had handled to show the requisite trial experience, incredibly, he came up with only three. The center concluded that practitioner O'Rourke committed unethical conduct in connection with those cases and that he was less than honest in his Senate judiciary questionnaire responses. The full report is available to the public. No, he lacks the legal competence to qualify as a trial lawyer, much less a judge.

But the most significant current disqualifier for judicial office is his blatantly political, partisan attempt to shackle his successor by a "no-layoff" clause in the union contract intended as "the matrix" of ongoing collective bargaining negotiations.

Do we really need another politician on the bench, state or federal? Unless Gov. Pataki immediately gets a thundering wake-up call from the public, that's what it's going to get — and deserve.

— ELI VIGLIANO
Port Charlotte, Fla.

*(The writer is chairman and founder of
the Ninth Judicial Committee.)*

Untrustworthy Ratings?

To the Editor:

"We have good, quality judges. I think I'd take that as a significant accomplishment." You quote that comment by President Bush in the sixth article of "The Bush Record" (July 1), about his appointment of conservative judges. The reality behind this is that one of every six of President Bush's judicial nominees has been rated "not qualified" by a minority vote of the American Bar Association's evaluating panel.

We believe the real story is not the conservative court built by President Bush but the mediocrities he has nominated for lifetime Federal judgeships. Our grass-roots citizen group recently submitted a critique to the Senate Judiciary Committee documenting the unfitness of one of President Bush's nominees to the Southern District of New York. That nominee also received a "not qualified" minority rating by the Bar Association panel.

You state that "in no case has a majority of the evaluating panel found a Bush nominee unqualified." Yet our critique, based on six months of investigation, found no basis for the Bar Association's majority rating of "qualified" for the nominee we studied. The evidence strongly suggests that the rating of that nominee was not the result of any meaningful investigation at all.

Because of the danger of Senate confirmation of unfit nominees to lifetime Federal judgeships, we have called on the Senate leadership to halt all judicial confirmations pending investigation and the setting up of safeguards.

ELENA RUTH SASSOWER
White Plains, July 10, 1992

The writer is coordinator of the Ninth Judicial Committee, a nonpartisan citizen group.

THE REPORTER DISPATCH

Monday, December 22, 1997

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<http://www.nynews.com>

O'Rourke could be wearing judge's robes in January

By Ed Tagliaferri
Staff Writer

If he dons the robes of a state Court of Claims judge, Andrew O'Rourke will work just around the corner from his old office in White Plains.

But if all goes as expected, the outgoing Westchester county executive will hear cases from Orange and Dutchess counties and probably none that have anything to do with his home county.

O'Rourke, who has been nominated by Gov. George Pataki for

the \$113,000-a-year job, could settle into his new world as quickly as the second week of January, if his confirmation process goes smoothly.

O'Rourke was nominated to the federal bench in 1991 by then-President Bush, but the nomination died in the Democratic-controlled Senate. The Republican's chances of confirmation are considerably better now because the GOP-controlled state Senate will evaluate him.

State Sen. James Lack, chairman of the Senate Judiciary Com-

mittee, said his staff was already at work checking O'Rourke's references and contacting people who worked with him.

Lack, R-Hauppauge, said the Senate committee would probably hold a hearing in the second week of January. If O'Rourke is approved by the committee, he will likely be confirmed the same day.

If approved, O'Rourke would be one of 22 judges who handle lawsuits against the state and state Thruway Authority, said David Klingaman, chief clerk for the Court of Claims. Another 60 judges

handle both civil and criminal cases, he said.

O'Rourke would be one of two judges stationed permanently in White Plains, Klingaman said. The other is Terry Jane Ruderman of Scarsdale.

The court hears about 2,500 new cases a year and has 5,800 cases pending. About one-third of the pending cases are lawsuits filed by inmates in the state prison system. O'Rourke would be assigned to cases filed in Orange and Dutchess counties, Klingaman said.

O'Rourke was rated "highly

qualified" by the Governor's Judicial Screening Committee after a background check and interview.

The committee was impressed with O'Rourke, who did well in the interview, said an official familiar with the screening committee's actions, who spoke on the condition of anonymity.

The committee asked O'Rourke about his not having practiced law since he became county executive 15 years ago. But O'Rourke noted that as county executive, he had been involved in resolving litigation and discussing legal issues

with the county attorney. He reminded the committee that he was rated qualified by the New York City Bar Association and American Bar Association when he was nominated for the federal judgeship.

The committee thought that if O'Rourke were appointed to handle criminal cases — as some Court of Claims judges are — "he'd have a lot of catching up to do on the law," the person said. But if O'Rourke were one of the judges kept solely on civil cases — as he has been nominated by Pataki — he would be able to handle the work.