NINTH JUDICIAL COMMITTEE

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LAW DAY, U.S.A.
May 1, 1992

Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Nomination of ANDREW P. O'ROURKE

Dear Committee Members:

Transmitted herewith is our contribution to Law Day: our critique of Andrew O'Rourke's qualifications for a federal judgeship.

This submission is based on investigation and analysis of Mr. O'Rourke's answers to the public portion of the Senate Judiciary Committee's questionnaire (Ex. "A")[1], review of relevant documentary evidence, and interviews with individuals having first-hand personal knowledge of the facts[2].

It is our intention to appear at the public confirmation hearings to be held on Mr. O'Rourke's nomination so that we can oppose it with live testimony.

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[1] Mr. O'Rourke's public questionnaire was provided to us by the Senate Judiciary Committee, pursuant to our letter requests, dated November 20, 1991 (Ex. "B") and January 10, 1992 (Ex. "C").

[2] Further materials may be forthcoming to us from additional sources and will be passed on to you with our comments at a later date.

OVERVIEW:

We believe the within critique decisively supports the following findings:

(1) that no reasonable, objective evaluation of Mr. O'Rourke's competence, character and temperament could come to any conclusion but that he is thoroughly unfit for judicial office; and

(2) that a serious and dangerous situation exists at every level of the judicial nomination and confirmation process--from the inception of the senatorial recommendation up to and including nomination by the President and confirmation by the Senate--resulting from the dereliction of all involved, including the professional organizations of the bar.

The latter finding results directly from the first, which the Ninth Judicial Committee--a small unfunded citizens' group--has been able to establish in a relatively short time and without great difficulty.

THE RESULTS OF OUR INVESTIGATION AND ANALYSIS:

Legal Competence and Integrity

Even the most cursory examination of Mr. O'Rourke's responses to the Senate Judiciary Committee questionnaire reveals their patent inadequacy. This submission will document that Mr. O'Rourke's responses disclose not only his lack of professional competence, but--as reflected by his multitudinous evasions and misrepresentations of material facts--his fundamental lack of integrity as well.

We believe that Mr. O'Rourke's responses to I-Q18 (Ex. "A", pp. 7-9) and II-Q2 (Ex. "A", p. 11) should be the Committee's starting point in evaluating this nominee since they particularly highlight his deficiencies in those two areas. Based upon Mr. O'Rourke's answers to I-Q18 and II-Q2, there can be no doubt that Mr. O'Rourke's nomination to the U.S. District Court for the Southern District must be rejected.

I-Q18 (Ex. "A", pp. 7-9):

Question I-Q18 makes the following request:

> "Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in

detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of the representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties."

Failure to Respond Candidly

At the outset it should be noted that the requested "ten" litigated matters is, by any reasonable standard, a minimal number, a fair prerequisite for any serious contender for a federal judgeship. Mr. O'Rourke supplies only three (3) cases--which he purports is the extent of his ability to comply.

Such inadequate response is made notwithstanding that Mr. O'Rourke was looking at a reservoir of over twenty years of private practice (Ex. "A", pp. 1-2, I-Q6) and represents himself as having done "all the trial work in whatever firm I belonged to" (Ex. "A", p. 7, I-Ab2).

Mr. O'Rourke attempts to explain his failure to provide the requisite ten cases by stating that he has "not engaged in the active practice of law" since he became Westchester County Executive on January 1, 1983, and that without his files from the years prior thereto he is unable to supply more than the three (3) cases--whose files were "still available" to him (Ex. "A", p. 8, I-A18).

It should be borne in mind that by the time Mr. O'Rourke filed his Senate Judiciary questionnaire in mid-January 1992, he had already been interviewed by screening committees of the American Bar Association ("ABA") and the Association of the Bar of the City of New York ("City Bar") (Ex. "A"; p. 12, III-A3). Both those organizations make similiar--if not more exacting--inquiries of prospective nominees. The identical ABA question[3]

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[3] The importance the ABA can be presumed to attach to this particular question may be seen from the statement contained in the ABA pamphlet: "Standing Committee on Federal Judiciary: What It Is and How It Works":

> "The Committee considers that civic activities and public service are valuable experiences, but that such activity and

adds the requirement that the nominee provide "a succinct statement of what you believe to be the particular significance of the case" (Ex. "D" #13). The City Bar's inquiry is actually more restrictive and less susceptible to self-selection, calling upon the nominee to provide information relative to "the last ten cases handled", including copies of appellate briefs (Ex. "E", #40).

In light of the explicit requests for case information in both the ABA and the City Bar questionnaires, Mr. O'Rourke's claim that, as of January 10, 1992, he could only provide three cases to the Senate Judiciary Committee must mean that he was also unable to provide the ABA and City Bar with the requisite ten cases they had requested the previous year[4].

As to the three cases Mr. O'Rourke does supply--two of which are state court cases--he does not set forth their significance from a constitutional or social standpoint or their relevance to his prospective position as a federal trial judge. Indeed, as described by Mr. O'Rourke, it is fair to say that the three cases are not of significance to anyone beyond the parties involved. By that standard, Mr. O'Rourke should have had no difficulty in coming up with another seven.

Clearly, well-maintained law offices keep inventories of their cases. By applicable law and rules, lawyers are required to maintain client records. It is common knowledge, widely reported in the press, that Mr. O'Rourke sought a judgeship long before he became County Executive (Ex. "B", p. 2)(Ex. "F", para. 4)(Ex. "W"). Except to the extent Mr. O'Rourke felt confident that his political activities and connections would secure him a judicial post without the necessary qualifications, he knew such records would be relevant, if not essential, to any future review of his legal experience and other qualifications.

Mr. O'Rourke does not explain why--if he required his "trial files" in order to provide a full response--he could not have accessed the court files maintained by the Westchester County

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> service are not a substitute for significant experience in the practice of law, whether that experience be in the private or public sector." (Ex. "WW", p. 4) (emphasis added)

[4] Neither the ABA nor the City Bar disclose to the public or even the Senate Judiciary Committee the questionnaires which Mr. O'Rourke completed for those organizations. Their position is that "confidentiality" is essential to their "effective" evaluation of judicial candidates.

Clerk's office[5]. As shown by the annexed "Location Map" (Ex."H"), Mr. O'Rourke's present offices in White Plains are physically a part of the courthouse complex (Ex. "H"). Thus, he did not even have to step outside the County Office building to avail himself of the necessary court records. Indeed, Mr. O'Rourke's response to this question must be considered in the light of the enormous resources at his disposal as Westchester County Executive.

Although Mr. O'Rourke lists eight separate law office affiliations as part of his "Employment Record" (Ex. "A", pp. 1-2, I-A6), he does not set forth any effort to obtain information from the offices of his former law partners or employers. Nor does he indicate that he made any attempt to communicate with former office personnel, former clients, adversaries, or judges involved in prior litigated matters so as to refresh his recollection of necessary details.

Mr. O'Rourke also does not indicate any effort to secure needed information from former law partners, such as Mr. LoCascio or Mr. Governali (Ex. "A", p. 2: I-A6, item #12), both still practicing law in White Plains (Ex. "H", Ex. "I"), or Mr. Lee (Ex. "A", p. 2: I-A6, item #7), or even the early law firms for which he worked as an employee, such as Kreindler & Kreindler (Ex. "A", p. 2: I-A6, item #5), a prominent law firm still in operation in New York City--to ascertain whether they had any of his old "trial files", or could help him to identify the case names or other essential data relating to "the most significant litigated matters personally handled" by him.

Instead, Mr. O'Rourke has provided conspicuously vague information which would necessarily inhibit and stymie follow-up investigation:

> "No other trial files could be found by me. After leaving my firm in December 1982, the files remained with the remaining partner. He later became <u>of counsel</u> to a larger White Plains law firm, then left for Florida. I have made a diligent search of such files as now remain." (Ex. "A", p. 9, item #4)

Mr. O'Rourke does not supply the name of "the remaining partner" to whom he refers, leaving it for the interested reader to track down. According to Mr. O'Rourke's response to I-A6 (Ex. "A", p.

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[5] Annexed hereto as Ex. "G" is page 6 of the "Information Guide" which is freely distributed at the office of the Westchester County Clerk. In pertinent part, it states:

> "As the law stands today, all court records are permanently retained."

2, item #13), that partner would appear to be Mr. LoCascio--as to whom Mr. O'Rourke creates the impression that he is in some unknown, inaccessible location in Florida.

Such impression is deliberately false and misleading. Mr. LoCascio continues to practice law in White Plains--in the very same suite as the "larger White Plains law firm" which Mr. O'Rourke has also chosen not to identify. That firm is the politically well-connected firm of Cerrato, Sweeney, Cohn, Stahl & Vaccaro, (914-428-0505), now located at 200 East Post Road, White Plains, New York (Ex. "H"). Indeed, that firm took over Mr. O'Rourke's representation of Tappan Motors, Inc., handling its later appeal to the Court of Appeals in Tappan v. Volvo, after Mr. O'Rourke became County Executive. (See later discussion at pp. 16-18).

Since Mr. LoCascio was still listed in the 1991 Lawyers' Diary[6] as located at the same address, with the same telephone number, as the aforesaid "larger White Plains law firm"[7] (Ex. "I"), Mr. O'Rourke could not have been unaware that Mr. LoCascio is not in Florida--but only a few minutes walk from his Executive offices in the County Office Building (Ex. "H").

The foregoing facts are essential background to assessing Mr. O'Rourke's candor in connection with his assertion that his lack of files prevented him from setting forth more than three (3) cases.

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[6] It may be noted that Mr. LoCascio is also listed in the Westchester telephone book, as is Mr. Governali.

[7] Parenthetically, it may be noted that when Mr. O'Rourke became County Executive in January, 1983, Mr. LoCascio's connection with that "larger White Plains law firm" was that of employee. He did not become of counsel, as indicated by Mr. O'Rourke, until about a year later. This arrangement may have been facilitated by the fact that Mr. O'Rourke owned the building at 50 Hamilton Avenue, White Plains in which Cerrato, Sweeney, Cohn, Stahl and Vaccaro's law offices were then located.

According to Julius Cohn, Esq., one of the named partners in that firm, Mr. LoCascio's association with his law firm as employee lasted for approximately a year. Thereafter, Mr. LoCascio remained on at the firm's location as a tenant of that firm, paying monthly rent for space in their suite--just as that firm had been paying rent to Andrew O'Rourke. This arrangement permitted Mr. LoCascio the privilege of identifying himself as of counsel to the law firm and using their telephone number. Mr. LoCascio is still a tenant of that firm, although he is no longer listed as of counsel to it.

Lack of Relevant Legal Experience

As to the three (3) cases for which Mr. O'Rourke does have files--and which he classifies in the category of the "most significant litigated matters" personally handled by him--we offer the following comments:

1. SURLAK v. SURLAK (Ex. "A", p.9):

At the outset, it must be noted that this is a state court case involving an aspect of domestic relations. The nominee shows no awareness of the fact that such area is outside the parameters of federal jurisdiction and of infrequent concern to federal courts, which would apply substantive state law to any case coming before it involving domestic relations issues.

The facts connected with this state court case, which Mr. O'Rourke presents as if he were proud, do not reflect favorably on the nominee. In our opinion, this case should cause him embarrassment and shame. It not only establishes Mr. O'Rourke's lack of competence, integrity, and judgment, but that--as a result of all three deficiencies--he directly and proximately, generated the costly and protracted litigation reflected in the case cited, as well as others related thereto involving the Surlaks.

Because the true "significance" of this case is its demonstration of Mr. O'Rourke's lack of legal competence, as well as his lack of candor, we will devote detailed discussion to it.

In 1973, Mr. O'Rourke drafted a separation agreement (Ex. "J") thereafter signed by Mrs. Surlak and her husband. Mr. Surlak was unrepresented by separate legal counsel. Such circumstance is considered questionable practice by reputable practitioners and imposes an added obligation on the attorney drafting the agreement to ensure that the unrepresented party is properly informed as to, and fully understands, the content of the agreement and the consequences thereof[8].

The document drafted by Mr. O'Rourke, signed and acknowledged by the parties on May 22, 1973, in the sole presence of Mr. O'Rourke, who also acted as the notary[9], is a most unusual one

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[8] From the attorney's point of view, such one-sided legal representation presents the danger of a potential malpractice claim by the unrepresented party, who may claim the attorney was acting also on his behalf, on which dual representation he relied.

[9] Mr. O'Rourke's acting as the sole attesting witness as to both the husband and wife, as well as the notary, is a further indication of his lack of competence and ethical sensitivity.

from a professional standpoint--both in form and substance. The entire agreement, regulating this separating couple's lives and that of their children consists of 3-1/2 pages, most of which is "boiler-plate".

One product of Mr. O'Rourke's tailoring to the Surlaks' situation is expressed in its support provision, found in Paragraph NINTH:

> "The husband agrees to pay to the wife for the support and alimoney [sic] the sum of Six Hundred ($600) Dollars per month, recognizing that his income presently prevent [sic] him from paying more"[10].

Totally absent was the standard and customary language providing for termination or reduction of the required payments upon the children's emancipation, usually spelled out in clearly defined occurrences, or for any allocation of support for the children upon the wife's remarriage--both normal and foreseeable contingencies resulting in termination and reduction, unless otherwise expressly provided in the agreement.

It may fairly be said that the omission of such routinely included language could have been seen at the time as opening the door to future litigation.

With respect to the husband, Mr. O'Rourke knew he was dealing with a layman, not a lawyer, and under an ethical duty to make explicit the intentions of the parties, if the intention was to depart from the norm. To the extent these vitally important matters were not discussed, as the lower court found, it reflects adversely upon Mr. O'Rourke. An experienced, reasonably skilled attorney would have brought such issues to the fore in discussions with the parties prior to finalizing the agreement. Failure to do so gives rise to an inference of a conscious intent on the drafter's part to leave the question unanswered so as to permit a future interpretation prejudicial to the unrepresented

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The absence of separate counsel for the husband should have particularly suggested to Mr. O'Rourke the value of a separate witness as to the husband's signature--someone other than, and totally independent of, the attorney who prepared the agreement.

[10] The typographical, spelling and grammatical errors in clause "NINTH" of the separation agreement, as well as in other parts of the document (Ex. "J"), reflect Mr. O'Rourke's apparent unconcern with the appearance of his workproduct and indifference to detail. This is evident as well in his answers to the Senate Judiciary Committee's questionnaire. In that connection, the index number for the Surlak case is 19283/1978--not 19238/1978, as cited by Mr. O'Rourke.

party.

Paragraph ELEVENTH of the agreement also omitted a termination date for the wife's agreed sole occupancy of the marital home. The omission of such normal and customary provision, similarly, left the intention of the parties open to question as to whether the wife's right to remain in the marital home was limited to the children's minority, or, as she later contended, represented a lifetime right. This lack of clear and explicit definition permitted the parties to maintain opposing views, which, years later, were expressed as hard-fought contentions in new and further litigation between them in connection with their 1985 divorce.

The issue as to the parties' intentions with respect to the support payments called for under Paragraph "NINTH" came up in 1978--some five years after the separation agreement was signed--when the children became emancipated and Mr. Surlak believed himself entitled to discontinue the payments intended for their support. Such termination led to the legal action by his wife, described by Mr. O'Rourke as one of the three "most significant cases personally handled" by him.

Mr. O'Rourke refers to the complaint in the Surlak case as if it were a unique one. This is the obvious import of Mr. O'Rourke's gratuitous comment: "A side note on this case is required". The purpose of the "side note" is to give Mr. O'Rourke the excuse to proffer--as a testimonial to his draftsmanship--a copy of a November 6, 1984 letter of Matthew Bender Publishing Company (Ex. "A", p. 10), which he states "requested a copy of my complaint in this action to include in its form book."

Mr. O'Rourke does not purport that the Surlak complaint was, in fact, ever published. That it was not may be deduced from a reading of it (Ex. "K"), a 1-1/2 page document, readily revealing that there is nothing significant about it which would warrant its inclusion in a form book for lawyers.

Mr. O'Rourke does not explain his ability to retrieve the 1984 Matthew Bender letter from his file, but not the complaint his files should have contained. In that connection, Mr. O'Rourke further volunteers--as part of his side note--that "the briefs could not be found".

Irrespective of what his files contained, Mr. O'Rourke, as an experienced litigator, certainly knew various ways in which he could have obtained copies of "the briefs" in the matter. He does not explain why, at very least, he could not have availed himself of the court files maintained by the County Clerk's

office[11]. The docket sheet in the Surlak case--obtainable at the County Clerk's Office in a matter of minutes--shows on its face that the appellate briefs are included in the County Clerk's files (Ex. "L"). The cover-pages of "the briefs", obtained from those files, are annexed as Ex. "M".

Since the briefs could, in fact, readily be found by anyone who wanted to find them, no other reasonable conclusion can be drawn but that Mr. O'Rourke did not wish to find them. The reason Mr. O'Rourke did not wish to find them becomes clear when the appeal brief is examined[12]. The Surlak complaint (the original, as well as two later virtually identical versions) is appended to the Brief as part of the Appellant's record on appeal (Ex. "N-1").

Although Mr. O'Rourke refers to "my complaint in the action"[13] review of all three complaints (Ex. "K"), as they appear in the Appendix to his Appellant's brief, shows unmistakably that (a) Mr. O'Rourke's name does not, in fact, appear on any of them,

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[11] As an experienced litigator, Mr. O'Rourke presumably also knew that the appellate briefs, as well as the entire record on appeal, including the complaint, were also available directly from the Appellate Division.

[12] The "Certification Pursuant to CPLR 2105", appearing on the last page of the appellant's brief, shows Mr. O'Rourke himself to be the signator (Ex. "N-2").

Such certification illustrates Mr. O'Rourke's incompetence or apparent belief that he is above the law and applicable rules. His statement therein that he has "personally compared" the record on appeal with the originals "which are either on file in the office of the Clerk of the County of Westchester, or in my possession..." is patently improper and might well have invoked a motion by his adversary to dismiss his appeal, or for rejection of his briefs. The authority given an attorney under CPLR 2105 to certify a record for appeal purposes in lieu of a certification by the County Clerk is clearly limited to comparison with the original records on file in the County Clerk's Office only, and does not contemplate introduction of documents dehors that record.

[13] Mr. O'Rourke should be asked to identify which complaint he refers to as his. His Table of Contents to the Appellant's Brief (N-1) indicates three complaints based on Mrs. Surlak's support arrears (Ex. "K-1", "K-2", and "K-3" respectively). As to each complaint, Mr. O'Rourke's Appendix to his Brief fails to include the verification pages. The reader is therefore left uninformed as to the dates on which they each were verified and by whom, if indeed they were.

nor the name of any law firm with which he lists an association; and (b) as to all three complaints, they are most ordinary documents, six paragraphs each, pleading a simple, single cause of action based on support arrears allegedly due under a separation agreement. The original complaint (Ex. "K-1") sought three months arrears at $600 per month and a money judgment for "the total sum of $1,800"[14]--the entire amount then in arrears. The "Amended Complaint" (Ex. "K-2") changed the number of months of arrears from three (3) to six (6), and the amount of the money judgment sought, from $1,800 to $3,600. An inexplicable later complaint (Ex. "K-3), appearing in Mr. O'Rourke's appendix, is the same in all respects as the "Amended Complaint".

The Surlak complaint (whichever one of the three Mr. O'Rourke is talking about) hardly reflects a case worthy of the time of a man claiming years of experience as a trial lawyer, who was then (1978-1982) the Chairman of the Westchester County Board of Legislators.

The fact that the Surlak complaint does not bear Mr. O'Rourke's name does not preclude the possibility that he may have authored that document, sub rosa, as well as other documents in the case. This could be the reason Mr. O'Rourke says in his opening statement: "I represented plaintiff in an action to enforce a portion of a separation agreement."[15] His subconscious admission is particularly significant in light of the fact that the "Attorneys for Plaintiff" listed on all three complaints is the law firm of Wekstein & Fulfree. According to the County Clerk's file, the Wekstein & Fulfree firm[16] appears as the plaintiff's attorneys of record not only on the complaint but on all legal documents until the June 1979 filing of the Note of Issue, whereon the name of "O'Rourke & LoCascio" appears for the first time. Neither the court file nor the official court docket (Ex.

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[14] Mr. O'Rourke might be asked to explain why the action based on his complaint alleging such a minuscule ad damnum clause was brought in the Supreme Court in the first place, rather than a court of lesser jurisdiction where such small claims are normally handled much more quickly and cheaply. Such action normally avoids the possible denial of costs to the client, if the amount recovered does not reach the minimum monetary of the Court.

[15] Mr. O'Rourke's characterization of the action as one "to enforce" is technically incorrect--it being one for "breach of contract" and, as noted, sought a money judgment only.

[16] Mr. O'Rourke does not include the Fulfree & Wekstein firm in his listing of employers or professional associations (Ex. "A": pp. 1-2, I-A6).

"L") reflect that such appearance is pursuant to any order or stipulation of substitution, as New York's Civil Practice Law and Rules require whenever there is a change of record counsel (CPLR 321).

Mr. O'Rourke's failure to respond to that portion of I-Q18, specifically asking the nominee to "describe in detail the nature of your participation" and also to state "(c) the individual name [sic], addresses and telephone numbers of co-counsel" conveys the false impression that he was the sole attorney handling the case for the plaintiff. Mr. O'Rourke's failure to disclose the participation of the Wekstein & Fulfree firm is further indicative of his lack of candor.

It must be noted that in representing Mrs. Surlak in the case against her husband based on the separation agreement he drafted, Mr. O'Rourke was violating black-letter law and Disciplinary Rule DR5-101B mandating, subject to exceptions here inapplicable, that:

> "A lawyer shall not act, or accept employment that contemplates the lawyer's acting, as an advocate before any tribunal if the lawyer know or it is obvious that the lawyer ought to be called as a witness on behalf of the client...".

Under the extant circumstances, Mr. O'Rourke was ethically disqualified from acting as counsel since he was a witness in the case, having not only been the attorney who drafted the agreement for Mrs. Surlak, but the only witness to its execution when he met with the parties on May 22, 1973, and they signed it in his presence (Ex. "J"). Indeed, when he became counsel of record, Mr. O'Rourke had already given testimony as an actual witness. This was done via an affidavit dated November 2, 1978, signed by Mr. O'Rourke and submitted by the Wekstein & Fulfree firm in support of Mrs. Surlak's summary judgment motion (Ex."O")[17]. In that affidavit, Mr. O'Rourke attested to material facts to support her claims.

Following his submission of such testimonial affidavit and notwithstanding his unequivocal ethical and legal duty to disqualify himself and his law firm from acting as counsel in the case, Mr. O'Rourke acted as counsel in conducting depositions of

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[17] Mr. O'Rourke's affidavit (Ex. "O") referred to records of his office allegedly refuting Mr. Surlak's position. It may be noted, however, that he produced no copies of his alleged records in substantiation of Mrs. Surlak's summary judgment motion.

Mr. Surlak and Mrs. Surlak on June 18, 1979. He also conducted the January 28, 1981 trial for Mrs. Surlak in the lower court and, thereafter, represented her on the appeal from the lower court decision referred to herein.

Mr. O'Rourke misdescribes the disposition of the lower court by saying that "Defendant won this trial action..." (emphasis added). Such statement is inaccurate. Mrs. Surlak, the plaintiff, won the money judgment for her claimed arrears--the complete relief she was suing for.

However, in addition to granting the money judgment, what the lower court did--which reflected directly upon Mr. O'Rourke's draftsmanship of the separation agreement and necessitated his appeal on Mrs. Surlak's behalf to the Appellate Division--was to nullify the entire Paragraph "NINTH" prospectively because it failed to provide for the normal emancipation contingencies allowed by law[18].

Mr. O'Rourke incorrectly states:

> "The Appelate (sic) Division reversed the trial court, holding the defendant bound by the separation agreement, regardless of his former wife's remarriage."

The quoted underlined words materially misstate the Court's holding in its decision at 95 AD2d 371, 466 NYS2d 461 (2nd Dept, 1983)[19], deciding only the question of whether the husband's

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[18] Mr. O'Rourke became Westchester County Executive during the pendency of the Surlak appeal, decided by the Appellate Division in September 1983. Although Mr. O'Rourke's brief indicated that he would orally argue for the Appellant (Ex. "M-1"), neither he nor anyone from his firm appeared for argument, and the appeal went in on submission. Mr. O'Rourke won reversal for Mrs. Surlak in a most questionable 3-2 decision.

[19] Mr. O'Rourke also does not disclose the fact that the Appellate Division rendered a split decision, with two judges dissenting, who parenthetically described Mr. O'Rourke's separation agreement as "poorly drafted". Although I-Q18 requests "the final disposition of the case", Mr. O'Rourke also fails to disclose that Mr. Surlak sought review in the Court of Appeals, which because of the two judge dissent was a matter of right. Due to Mr. O'Rourke's having by then moved on to the job of County Executive, Mr. Fulfree, then representing his wife, the former Mrs. Surlak, on the appeal, was able to have it dismissed on the ground that the Notice of Appeal had not been served on his firm, but on Mr. O'Rourke's law firm. The

support obligation ceased after the children were legally emancipated. The Court ruled it did not, due to the absence of such express limitation words in the agreement. It did not say the wife was entitled to support even after she remarried. That issue was not before the Appellate Division since the parties were not then divorced, there was no remarriage of the wife, and the wife made no such claim in the case before the Appellate Division at that time[20].

Unquestionably, had the underlined crystal-clear language, appeared in the above-quoted Paragraph NINTH and PARAGRAPH ELEVENTH of the separation agreement, the later ensuing costly and protracted litigation between the parties would not have been necessary. Indeed, had the agreement contained such clarity, Mr. Surlak, as he stated in our personal interview with him, never would have signed it[21].

Under the wife's post-agreement interpretation of Mr. O'Rourke's agreement, her unrepresented husband--a police officer, of such modest means that he held two jobs in order to make his required $600 monthly support payments--was deemed to have voluntarily agreed to surrender the unequivocal legal rights he would otherwise have had to reduce or terminate that support when

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dismissal was thus not on the merits and the cited Appellate Division decision evaded review.

[20] A separate lawsuit involving Paragraph ELEVENTH of the agreement relative to the husband's asserted right to a sale of the marital home after the 1985 divorce was finally resolved by settlement in 1991--nearly 15 years from commencement of litigation between the Surlaks in 1978--and nearly 20 years after the agreement's execution.

[21] Anthony Burton represented Mr. Surlak on the appeal to the Appellate Division of the case. In a lengthy telephone interview, Mr. Burton stated that the Surlak case had resulted in the expenditure of thousands and thousands of dollars by the husband in litigation because of the differing interpretations placed on Mr. O'Rourke's separation agreement by the courts, as well as the parties involved.

It might be noted that Mr. O'Rourke's continuing lack of care and attention to detail is further reflected by the obsolete information he provided for communication with Mr. Burton, his adverse counsel in the case. The firm indicated by Mr. O'Rourke for Mr. Burton no longer exists, having been dissolved in 1984, the telephone number and address listed by Mr. O'Rourke for Mr. Burton, being both superseded long ago. Mr. Burton's law offices are now at 150 Broadway, New York, New York. His current telephone number is (212) 732-4850.

foreseeable events, such as emancipation of the children and remarriage of the wife, occurred.

A final observation is in order. At the time Mrs. Surlak came to Mr. O'Rourke, his office was located only a few doors away from the law offices of Wekstein & Fulfree on Pondfield Road in Bronxville, New York. It is believed that Richard Fulfree and Mr. O'Rourke had been friends for many years through their common political activities in the City of Yonkers[22], also their common employer--when Mr. O'Rourke was a Yonkers Councilman and Mr. Fulfree an Assistant Corporation Counsel.

It is uncertain precisely when Richard Fulfree became romantically involved with Mrs. Surlak. It might be noted that sometime after the separation agreement was in place, Mr. Fulfree, physically moved into the marital home--while the Surlak children were still living in their mother's custody. He lived in the marital home for almost ten years as her lover[23] until the divorce took place in 1985[24]. During all that time, Mr. Surlak was being called upon to continue his support payments--as shown above, long after the children's departure from the home and even after the wife's remarriage.

There are other aspects connected with this most disturbing case, suggesting additional areas of "sharp practice" by counsel for

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[22] A Gannett newspaper article by Ed Tagliaferri, appearing on August 16, 1989, included a pertinent aside to Mr. O'Rourke's law practice, as well as his political affiliation:

> "Although conservative after the no-nonsense world of the military, O'Rourke said he became a Republican purely by chance. He had heard that the best way to establish a practice was to join a political party. In Yonkers at that time, the Democratic Party met infrequently and the GOP every week."

[23] Mr. Surlak could have been protected against the requirement of support payments from that point on had the separation agreement included the commonly used "anti-cohabitation" clause.

[24] The separation agreement (Ex. "J") omitted any provisions for filing of the agreement, and the agreement was not filed at the time of its execution in 1973. This was commented upon by the lower court. It may be noted that under the law of the State of New York, a "no-fault" conversion divorce was obtainable one year after the date of filing.

Mrs. Surlak, which will not be addressed in this already lengthy presentation. Such aspects may be the subject of further discussion at the live presentation at the upcoming public hearings.

2. TAPPAN MOTORS v. VOLVO (Ex. "A", p.8):

Mr. O'Rourke does not state what he considers the significance of this case--other than the fact that "This matter was tried" successfully "across fifteen (15) actual trial days", before a Westchester Supreme Court judge, without a jury[25]. We believe that what is truly significant are Mr. O'Rourke's critical misstatements and omissions of material facts.

As to the disposition of the case, Mr. O'Rourke states: "Plaintiff was granted a permanent injunction and Defendant's counterclaim was dismissed". Mr. O'Rourke does not disclose that the Appellate Division completely reversed the lower court judgment by not only denying the injunctive relief sought by the plaintiff, but also by reinstating the defendant's counterclaim in its Order dated December 14, 1981 (Ex. "P-2"). The Appellate Division's decision in that case was reported as 85 AD2d 624, 444 NYS2d 938 and affirmed by the New York Court of Appeals. These highly significant facts Mr. O'Rourke also does not disclose[26]--notwithstanding your Q18 specifically requests the nominee to "Give the citations, if the decisions were reported...".

Indeed, Mr. O'Rourke's attempt to mask "the final disposition in the case" by his allusion to "later appeals in which I took no part since I had become County Executive" is plainly false and misleading, as shown by the following facts:

(1) The Appellate Division decision preceded by more than a year the January 1, 1983 date when he became County Executive;

(2) Mr. O'Rourke did participate in the appeal, which resulted in that Appellate Division defeat for him. As shown by the published decision (Ex. "Q", p. 939), Mr. O'Rourke's firm,

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[25] At the time this case was brought before the Westchester Supreme Court, Mr. O'Rourke was Chairman of the Westchester County Board of Legislators (1978-1982), giving rise to the perception that his political influence facilitated his favorable decision at the lower court level, as well as his ability to obtain an ex parte TRO against Volvo before the action was even commenced.

[26] This contrasts with Mr. O'Rourke's inclusion of the citation to the reported Appellate Division decision in Surlak v. Surlak, leading to the inference that Mr. O'Rourke only supplies requested information when it is favorable to him.

O'Rourke & LoCascio, is listed as counsel of record. The cover page of the Respondent's appellate brief (Ex. "R") reflects the fact that Mr. O'Rourke designated himself as the attorney who would argue the case before the Appellate Division.

It may be further noted that Mr. O'Rourke failed to state, as Q18 further requested, "the nature of [his] participation in the case" or that of his co-counsel. Although the name "Barbara S. Frees" appears with his own on his Respondent's brief as "of counsel" to his firm (Ex. "R"), Mr. O'Rourke omits any statement as to their respective contributions.

In connection with oral argument of the appeal, the Appellate Division Order (Ex. "P-2") accompanying its reversal of Mr. O'Rourke's lower court victory, shows that although the Appellant's counsel argued the appeal for Volvo, counsel for Respondent Tappan Motors, Inc., O'Rourke & LoCascio, "submitted" their case <u>without the oral argument</u> their brief requested (Ex. "R"). In discussing this most unusual circumstance with Appellant's counsel, Frederick Whitmer, Esq., of the New Jersey law firm of Pitney, Hardin, Kipp & Szuch, we learned that Mr. O'Rourke had <u>missed</u> the scheduled oral argument, and that he thereafter told Mr. Whitmer he had "failed to diary it".

Mr. O'Rourke's direct <u>personal</u> knowledge of the Appellate Division reversal order may also be seen from the annexed letter, dated June 7, 1982, signed by Mr. O'Rourke (Ex."P-1"), showing that he himself placed it on file with the County Clerk's Office after it had been served on Volvo's counsel.

It should be noted that after Mr. O'Rourke took office as Westchester County Executive on January 1, 1983, the law firm of Cerrato, Sweeney, Cohn, Stahl & Vaccaro took over the representation of Mr. O'Rourke's client, Tappan Motors, Inc. As noted hereinabove, that law firm was Mr. O'Rourke's tenant at 50 Hamilton Avenue, White Plains, New York--the same building housing the law offices of O'Rourke & LoCascio. The Cerrato law firm, still located in downtown White Plains (Ex. "H", "I"), thereafter carried an appeal to the Court of Appeals--which resulted in an <u>affirmance</u> of the aforesaid Appellate Division reversal. Plainly, irrespective of whether or not Mr. O'Rourke took part in "the later appeals", he should have been able to supply the additional information requested by I-Q18's inquiry as to "<u>the final disposition of the case</u>"--had he been so disposed.

3. PEREIRA v. HOMELITE (Ex. "A", p. 8):

This is the only federal case[27] identified by Mr. O'Rourke as within the Committee's request for "ten most significant litigated matters which you personally handled". Mr. O'Rourke does not state his criteria for including this case within that category.

The facts set forth by Mr. O'Rourke do not suggest anything more than a garden variety "products liability" case, presumably in federal court only by virtue of diversity of citizenship. No constitutional issues are mentioned or suggested. Since the case was settled, it has no precedential value. Nor does Mr. O'Rourke proffer any. The amount of the settlement is not stated. It may thus be presumed not to have been extraordinary in relation to the injuries, which appear to have been rather substantial and serious.

According to Mr. O'Rourke, the case was settled in October 18, 1982. Again, Mr. O'Rourke fails to give details in response to the question, specifically calling for "the nature of your participation in the litigation" and the "individual name [sic], addresses, and telephone numbers of co-counsel".

The sole discernible importance of the case is that it gave Mr. O'Rourke an opportunity to identify Anthony J. Caputo, a well-known negligence lawyer, as his opposing counsel for reference purposes in connection with his instant judicial nomination.

In a telephone interview of Mr. Caputo on Monday, March 30, 1992, Mr. Caputo stated he no longer had any of the legal files in the case of Pereira v. Homelite. He did not know where they were and suggested he might have turned them over to the insurance company that had retained him on the case[28]. Mr. Caputo further

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[27] The files in this case--the only one of the three cases mentioned by Mr. O'Rourke involving a federal litigated matter--are available for examination at the Federal Records Center in Bayonne, New Jersey. Because of the distance involved, we have not had an opportunity to review these files. As shown by the correspondence relative thereto (Ex. "S"), Mr. O'Rourke could have readily accessed any other federal matters handled by him by the simple procedure therein set forth. Indeed, we obtained the accession number by mail from the U.S. District Office on the Pereira case within ten days.

[28] Mr. Caputo offered no reason for such suggested "possibility"--it being the duty of defense counsel to preserve the confidentiality of the files in a given case, as well as the

stated he did not remember the name of the insurance company or the amount of the settlement.

During the conversation Mr. Caputo recalled having previously been contacted as a reference concerning Mr. O'Rourke's nomination for a federal judgeship. He did not specifically recollect whether the caller said he was with the ABA or the FBI, but he did remember telling the caller that he considered Mr. O'Rourke "a helluva good lawyer".

Mr. Caputo did not state whether he informed the individual inquiring about Mr. O'Rourke as to certain material facts bearing on his favorably-expressed opinion, which were subsequently revealed by him in the course of our conversation together: Mr. Caputo admitted that he and Mr. O'Rourke have been "good friends" for many years--and still are[29]. Both have long been politically involved in Westchester Republican Party politics. (Mr. Caputo's son, Bruce, was elected Congressman from Westchester and served from 1974 to 1976, and thereafter was a candidate for Lieutenant Governor of New York). It was in the context of that discussion that Mr. Caputo also admitted that he is a "good friend" and "personal attorney" for Anthony Colavita. He also stated that he currently represents Mr. Colavita in pending litigation.

It should be noted that Mr. Colavita enjoyed the dual role of Chairman of the Westchester Republican Party[30] and State Chairman of the Republican Party until he stepped down from the state position in June 1989. Part of the consideration for his relinquishing the state chairmanship is believed to be Senator D'Amato's commitment to Mr. Colavita to nominate Mr. O'Rourke for a federal judgeship.

According to newspaper reports in 1989 (Ex. "T"), Jonathan Bush, the President's brother, "teamed up with Senator D'Amato" in soliciting Mr. Colavita's resignation from the state Republican Party chairmanship. Jonathan Bush's involvement with Mr. Colavita would explain a White House nomination of Mr. O'Rourke, a lawyer with no judicial experience--without real inquiry into

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files themselves, even from the insurer who pays him.

[29] Mr. Caputo, a practitioner for more than fifty years, lives in Bronxville, New York, where Mr. O'Rourke owns prime commercial real estate in the heart of town and in which Mr. O'Rourke maintained his law offices from 1968 to 1980 (Ex. "A": p. 2, A6).

[30] Mr. Colavita has been Chairman of the Westchester Republican County Committee since 1979. In September 1985 he assumed the New York State chairmanship as well.

his qualifications for such office[31], and in the face of criticism of Mr. O'Rourke concerning political influence in Westchester County government under his leadership. The June 1990 published report of the New York State Commission on Government Integrity, entitled: The Blurred Line: Party Politics and Government in Westchester County[32] furnishes compelling evidence of the extent to which Mr. Colavita and the Republican Party have steadily gained control over Westchester County government contracts and job patronage (Ex. "V-1"), unrestrained by Mr. O'Rourke (Ex. "V-2", Ex. "V-3").

* * *

Insensitivity to Conflict of Interest Issues

Against the foregoing background, Mr. O'Rourke's response to the Senate Judiciary Committee's II-Q2. (Ex. "A", p. 13) assumes added significance.

II-Q2 (Ex. "A", p. 13) reads as follows:

> "Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated."

Mr. O'Rourke gives the following perfunctory answer:

> "While I do not anticipate any specific areas of conflict-of-interest, I will endeavor to avoid even the appearance of conflict. I will follow the guidelines of the canons of judicial conduct relative to recusal." (emphasis added)

Such response reflects not only this nominee's lack of

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31 As shown from the annexed letters and faxed communication (Ex. "U"), we attempted--without success--to secure from the White House information as to the basis for its nomination of Mr. O'Rourke.

32 Our January 10, 1992 letter to the Senate Judiciary Committee (Ex. "C", pp. 4-5) enclosed a bound copy of that report.

competence, but his apparent insensitivity to ethical concerns. Mr. O'Rourke's statement that he does "not anticipate any specific areas of conflict of interest" is a shocking admission by him--particularly in light of his long involvement as an official in both the legislative and executive branches of government, where conflict of interest issues are constantly raised.

Mr. O'Rourke purportedly does not recognize that his tenure as Westchester County Executive and as Chairman of the Westchester County Board of Legislators would be a source of legitimate concern to any litigant and lawyer involved in a case where Westchester County is an adverse party to the litigation or might be affected by it.

As a federal judge for the Southern District of New York, Mr. O'Rourke will be sitting in the very venue where conflicts based on his governmental and political ties must inevitably arise. Mr. O'Rourke's failure to "anticipate" his conflict of interest in those reasonably foreseeable situations suggests he would not consider it inappropriate to sit in the already existing Federal Court in White Plains (Ex. "H")--or in the new and expanded federal courthouse planned for a site ten minutes' walking distance from his present County Executive offices (Ex. "H").

The fact that Mr. O'Rourke does not "anticipate" potential conflict of interest issues is an ominous indication that the onus of raising them will fall upon litigants, who may be unaware of Mr. O'Rourke's background, and upon their lawyers, who may be fearful of arousing his ire affecting future cases before him.

Because the process of judicial nomination is so cloaked in confidentiality, the specific background of federal judges is virtually unknown to most of the legal community, let alone the members of the lay public coming before them. If Mr. O'Rourke does not recognize the potential conflict of interest--which he claims he does not--he would have no reason to make the disclosure called for under the Code of Judicial Conduct. Such disclosure might require him to acknowledge the political connections responsible for his legislative and executive careers--as well as for his nomination to a federal judgeship.

It is in this context that Mr. O'Rourke's failure to properly respond to III-Q3 must be viewed. That question specifically asked Mr. O'Rourke to set forth "the circumstances which led to your nomination". Mr. O'Rourke's failure to set forth his political activities as a relevant "circumstance" indicates that as a sitting judge, he would, likewise, not disclose such "circumstance" to litigants before him. Nor would he

necessarily grant a recusal motion[33] based upon his political ties.

POLITICAL REALITIES UNDERLYING JUDICIAL NOMINATIONS

As reflected by the quote appearing in our November 20, 1991 letter to the Senate Judiciary Committee (Ex. "B", p. 2), Mr. O'Rourke's judicial nomination is openly regarded as his reward for party loyalty[34]:

> "O'Rourke...sought a Yonkers or county judgeship while on the Board of Legislators, from 1973 to 1983, but was blocked by Yonkers GOP officials, who thought he was not enough of a party man. After running unsuccessfully for governor in 1986 against Mario Cuomo, O'Rourke found speculation aplenty that the GOP would reward him with a federal judgeship." (10/24/90 Gannett, Ed Tagliaferri)[35]

The fact is that Mr. O'Rourke's long-standing judicial aspirations required demonstrated allegiance to the Republican Party and its leader, Anthony Colavita--which he continually gave

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[33] Unquestionably, the difficulties and cost involved in both the appellate and impeachment processes offer little real accountability for non-compliance with the high standards of judicial conduct expected of all judges. The best assurance of adherence to those standards is by rigorous pre-nomination and pre-confirmation screening of all judicial candidates.

[34] Such loyalty to the party is reflected by Mr. O'Rourke's own words on November 11, 1982:

> "I've been a soldier in the Republican party and where they send me, I will go and fight the battle." (Ex. "W")

It is also reflected by Mr. O'Rourke's gubernatorial candidacy in 1986 "at Colavita's request when all other viable GOP candidates declined to face Mario Cuomo..." (Ex. "T-2").

[35] It may be noted that the GOP has also rewarded Michael Kavanaugh for his run for lieutenant governor in 1986--the same year that Mr. O'Rourke ran for governor. Mr. Kavanaugh's nomination, like Mr. O'Rourke's, was initiated by Senator D'Amato and is presently pending before the Senate Judiciary Committee.

throughout his years and years of political activity[36].

Mr. Colavita's control of judicial nominations[37] for state court judgeships was documented by the Ninth Judicial Committee in two legal cases it spearheaded in 1990 and 1991, Castracan v. Colavita and Sady v. Murphy. The odyssey of those cases through the state courts reflects the very reason why politicians seek to control the courts: once they do, the path is cleared for political decision-making[38].

We see nothing in Mr. O'Rourke's instant response to II-Q2 or his past behavior to inspire public confidence that as a judge he

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[36] As reported by a December 15, 1982 Gannett article (Ex. "X"), the vote by Republican leaders throwing their support to Mr. O'Rourke for the position of interim County Executive "was unanimous and followed, as if by script, the recommendation of party chairman Anthony J. Colavita...".

For his part, Mr. O'Rourke pledged: "An administration that is aware of the strong part the party plays."

[37] It may be noted that the New York State Commission on Government Integrity was charged with investigating the procedures for selection of judges in New York State. Its report, Becoming A Judge: Report on the Failings of Judicial Elections in New York State, issued on May 19, 1988, stated:

> "Our investigation has shown that the election of Supreme Court justices and judges of courts of limited jurisdiction is so intertwined with party politics that the process violates...principles basic to our ideal of an independent judiciary...Elective systems...in granting control over judgeships to political party leaders in the various parts of the state, have made service and influence within party organizations usually a prerequisite to obtaining a judgeship..." (Government Ethics Reform for the 1990s: The Collected Reports of the New York State Commission on Government Integrity, at p. 273)

The Commission recommended the complete overhaul of the present system of judicial elections in New York.

[38] The extraordinary story of what the state courts did to those two precedent-setting cases is described more fully in our recent letter to the members of Governor Cuomo's Task Force on Judicial Diversity (Ex. "Y").

would divorce himself from his political relationships and that he would abstain from the politician's "golden rule", i.e., "reward your friends and punish your enemies".

Indeed, even while his very nomination was before the President, Mr. O'Rourke demonstrated the vindictive manner in which he exercises power--unconstrained by the "appearance" of his behavior or its effect upon the community.

LACK OF JUDICIAL TEMPERAMENT AND LACK OF RECOGNITION OF THE APPEARANCE OF HIS ACTIONS

Mr. O'Rourke's public display of his intemperate behavior should be of particular interest to the Senate Judiciary Committee since it not only reveals Mr. O'Rourke's disregard for the "appearance" of his actions, but also the public perception of Senator D'Amato's recommendation of Mr. O'Rourke for a federal judgeship.

The Westchester County Medical Center Commissionership Vacancy

Throughout 1991, it was reported that "behind-the-scenes" political forces were influencing Mr. O'Rourke in connection with the vacant post of Commissioner of the Westchester County Medical Center. Senator D'Amato's recommendation of Mr. O'Rourke for a federal judgeship in October 1990 was seen by the public at large as connected with his recommendation to Mr. O'Rourke in September 1990 of a candidate for that vacant hospital post (Ex. "Z").

The cynicism reflected by such perception was no doubt fueled by two facts:

(a) Senator D'Amato's recommendation of Mr. O'Rourke for a federal judgeship came less than five months after the spotlight was put on job patronage at Rye Playland, a county recreational facility, by the June 1990 Report of the New York State Commission on Government Integrity. (Ex. "C", p. 4); and

(b) the Westchester County Medical Center, with its quarter of a billion dollar budget and 3,600 workers on the county payroll, represents the largest "potential patronage mill" in Westchester (Ex. "AA").

In response to pressure by the public, media, and individuals connected with the Westchester County Medical Center, Mr. O'Rourke established a screening process to fill the Commissioner vacancy. At a cost of $50,000 to Westchester County taxpayers, a head-hunting agency was engaged to submit a list of candidates to a selection committee. In turn, the selection committee was to

screen the list of candidates and recommend at least three candidates to Mr. O'Rourke for his final decision.

The headhunting agency did, in fact, forward to the selection committee a list of ten names. The selection committee--composed of four of Mr. O'Rourke's own senior staffers, together with Dr. Samuel Kasoff, on behalf of the Medical Board and Carol Farkas, on behalf of the Hospital Advisory Board--reviewed the qualifications of the candidates.

By unanimous vote, the selection committee passed on to Mr. O'Rourke their recommendations as to the three "Most Qualified" candidates. Thereafter, Mr. O'Rourke overrode the screening process he had put in place and jettisoned a credential he himself had laid down as a sine qua non for any nominee, i.e. prior experience as a Chief Executive Officer of a hospital (Ex. "BB"). Indeed, in choosing Mack Carter, Mr. O'Rourke not only picked a man who was not one of the three finalists recommended by his own selection committee, but a man who that very committee had unanimously found not qualified for the post for reasons including his lack of the aforementioned job requirement (Ex. "JJ", para. 9).

Since Mr. O'Rourke's appointment of Mr. Carter was not based upon objective evaluation of his qualifications, including job experience (Ex. "CC"), the appointment immediately fulfilled fears that were current all along, i.e., that political forces were in control of the situation[39].

By letter, dated September 16, 1991 (Ex. "DD"), the Westchester County Medical Center's Advisory Board, chaired by Carol Farkas, set forth their concerns about Mr. Carter's nomination to the Westchester County Board of Legislators. After outlining Mr. Carter's lack of essential job experience, the letter stated "we unanimously feel that at the present time Mr. Carter's appointment is not in the best interests of the County and its taxpayers...".

The Advisory Board's letter, listing Mr. O'Rourke as an indicated recipient, closed with the following observation:

> "It should be noted that the County Executive himself established a search committee, at which four of the six members were from his own staff. The committee was empowered to make recommendations for the position of

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[39] We were informed by a senior member of the Westchester County Medical Center staff that immediately prior to the appointment, a meeting was held between Mr. O'Rourke, Mr. Carter and Mr. Colavita.

> Commissioner based upon qualifications set by both the County Executive and the Hospital Advisory Board and, from which, Mr. O'Rourke would make his selection. That committee interviewed Mr. Carter and did not recommend him. By selecting Mr. Carter, Mr. O'Rourke has discarded the very selection procedure he established. If he was dissatisfied with candidates submitted to him it would have been more appropriate to ask his committee to continue the search and present a different slate for his consideration." (Ex. "DD", p. 2) (emphasis in the original)

Mr. O'Rourke's response to the legitimate concerns of the Advisory Board--all of whose members are citizens of the community, serving without pay--was to send each of its 13 current members by Federal Express "Priority Mail" (at taxpayers' expense) the following two-paragraph communication (Ex. "EE"):

> "I have received a copy of your letter of September 16, 1991 to the Board of Legislators regarding my appointment of Mack L. Carter to be Commissioner of Hospitals.
>
> Considering the position you have taken, I cannot imagine your being able to fulfill your responsibilities under the Charter to advise me and the Commissioner of Hospitals. Accordingly, I would welcome your resignation from the Westchester County Medical Center Hospital Advisory Board. In order to assist you, a letter is enclosed for your signature along with a post-paid return envelope."

Mr. O'Rourke's peremptory demand for en masse resignations of the Hospital Advisory Board was featured in a front-page banner headline Gannett newspaper story on September 19, 1991 (Ex. "FF"). An apt comment contained therein is made by Dr. George Reed, Chairman of the Westchester County Medical Board, who is quoted, as follows:

> "'I think it's a very poor display of democracy in action,' he said of O'Rourke's response. 'I think it's a rather shocking display of lack of judicial temperament.'"

The following week, Mr. O'Rourke gave equally devastating evidence of his vindictive nature by the following quoted retaliatory response to the Advisory Board, whose members had not yet resigned per his indicated direction:

> "I'll make sure none of them ever serves Westchester County again in any capacity."

(Ex. "GG")

Mr. O'Rourke's open expression of such vengeance gave no consideration to: (a) the years of devoted, uncompensated service rendered by the citizen members of the Hospital Board (Ex. "HH"); (b) the devastating impact of such a vindictive reaction by the County Executive upon the community (Ex. "II"); and (c) the good and sufficient basis for concern about the nomination of an unqualified candidate and the public perception that merit was being subordinated to extraneous political considerations (Ex. "JJ").

Indeed, on January 8, 1992, following Mr. Carter's confirmation as Commissioner by the Westchester County Board of Legislators, Mr. O'Rourke announced he would not reappoint the Advisory Board's Chairman, Carol Farkas and its Vice-Chairman, Arthur Litt, to continue on the Advisory Board (Ex. "KK"). Both Ms. Farkas and Mr. Litt had each served on the Hospital Advisory Board for twelve years.

Mr. O'Rourke's insensitivity and unconcern with the public perception that he was retaliating against Ms. Farkas and Mr. Litt for their opposition to his nomination of Mr. Carter was made the subject of unfavorable publicity, including a January 9, 1992 Gannett editorial, "O'Rourke Bungles in Dropping Two Hospital Board Members"--which also remarked upon his selection of a new chairman for the Hospital Advisory Board (Ex. "LL").

Such adverse comment did nothing to restrain Mr. O'Rourke's crass behavior, highlighted in his subsequent response to a letter sent him by Richard Berenson (Ex. "MM"), who served on the Advisory Board for six years. Indeed, the cynicism existing throughout 1991 has given way to complete demoralization. This is epitomized in the recent resignation of Ellen Popper, who, like Ms. Farkas and Mr. Lit, also gave twelve years of voluntary service to the Hospital Advisory Board. Her letter of resignation reflects the negative mood Mr. O'Rourke's actions have engendered (Ex. "NN").

Further Disregard for the Appearance of Impropriety

Even before the members of the Hospital Advisory Board wrote its letter to the County Board of Legislators and Mr. O'Rourke, in response, demanded their resignations--other actions by Mr. O'Rourke as Westchester's top executive officer caused doubt that Mr. O'Rourke could be a viable nominee for a federal judgeship. As stated by a Gannett editorial (Ex. "OO"):

> "If a man cannot competently administer county government, can he be entrusted with the responsibilities of judicial office? That is a question that must weigh heavily

> within the Bush administration. If Mr. O'Rourke's name should be reported out, nonetheless, then the Senate Judiciary Committee will be asking the same question."

Since the White House has failed to respond to our inquiries (Ex. "U"), we are unable to ascertain whether and to what extent the President considered certain matters that came to light in the months immediately preceding his nomination of Mr. O'Rourke. The most noteworthy[40] involved Mr. O'Rourke's repeated signing of waiver applications to enable Westchester's Police Commissioner Anthony Mosca to collect a New York City pension while getting his county salary. This was done on the required representation that other qualified candidates for the job, not requiring a waiver, could not be found. In fact, as Mr. O'Rourke later admitted to the Gannett newspapers, no job searches had been made by the county for eight years. Despite this clear violation of state law resulting from his false and misleading statement, Mr. O'Rourke, nonetheless, refused to accept responsibility for his improper actions, and was quoted in the press as saying: "I stand by what I signed" (Ex. "PP").

It may be noted that Commissioner Mosca had himself previously caused an erosion of public confidence by interfering with the prosecution of a drug case involving a friend's son. The manner in which Mr. O'Rourke dealt with that situation not only became the subject of press attention (Ex. "QQ"), but has continued to have an effect on the public perception of Mr. O'Rourke's administration and his fitness for a judicial post. The remarks by Michael J. Reynolds, the sole Republican member of the Board of Trustees in the Village of Tarrytown, were recorded in the Minutes of its September 16, 1991 Board Meeting (Ex. "RR"). Mr. Reynolds, a former police officer, summed up his feelings as follows:

> "...I must question Mr. O'Rourke's commitment to what he himself calls the war on drugs. For example did Mr. O'Rourke provide his own 'best efforts in law enforcement' when he let his own appointed police commissioner, Anthony Mosca, keep his job after that man interfered with the arrest of a man accused of drug dealing? The State Ethics Commission called Mosca's conduct, and I quote, '...a gross departure from acceptable professional standards...Citizens may conclude that justice in Westchester County depends on who

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[40] Indeed, Gannett's 9/12/91 editorial (Ex. "OO") framed the following words at its center: "His [O'Rourke's] handling of Mosca pension might interest U.S. senators".

> you know, an attitude which in turn breeds resentment and disrespect for the entire criminal justice system.' When County legislators and others demanded Mosca's resignation, O'Rourke, assuming the untouchable majesty of the federal judge he wants to be, defied them all. ...".

* * *

We respectfully submit that the foregoing three-dimensional portrait of Mr. O'Rourke, placing in sharp focus his "competence", "character", and "temperament", more than sufficiently demonstrates his deficiency in all three areas.

In the interest of completeness, we will, nonetheless, also address the balance of Mr. O'Rourke's responses to the Senate Judiciary questionnaire. Before doing so, however, we wish to offer some observations as to the appalling deficiencies of the "screening process", which permitted this inappropriate nomination to reach the President, as well as the Senate.

FAILURE OF THE SCREENING PROCESS

As stated in the recently published report of the Senate Task Force on the Confirmation Process:

> "The most critical evaluation of potential nominees occurs before submission to the Senate. If the process functions properly, unsuitable candidates will be screened out by the President before they are nominated. The responsibility for screening nominees lies first and foremost with the President and his administration. Their investigation must be thorough and complete. It is not in the interest of any party for unfit candidates to be nominated, with the Senate left to identify and reject such an unfit nominee." (pp. 11-12) (emphasis in the original)

The nomination of Andrew O'Rourke by President Bush should be looked upon as "a case study" demonstrating that "the process" does not function "properly". This conclusion is further supported by analysis of Mr. O'Rourke's response to III-Q3 (Ex. "A", p. 12).

III-Q3 expresses the Senate Judiciary Committee's concern for proper pre-nomination screening. That question makes the following specific inquiry:

> "Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated."

Mr. O'Rourke's scant answer is as follows:

> "I appeared before the judicial screening committee of Senator Alfonse D'Amato in January of this year; I was found qualified by the committee. I also appeared before the Committee on the Judiciary of the Association of the Bar of the City of the Bar of the City of New York, also in January 1991. To my knowledge, there has been no finding by said committee. I met with several members of the U.S. Attorney General's staff in May 1991, and have been filling out forms as required. Also, I have been interviewed by both the Federal Bureau of Investigation (FBI) and the American Bar Association." (Ex. "A", p. 12, III-A3)

Mr. O'Rourke's response notably does not describe, as the Senate Judiciary Committee form requests, "the entire judicial selection process, from beginning to end". Nor does Mr. O'Rourke at all comply with the requirement that he disclose "the circumstances which led to [his] nomination"[41].

A. Senator D'Amato's Recommendation of this Nomination to President Bush

Mr. O'Rourke's initial statement that he appeared before Senator D'Amato's judicial screening committee "in January of this year" raises an immediate question since Mr. O'Rourke's completed questionnaire is dated January 10, 1992. Mr. O'Rourke is thereby stating that he was interviewed that very month--fifteen months after Senator D'Amato's proposed nomination and

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[41] In support of the fact that Mr. O'Rourke's unsuccessful gubernatorial run against Mario Cuomo in 1986 was a relevant "circumstance" leading to his recommendation by Senator D'Amato, we note that Senator D'Amato also recommended Michael Kavanaugh's name to President Bush for nomination for a federal court judgeship. Mr. Kavanaugh was Mr. O'Rourke's running mate in 1986 as the Republican party candidate for Lieutenant-Governor.

two months after his nomination by President Bush.

From the next sentence in Mr. O'Rourke's response we are led to believe that the date on which Mr. O'Rourke was interviewed by Senator D'Amato's screening committee was not January 1992, but January 1991. Assuming that were so, Mr. O'Rourke's interview took place three months after Senator D'Amato's public recommendation of his name in October 1990.

As shown from our faxed and mailed correspondence (Ex. "SS"), Senator D'Amato's office has totally ignored and refused to comply with our many inquiries spanning almost half a year seeking information:

> "delineating the process by which Senator D'Amato made his recommendation--including who proposed Mr. O'Rourke's name to the Senator--and any and all supporting materials reviewed by the Senator's judicial screening panel, as to whose membership we also wish an identification." (Ex. "SS-1", p. 2)

To date, the only information we have relative to the foregoing request has come not from Senator D'Amato's office, but from an Associated Press news story appearing in the local press on December 13, 1991 (Ex. "TT"). That article refers to the fact that Michael Armstrong, Esq. is a member of Senator D'Amato's judicial screening committee as well as "D'Amato's personal attorney for more than a decade". According to that news story, Senator D'Amato owes Mr. Armstrong money for legal fees due in connection with his defense of the Senator before the Senate Ethics Committee against charges of having conducted his office in an inappropriate manner in violation of Senate rules.

Certainly, to constitute a screening panel with members conflicted in interest by reason of their relationship with the nominator gives rise to an "appearance of impropriety". This is particularly so where, as here, the Senator first publicly heralds his recommendation of a judicial candidate[42] before his screening panel has even conducted its evaluation. We believe it likely that Senator D'Amato felt secure in the belief that his screening panel would not embarrass him by subsequently finding

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[42] According to an October 24, 1990 Gannett news story by Ed Tagliaferri:

> "D'Amato expressed confidence that the two-term county executive would make it through the review process, 'given Andy O'Rourke's record both in government and public service and as a fine attorney". (at p. 9)

the Senator's announced choice to be unfit[43].

It should be obvious that the value of a rating by a committee whose membership and procedures are unknown is necessarily diminished by such facts. Consequently, the Ninth Judicial Committee was astounded to learn that the Senate Judiciary Committee itself possesses no information about the composition of Senator D'Amato's screening panel or its procedures--and, in fact, does not even request such data from nominating Senators.

We were further informed that, as a general practice, the Senate Judiciary Committee receives no information as to the basis upon which Senators make their recommendations for judgeships and no information as to the basis upon which the President makes his judicial nominations.

These facts are further reflected in our January 10, 1992 letter to you (Ex. "C", p. 3: para 1) and in your signed letter response, dated January 30, 1992 (Ex. "UU"), stating:

> "...the committee's involvement with a nomination begins only after the nomination has been made and submitted to the Senate. Therefore, your inquiries about the selection of Mr. O'Rourke for this position--a process in which the Judiciary Committee is not involved--should be directed to Senator D'Amato's office and the White House." (emphasis in the original)

Although we directly quoted this very statement from you in our February 25, 1992 letter to President Bush (Ex. "U-2")--the White House, like Senator D'Amato, has also totally ignored our several written requests for the aforesaid basic information.

In view of this documented failure and refusal of the White House and Senator D'Amato to answer our legitimate inquiries about Mr. O'Rourke's nomination, it is of even greater importance that Mr. O'Rourke be called upon to properly answer the last portion of the Committee's question requesting a description of:

> "...the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination

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[43] In contrast to the "after-the-fact" screening process employed by Senator D'Amato's judicial screening committee, Senator Moynihan's counterpart committee screens judicial candidates before Senator Moynihan makes any public recommendation.

and interviews in which you participated."

The Ninth Judicial Committee has been unable to ascertain critical information relative to the year's time between Senator D'Amato's October 1990 recommendation and the November 1991 date on which the President sent Mr. O'Rourke's nomination to the Senate. A detailed "Freedom of Information" request has recently been made upon the Justice Department (Ex. "VV").

B. The Role Played by the American Bar Association (The ABA)

It is our understanding that the Justice Department assumes the information-gathering function for the President. It not only launches the FBI investigation, but "utilizes" the ABA to evaluate the prospective nominee.

We believe significant questions arise as to the role being played by the ABA[44]. Although the ABA's position vis-a-vis the Senate Judiciary Committee is that "confidentiality...is a cornerstone of the Committee's effective operation" (Ex. "WW", p. 2), the ABA does not take that position relative to its rather free exchange of information with the Justice Department. The following excerpts are from the ABA's own booklet, entitled: Standing Committee on Federal Judiciary, What It Is and How It Works:

> "The Attorney General's office sends to each prospective nominee a comprehensive ABA-designed questionnaire (called the 'Personal Data Questionnaire') that seeks wide-ranging information related to fitness for judicial service. The responses are sent to the U.S. Department of Justice, the ABA Committee Chair and the circuit member... (p. 4)
>
> ...The circuit member prepares a written informal report to the Chair...the Chair discusses the informal report with the Attorney General's office... (p. 6)

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[44] We also believe that changes made by the ABA in its screening process, pursuant to pressures exerted upon it by the Justice Department (Ex. "AAA-1"), have facilitated selection of mediocre and unfit nominees by the President.

> ...If the office of the Attorney General so requests, the circuit member prepares a formal or final report... (p. 6)[45]
>
> The Chair confidentially advises the office of the Attorney General of the Committee's rating... (p. 6)
>
> If the Committee has found a prospective nominee 'Not Qualified,' the question arises whether the President will nominate the prospective nominee. Only in rare instances has a President decided to nominate a person found 'Not Qualified" by the Committee..." (p. 7) (Ex. "AA", emphasis added)

Although the ABA affords the Justice Department a copy of Mr. O'Rourke's completed ABA questionnaire (Ex. "WW", p. 4), we are informed that no copy of the nominee's completed questionnaire is supplied to the Senate Judiciary Committee. Indeed, because of the ABA's assertion of "confidentiality", the extent of the ABA's contribution to the Senate Judiciary Committee's evaluation of Mr. O'Rourke is a "bare-bones" rating, without any accompanying exposition--even by way of explaining the basis for Mr. O'Rourke's "Not Qualified" minority rating (Ex. "C", p. 3).

We have verified that the rating of the ABA's Standing Committee on Federal Judiciary was transmitted to the Senate Judiciary Committee on November 12, 1991--the same day as the President sent Mr. O'Rourke's name to the Senate Judiciary Committee. In pertinent part, the ABA's letter stated:

> "A substantial majority of our Committee is of the opinion that Mr. O'Rourke is Qualified for this appointment. A minority found him to be Not Qualified."

That ABA rating of "Not Qualified" means that an unidentified number of the ABA Judiciary Committee members believed that Mr. O'Rourke "does not meet the Committee's standards with regard to integrity, professional competence or judicial temperament", which categories form the predicate for a favorable rating. It also means that President Bush nominated him notwithstanding such

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[45] It may be noted that our Freedom of Information request seeks information as to the contacts between the Justice Department and the ABA relative to this nomination (Ex. "VV", p. 2)

unfavorable finding by the aforesaid "minority"[46].

The Ninth Judicial Committee has fully documented the validity of the minority view expressed by the ABA Standing Committee on the Judiciary. Since the Senate Judiciary Committee questionnaire is virtually identical to the ABA's form (Ex. "D"), there is no reason to believe that Mr. O'Rourke provided any more or better information to the ABA and the Justice Department than he thereafter provided to the Senate Judiciary Committee. Given these facts, we believe that the Senate Judiciary Committee must conduct a full-scale investigation into the basis for the ABA's "Qualified" rating expressed by the majority view of its Standing Committee on Federal Judiciary.

C. The Association of the Bar of the City of New York (The City Bar)

With respect to Mr. O'Rourke's stated appearance before the Committee on the Judiciary of the Association of the Bar of the City of New York, which he claims took place on January 1991, and his statement as of a year later that "to my knowledge there has been no finding by said Committee", we made diligent efforts to verify such statements[47]. The City Bar has refused to provide the most minimal confirmation we requested as to:

(1) whether or not it rated Mr. O'Rourke; and

(2) whether, and if so, when Mr. O'Rourke was notified of such rating.

Annexed hereto are copies of the relevant correspondence (Ex. "XX", including a March 5, 1992 letter from the President of the City Bar, Conrad Harper, stating:

"The Association conducts evaluations of

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[46] It would appear that the White House does not necessarily disclose information of an adverse nature obtained during the course of its investigations to the Senate Judiciary Committee. (Report of the Task Force on the Confirmation Process, 12/18/91, p. 13)

[47] Mr. O'Rourke did not indicate any comparable facts relative to the ABA's screening of him. He neither identifies the date on which he was interviewed by the ABA's Standing Committee on Federal Judiciary nor its rating of him. It may be noted, however, that as of January 10, 1992--the date which appears on the public portion of his Senate Judiciary Questionnaire--Mr. O'Rourke had knowledge of the ABA's majority/minority rating since he presumably received the ABA's November 12, 1992 letter which named him as a recipient.

> judicial candidates, including its investigations and deliberations, in confidence. In accordance with this policy, the Association does not make public any information regarding the status of review of particular nominees. Our recommendations on appointive judgeships are conveyed to the proper appointing authorities..." (Ex. "XX-2") (emphasis added)

Although we initially understood that the Senate Judiciary Committee did not possess any rating from the City Bar relative to Mr. O'Rourke's nomination (Ex. "C", p. 4)[48], your Chief Nominations Counsel has informed us that the Senate Judiciary Committee's position is that it cannot, in fact, disclose whether the City Bar transmitted a rating for Mr. O'Rourke--unless the City Bar gives it permission to do so. (Ex. "YY").

We find such position inconsistent with the inclusion of question III-Q3 in the public portion of the Senate Judiciary Committee questionnaire, plainly reflecting its view that the public is entitled to a response from the nominee to the specific question:

> "Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination?"

As we pointed out to City Bar President Harper in our March 17, 1992 reply to him (Ex. "XX-3")--to which we received no response--Mr. O'Rourke answered that question without asserting any privilege objection. Thus, the information we seek is the very information that Mr. O'Rourke himself agreed to make public.

Verification is particularly essential because of Mr. O'Rourke's implicit suggestion that there was "no finding" by the City Bar in the course of a year's time[49], which we find most peculiar.

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[48] Based upon such understanding from the Senate Judiciary Committee--as well as from conversations with the City Bar--we expended considerable time and energy in soliciting support for review of Mr. O'Rourke's qualifications by the City Bar. This is evidenced by our letters to the ABA, the Federal Bar Council, and the Federal Bar Association--annexed to our February 24, 1992 letter to President Harper (Ex. "XX-1").

[49] By way of comparison, the public portion of Sonia Sontomayer's questionnaire shows that she was informed of her City Bar rating prior to completing her Senate Judiciary Committee questionnaire on December 9, 1991.

The City Bar has flatly refused to discuss with us anything having to do with the general procedures of its Committee on the Judiciary--aside from being rude and hostile to our requests for the aforesaid verifying data relative to Mr. O'Rourke (see (Ex. "XX-1": our February 24, 1992 letter to President Harper--to which his March 5, 1992 reply is not responsive: Ex. "XX-2.)

Indeed, on advice of its legal counsel, the City Bar takes the position that we have no right even to see the "Rules of Procedure"[50] governing its Committee on the Judiciary, nor a copy, in blank, of the questionnaire completed by judicial candidates. The City Bar claims that such documents which we received from them in late January 1992 were "mistakenly sent out"[51].

Since Mr. O'Rourke states that he "met with several members of the U.S. Attorney General's staff in May 1991", we find it hard to believe that the Attorney General's office did not inquire of Mr. O'Rourke as to the results of his interview with the City Bar's Committee on the Judiciary and, either directly or through him, inquire of the City Bar as to its rating of Mr. O'Rourke's qualifications.

We cannot help but draw a connection between such reasonable inquiry by the Attorney General's office concerning Mr. O'Rourke's rating by the City Bar and the spate of news items which appeared in early June 1991, concerning a letter from Murray Dickman, special assistant to Attorney General Thornburgh, in which he is quoted as telling the City Bar:

> "Your interference in the constitutional process of selecting and appointing Federal judges must end".

Annexed hereto are pertinent articles and editorials (Ex. "AAA"). Although they do not identify the precipitating cause of Mr. Dickman's letter, it may be inferred that it involved the City

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[50] According to the Rules, the judicial candidate has a right of appeal to the Executive Committee in the event of an adverse ruling. Candidates who do not cooperate with the City Bar's Committee on the Judiciary are rated "Not Approved"--with no right of appeal (Ex. "ZZ").

[51] In fact, the City Bar refused to send us a duplicate copy of the blank questionnaire when we advised them that we had misplaced the original.

Bar's evaluation of Mr. O'Rourke[52].

In that regard, we might add that the City Bar has also withheld from us promised information on the subject of the Justice Department's extraordinary directive against their screening of federal judicial nominees (Ex. "XX-1").

It is our view that the "confidentiality" insisted upon by the ABA and the Association of the Bar of the City of New York has definitely not contributed to "effective evaluation" of Mr. O'Rourke's nomination by either of those two highly important and respected legal organizations.

* * *

Our comments as to the balance of Mr. O'Rourke's responses, taken in the order in which they appear, follow:

BIOGRAPHICAL INFORMATION (PUBLIC) (Ex. "A", pp. 1-10)

Q5. Education (Ex. "A", p. 1)[53]:

In view of the sparse information furnished by the nominee in response to questions relating to his work as a practicing lawyer, Mr. O'Rourke's educational records at the graduate and undergraduate schools listed by him, particularly those at Fordham Law School and New York University Law School, take on added significance. Mr. O'Rourke does not indicate any scholastic attainments as a student: whether he made law review or achieved any academic distinction. It may also be noted that Mr. O'Rourke omits mention of the fact that he attended law school as a night student. We in no way mean to denigrate night studies, but point it out as being a relevant fact for any legal employer, which we believe should have been included in Mr. O'Rourke's statement of educational background.

Mr. O'Rourke states he received a "Bachelor of Laws later converted to a Doctor of Jurisprudence". This statement is not factually correct. Mr. O'Rourke should be aware that a "Bachelor of Laws" degree is not convertible into a "Doctor of Jurisprudence", but only to a Juris Doctor degree. Mr. O'Rourke's representation of himself as a Doctor of Jurisprudence implies that he has attained a graduate law degree comparable to

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[52] Our Freedom of Information request to the Justice Department specifically seeks information on this subject, including a copy of Mr. Dickman's letter (Ex. "VV", p. 3)

[53] This question may be cross-referenced with ABA question #7 and City Bar questions 16, 17, 18.

a Ph.D. This is not the case at all.

Q6. Employment Record (Ex. "A", pp. 1-2)[54]:

In reviewing Mr. O'Rourke's answer to this question, we find it most peculiar that although Mr. O'Rourke identifies himself in item #10 as having been a "Legislator" by reason of his work on the Westchester County Board of Legislators from 1974 to 1982, he omits to mention the fact that he was its Chairman from 1978 until he resigned in late December 1982 to become Westchester County Executive.

It is against this backdrop that members of the Senate Judiciary Committee are invited to read the accompanying affidavit by Richard Barbuto, Esq., a lawyer with first-hand knowledge of Mr. O'Rourke during that period (Ex. "F"). Mr. Barbuto, who ran for Congress in 1990, is particularly knowledgeable concerning the facts and circumstances as to how Mr. O'Rourke succeeded--with the aid of Anthony Colavita, then Westchester Chairman of the Republican Party (see: Ex. "X")--in "parlaying" his position as Chairman of the Westchester County Board of Legislators into that of Westchester County Executive--in the face of a County Charter prohibition specifically barring a member of the County Legislature from being appointed to that post. (A copy of the applicable County law, embodying the Charter restriction, is Ex. "C" to Mr. Barbuto's Affidavit). The manner in which that "success" was achieved leaves little doubt that Mr. O'Rourke is prepared, when it suits his personal and political ends, to subvert the spirit of the law, as well as its letter.

In that connection, it bears emphasis that a federal judgeship carries lifetime tenure, and that such appointment--procured by Mr. O'Rourke through his political activities and connections--would probably be his last[55].

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[54] This question may be cross-referenced with ABA question #9(c)--which contains an added request for "the names, addresses and current telephone numbers for individuals who have direct personal knowledge about your work...". It may also be cross-referenced to City Bar questions #12 and #14.

[55] Interestingly, Mr. O'Rourke's first job was also the product of political connections:

> "The first job I ever had was in the City of New York. I was a welfare worker. I was recommended by the Democratic Reform Club, on 23rd Street." (11/29/89 testimony of Andrew O'Rourke before the NYS Commission on Government Integrity, p. 542)

Q8. Honors and Awards[56] (Ex "A", p. 3):

It may be noted that other than the scholarship given him as a student at Fordham Law School, the criteria for which is not stated, none of the awards listed by Mr. O'Rourke predate his tenure as County Executive--and would appear to be in recognition of his service in that capacity. Mr. O'Rourke does not identify any awards prior to that period for the years in which he was a practicing attorney or law student.

Q9. Bar Associations[57] (Ex. "A", p. 4):

Mr. O'Rourke does not set forth any details as to the four bar memberships he identifies, i.e., the dates they commenced or their duration. It may be noted that Mr. O'Rourke indicates no active involvement as an officer or committee member[58] of the associations mentioned, nor participation in any of their pro bono activities.

In building a law practice, Mr. O'Rourke, likewise, sought success by seeking a political advantage, without regard to principle--it being of no apparent concern to him which political party he belonged to:

> "Although conservative after the no-nonsense world of the military, O'Rourke said he became a Republican purely by chance. He had heard that the best way to establish a law practice was to join a political party. In Yonkers at that time, the Democratic Party met infrequently and the GOP every week." (August 16, 1989, Gannett) (emphasis added).

[56] This question may be cross-referenced to ABA question #28.

[57] This question may be cross-referenced with ABA question #26 and City Bar questions #33.

[58] Such inquiry, although not included in the Senate Judiciary Committee questionnaire--does appear in the relevant ABA question #26:

> "List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance..."

It may be noted that Mr. O'Rourke's listing of bar association memberships does not include a past membership in the American Trial Lawyers' Association or in the New York State Trial Lawyers' Association. This is surprising not only because Mr. O'Rourke represents himself as having done "all the trial work" for the offices with which he was associated when he was a practitioner (Ex. "A", p. 7, I-Ab2), but also because he states that he has "served as a faculty member of the American Trial Lawyers Association...". It is also worthy of mention that Mr. O'Rourke's past and/or present bar memberships reflect no activity in, or membership support for, the work of the American Bar Association.

Mr. O'Rourke vague statement in his response to this question that he "served as a faculty member of the American Trial Lawyers Association, giving classes and seminars on trial tactics in New York State" gives no substantive detail as to the number of hours his teaching involved"[59], the dates and precise locations thereof, or any other specifics as to the subject matter encompassed by the generic category of "trial tactics". Likewise, Mr. O'Rourke identifies no names of other individuals--either on the faculty or connected with the American Trial Lawyers Association as references to be contacted as to his indeterminate prior status as a "faculty member".

Q11. Court Admission[60] (Ex. "A", p. 4):

It should be stated that this question calls for information of obvious relevance[61]. However, the answers are meaningless without supplementation by information, not requested by the question, as to the extent of the nominee's appearances in the specific federal courts listed by him to which he is admitted--in terms of the number and nature of any such appearances.

Q12. Published Writings (Ex. "A", p. 4):

Mr. O'Rourke answers this question requesting the nominee to identify "published material", without disclosing the fact that he is the author of two paperback novels, The Red Banner Mutiny

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[59] Question #36 of the City Bar questionnaire inquires as to "teaching experience in law or related fields".

[60] This question may be cross-referenced to ABA question #8 and City Bar question #19.

[61] Michael Kavanaugh, whose nomination to a federal judgeship is presently pending before the Senate Judiciary Committee, is not even admitted to practice in federal court. Mr. Kavanaugh was the Republican candidate for Lieutenant-Governor in 1986 when Mr. O'Rourke was running for Governor.

and Hawkwood, (Ex. "BBB"). Such omission is significant since the publication of both those books is of relatively recent date and the question specifically asked for a listing of:

> "titles, publishers, and dates of books, articles, reports, or other published material you have written or edited".

Mr. O'Rourke, however, expressly limits his response to what he identifies as a "partial listing of articles written by me on legal topics". Mr. O'Rourke does not explain why his answer does not encompass all published writings--legal and non-legal--which is, after all, the question asked[62].

All of Mr. O'Rourke's identified articles pre-date his tenure as County Executive--and, presumably, these are the materials that he not only proffered to the Senate Judiciary Committee, but to the ABA in answer to its request for "at least five examples of legal articles, books, briefs, or other legal writings which reflect your personal work" (ABA #26).

Mr. O'Rourke completely ignores that portion of the question as specifically calls for "all speeches by you on issues involving constitutional law or legal policy", as well as any "press reports" relative thereto. This omission is extraordinary considering that Mr. O'Rourke has given of hundreds of speeches as Westchester County Executive and as a gubernatorial candidate of the State of New York--many of which can be presumed to have addressed areas touching upon "constitutional law or legal policy".

Indeed, in his answer to I-Q19 (Ex. "A", p. 9), Mr. O'Rourke claims "to have dealt with some of the major issues of our time, including the legal aspects of each area"--identifying therein "transitional housing for the homeless", "establishment of an AIDS unit", "affirmative action", "government contracts", "ethics legislation" and "welfare reform requiring work for benefits". Yet, no speeches or press reports relative thereto have been supplied by him.

In view of the fact that there is an "Office of Public Affairs" (tele: 914-285-2930) maintaining speeches and news clippings for the County Executive, located on the same floor as his office, such omission gives additional ground for inquiry.

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[62] It may be noted that question #35 of the City Bar questionnaire is limited to "articles for publication".

Q14. Judicial Office[63] (Ex. "A", p. 5):

Mr. O'Rourke has no judicial experience on either the trial or appellate level--nor any court-related experience, even as a law clerk (see Ex. "A", p. 6: Aa1). Nor does he claim any relevant experience in an adjudicative capacity, as an arbitrator or judicial hearing officer. This should be all the more disqualifying, in view of the fact that at this point, Mr. O'Rourke has not been practicing law for nearly ten years (Ex. "A", p. 7: Ac1), and the limited nature of his federal litigation experience in his own practice prior thereto.

Q15. Citations[64] (Ex. "A", p. 5):

Since Mr. O'Rourke has no judicial workproduct for evaluation, the request for citations of his "ten most significant opinions" written by him and additional information predicated on prior judicial experience, does not apply. No counterpart evidence is offered by him showing his legal scholarship or workproduct in connection with his private practice or as a Member and Chairman of the County Board of Legislators.

Q16. Public Office[65] (Ex. "A", p. 5):

Mr. O'Rourke's political credentials, quite plainly, are the true basis for his judicial nomination. It is widely believed that Mr. O'Rourke was promised a federal judgeship in return for his running against Governor Mario Cuomo in the 1986 gubernatorial election (Ex. "B", p. 2). Senator D'Amato apparently believes that federal judgeships are suitable rewards for such political loyalty--demonstrating this not only by his recommendation of Mr. O'Rourke, but also of Michael Kavanaugh, Mr. O'Rourke's running mate in that gubernatorial race. We understand that the Senator's recommendation of Mr. Kavanaugh, like that of Mr. O'Rourke, has already received the blessing of President Bush's nomination and is also awaiting confirmation by the Senate.

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63 This question may be cross-referenced to ABA question #14a.

64 This question may be cross-referenced with City Bar question #43, #44.

65 This question may be cross-referenced with ABA questions #14b and #15 and City Bar question #13.

Q17 Legal Career[66] (Ex. "A", p. 6):

Qb2. (Ex. "A", p. 6):

Mr. O'Rourke's vague and uninformative answer does not identify the parameters of the "cross section of the social and economic life in Westchester County" from which his "typical former clients" were drawn, and would furnish no basis on which to determine conflict of interest or predicate a recusal motion.

Qc1. (Ex. "A", p. 7):[67]

This question is awkwardly and ambiguously answered. Mr. O'Rourke prefaces his answer by stating: "I submit the following comments"--leading the reader to believe that more than a single comment will ensue. However, Mr. O'Rourke's one and only comment does not answer the precise question asked, i.e. whether the nominee appeared in court "frequently, occasionally, or not at all". His response of "regularly" is not one of the indicated answers--and gives no idea of how frequent "regularly" is.

Mr. O'Rourke's failure to answer the second part of the question connotes that there was no variation in the frequency of his court appearances during his years of private practice. This would be questionable in light of his answer to I-Q6 relative to his employment (Ex. "A", pp. 1-2). In I-A6, Mr. O'Rourke acknowledges part-time employment in a legislative capacity from 1974 to 1982. As noted, he failed to disclose he was also Chairman of the County Board of Legislators from 1978 to 1982, and actively seeking the nomination for County Executive, all of which may reasonably be assumed to have impacted on the frequency of his court appearances in his private practice.

Qc2. (Ex. "A", p. 7):

Mr. O'Rourke's answer to this three-part inquiry calling for the "percentage" of appearances in various courts--starting with the federal courts--is completely non-responsive. Mr. O'Rourke does not respond at all to the inquiry as to federal courts. Nor does he provide any response to his appearance in "other courts". His only answer relates to "state courts of record"--as to which he

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66 This question may be cross-referenced with ABA questions #9a-d, 10, 11, 12--with which it bears a verbatim resemblance.

67 The ABA questionnaire breaks up this question into two categories: ABA question #11 refers to "the last five years"; and ABA question #12 "prior to the last five years". Presumably, Mr. O'Rourke was only able to respond to ABA question #12--and did so with answers identical to those he supplied to the Senate Judiciary Committee's I-Qc1, Qc2, Qc3, Qc4, Qc5.

does not supply a percentage, but, instead, gives the vague answer that such appearances constitute the "majority"--which can be anything from 51 percent on up.

Mr. O'Rourke attempts to explain his failure to give percentages by rephrasing the question to suggest it had asked for "exact percentages". Since that was not the question, Mr. O'Rourke presumably was unable even to offer reasonable estimates as to his appearances in federal and other courts.

An adverse inference may be drawn by Mr. O'Rourke's failure to give a percentage of his federal court appearances.

Qc3. (Ex. "A", p. 7):

Mr. O'Rourke's answer to this question should be contrasted with his preceding answer, which is part of the same question. Indeed, notwithstanding his "present lack of case files" to which his prior answer had referred, he is able to state "approximately" the percentage of his litigation which was civil and criminal, divided neatly into 75% and 25% respectively.

Qc4. (Ex. "A", p. 7):

Again, notwithstanding his previously alleged "present lack of files", Mr. O'Rourke purports to approximate the number of cases he tried to conclusion when he was practicing law as a maximum per year of "three" cases. Mr. O'Rourke does not indicate how many of those three were federal cases. Mr. O'Rourke also completely ignores the other part of the question requesting information as to whether he was "sole counsel, chief counsel, or associate counsel" in those "two or three" cases he was trying each year.

It should be noted that although the question expressly excludes any interest in information about settled cases, Mr. O'Rourke's volunteered statement that "many others were settled prior to or after jury selection" is another example of unhelpful vagueness. He does not indicate the extent and nature of the litigation involved in the settled cases, any significance to the settlements themselves, or the number or amount on a yearly basis those settlements represented.

Qc5. (Ex. "A", p. 7):

Notwithstanding his aforestated "present lack of files", Mr. O'Rourke is able to approximate that half of his "two or three cases per year" that he tried to conclusion were jury trials. Since his actual trials to conclusion are so few in number, Mr. O'Rourke should have been able to readily draw upon these cases when he responded to question I-Q18 requesting "the ten most significant litigated matters which you personally handled" (Ex.

"A", pp. 8-9).

Q18. LITIGATION:

This question asks for "the ten most significant litigated matters which you personally handled"--without the restriction appearing in I-Qc4 that the cases identified be those "tried to verdict or judgment (rather than settled)". A full discussion of Mr. O'Rourke's incomplete and demonstrably dishonest response to this important question has been detailed hereinabove.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC) (Ex. "A", p. 13):

Annexed hereto as Ex. "CCC" is an Affidavit of Richard Berenson, a Certified Public Accountant, attesting to his review of the financial information provided by Mr. O'Rourke. Mr. Berenson's analysis indicates that--like the rest of Mr. O'Rourke's answers--his financial presentation is similarly non-responsive, incomplete, evasive, and misleading.

III. GENERAL (PUBLIC) (Ex. "A", p. 12):

Q1. (Ex. "A", p. 12):[68]

Mr. O'Rourke falls back on his "lack of files" from the period in which he practiced--more than nine years ago--to justify his stated inability to list "specific instances and the amount of time devoted" to "serving the disadvantaged". Although Mr. O'Rourke states that he "routinely accepted criminal defense and family court matters", he claims to be unable to list any "specific instances and amounts of time devoted thereto". He provides no estimate of the number of such cases he handled or any other particulars relative thereto. Nor does Mr. O'Rourke set forth what efforts, if any, he has made to obtain such information. Mr. O'Rourke's unresponsive answer is non-probative of any fact stated.

Mr. O'Rourke's final sentence is vague, as well as misleading. He does not say that the "community services" he rendered to "local civic and school PTA groups and church activities, such as parish groups", would qualify as "public interest legal service".

Canon 2 of the lawyers' Code of Professional Responsibility specifically identifies the ways in which a lawyer may discharge the responsibility of "pro bono publico" service:

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[68] This question may be cross-referenced with the more general ABA question #29.

"(1) professional service at no fee--or a reduced fee to persons of limited means or to charitable groups or organizations;

(2) by service in activities for improving the law, the legal system, or the legal profession;

(3) by financial support for organizations that supply legal services to persons of limited means".

Mr. O'Rourke does not state that he performed any legal services for the "local civic and school PTA groups and church activities, such as parish groups" he refers to, which are unidentified in any more specific way. One might presume that Mr. O'Rourke does not require his "case files" to name such groups so that the nature and extent of his "community services" on their behalf could be more accurately ascertained.

Q2. (Ex. "A", p. 12):

Mr. O'Rourke's response to this question concerning membership in any discriminatory organization is less than candid. Although stating that he has never knowingly belonged to any organization which invidiously discriminates, Mr. O'Rourke elsewhere acknowledges his membership at the Westchester Country Club in his answer to I-A10 (Ex. "A", p. 4), It is well known that the Westchester Country Club maintained discriminatory admissions policies until quite recently. As shown by the annexed news items (Ex. "DDD"), it required a decision by the U.S. Supreme Court, the pressure of the Urban League in White Plains, and the potential economic loss of the Annual PGA golf event before the Westchester County Club opened its doors to its first black members.

Q5. (Ex. "A", p. 12):

Mr. O'Rourke's response is in keeping with the nebulousness and abstractions of his previous answers. Although Mr. O'Rourke served in both legislative and executive capacities and can be presumed to have a wealth of experience not only in those branches, but in their continual interface with the courts, his response reflects no concrete application of his practical experience. It would be useful to have Mr. O'Rourke discuss his contacts with the courts during his legislative and executive career and provide a more thoughtful and in-depth response to the question, including how and whether those experiences were formative of his present restrictive philosophy.

Mr. O'Rourke's conservativism, doubtless, bolstered his nomination by the President. Mr. O'Rourke's projected judicial self-restraint, taken together with his comment that "It is

possible a novel case may come along" suggests that he would tend to ignore the novelty of particular cases before him and would not be open to creative, open-minded judging.

* * *

CONCLUSION

We look forward to discussing our submission in greater detail at the upcoming confirmation hearings and answering any questions Committee members may have relative thereto. Based upon our experience, we would also be pleased to share our thoughts as to recommendations we would make to safeguard against recurrence of unworthy judicial nominations of this sort.

Most respectfully,

DORIS L. SASSOWER
Director, Ninth Judicial Committee

ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

Enclosures

PROFILE

NINTH JUDICIAL COMMITTEE is an unfunded citizens' group of lawyers and laypeople dedicated to a quality judiciary. It was founded in 1989 by Eli Vigliano, Esq., in response to the trading of state court judgeships by the major party leaders in the Ninth Judicial District of New York. The Ninth Judicial Committee has since spearheaded two state court cases challenging the political control of judicial nominations: Castracan v. Colavita in 1990 and Sady v. Murphy in 1991. The odyssey of those two cases in the state courts was outlined in a recent letter to Governor Cuomo's Task Force on Judicial Diversity (annexed as Ex. "Y" to the Committee's submission). The related federal case of Maxey v. Schaeffer is presently pending in the Federal Court of the Southern District of New York.

DORIS L. SASSOWER, Director of the Ninth Judicial Committee, is a cum laude graduate of New York University Law School, where she was a Florence Allen Scholar (named for the first woman to serve as a Chief Judge of a federal appeals court). Following her admission to the bar in 1955, she was appointed, in 1956, to work for one of the foremost champions of court reform--Arthur T. Vanderbilt, then Chief Justice of the Supreme Court of the State of New Jersey, for whom she worked until his death in 1957.

Returning to private practice (in which she remained for more than thirty-five years), she continued her interest in improving the quality of the judiciary as President of the New York Women's Bar Association from 1968-69 and became a leader of the women's rights movement before there was a recognized "movement". She actively promoted the importance of increasing the number of women in the legal profession and on the bench, a subject on which she spoke before the National Conference of Bar Presidents in 1969--the first woman ever to address that body.

In 1970, she became President of Phi Beta Kappa Alumnae in New York, and in 1971, she represented the New York Women's Bar Association on one of the earliest judicial screening panels set up in New York County. An article which she wrote about her experience, expressing her views about the value of pre-nomination screening, was published on the front page of the New York Law Journal on October 22, 1971. Thereafter, the New York State Bar Association invited her to become the first woman member of its Judiciary Committee.

In that capacity, she served for eight years--in which she spent hundreds of hours, pro bono, interviewing candidates for the New York State Court of Appeals, the Appellate Division of the New York Supreme Court, and the state Court of Claims.

A Fellow of the Academy of Matrimonial Lawyers and winner of numerous awards, in 1973, she was named by the American Bar Association as its first woman Chair of the National Association of Lawyers and Social Workers. In 1981, the National Organization for Women gave her a Special Award in recognition of her work on legislative reform of New York's divorce law and for her "outstanding efforts on behalf of women and children in the area of Family Law".

In June 1989, she was honored by election to the Fellows of the American Bar Foundation, "an honor reserved for less than one-third of one percent of the practicing bar in each State", awarded "to lawyers whose professional, public, and private careers have demonstrated outstanding dedication to the welfare of their communities and to the objectives of the American Bar Association...".

In 1990, as pro bono counsel to the NINTH JUDICIAL COMMITTEE, she brought the lawsuit of Castracan v. Colavita, to challenge the manipulation of state court judgeships by political party bosses--which was dismissed without an adjudication on the merits.

On June 14, 1991, she was suspended from the practice of law immediately, indefinitely, unconditionally--and without any hearing--five days after The New York Times reported her intention to take the Castracan case to the Court of Appeals. This has not silenced her from speaking forcefully on the critical issues of reform of the judicial selection process.

The within submission by her as Director of the Ninth Judicial Committee reflects her continuing commitment to the fundamental democratic principles involved.

ELENA RUTH SASSOWER, Coordinator of the Ninth Judicial Committee, is the daughter of Doris L. Sassower. She is also the daughter of George Sassower[1], a lawyer for nearly 40 years, who paid an even more exorbitant price than her mother for his courage in standing up to--and speaking out against--the corruption of our judicial system.

In July 1974 when she was 18 years old, Elena Sassower was featured by the news media who made quite a fuss over the fact that she was the "first on line" to hear the case of U.S. v. Richard Nixon at the Supreme Court. Her photograph not only appeared on the front page of the July 8, 1974 issue of The New York Times, but news items about her were carried as far as the front-page of the Bankok World. She hopes that the substantive

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[1] Doris Sassower and George Sassower were divorced some years ago, a result of the stresses of battling against unfit judges.

issues documented by the within submission will receive no less media coverage--since they deserve far more.

When not working, pro bono, on behalf of the Ninth Judicial Committee, Elena Sassower is a Hebrew school teacher.

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DORIS L. SASSOWER, born New York, N.Y., September 25, 1932; admitted to bar, 1955, New York; 1961, U.S. Supreme Court, U.S. Claims Court, U.S. Court of Military Appeals and U.S. Court of International Trade. *Education:* Brooklyn College (B.A., summa cum laude, 1954); New York University (J.D., cum laude, 1955). Phi Beta Kappa. Florence Allen Scholar. Law Assistant; U.S. Attorney's Office, Southern District of New York, 1954-1955; Chief Justice Arthur T. Vanderbilt, Supreme Court of New Jersey, 1956-1957. President, Phi Beta Kappa Alumnae in New York, 1970-71. President, New York Women's Bar Association, 1968-69. President, Lawyers' Group of Brooklyn College Alumni Association, 1963-65. Recipient: Distinguished Woman Award, Northwood Institute, Midland, Michigan, 1976. Special Award "for outstanding achievements on behalf of women and children," National Organization for Women—NYS, 1981; New York Women's Sports Association Award "as champion of equal rights," 1981. Distinguished Alumna Award, Brooklyn College, 1973. Named Outstanding Young Woman of America, State of New York, 1969. Nominated as candidate for New York Court of Appeals, 1972. Columnist: ("Feminism and the Law") and Member, Editorial Board, Woman's Life Magazine, 1981. Author: Book Review, *Separation Agreements and Marital Contracts,* Trial Magazine, October, 1987; *Support Handbook, ABA Journal,* October, 1986; Anatomy of a Settlement Agreement Divorce Law Eduction Institute 1982 "Climax of a Custody Case," *Litigation,* Summer, 1982; "Finding a Divorce Lawyer you can Trust," *Scarsdale Inquirer,* May 20, 1982. "Is This Any Way To Run An Election?" *American Bar Association Journal,* August, 1980; "The Disposable Parent: The Case for Joint Custody," Trial Magazine, April, 1980. "Marriages in Turmoil: The Lawyer as Doctor," Journal of Psychiatry and Law, Fall, 1979. "Custody's Last Stand," Trial Magazine, September, 1979; "Sex Discrimination-How to Know It When You See It," *American Bar Association Section of Individual Rights and Responsibilities Newsletter,* Summer, 1976; "Sex Discrimination and The Law," *NY Women's Week,* November 8, 1976; "Women, Power and the Law," *American Bar Association Journal,* May, 1976; "The Chief Justice Wore a Red Dress," *Woman In the Year 2000,* Arbor House, 1974; "Women and the Judiciary: Undoing the Law of the Creator," *Judicature,* February, 1974; "Prostitution Review," *Juris Doctor,* February, 1974; "'No-Fault' Divorce and Women's Property Rights," *New York State Bar Journal,* November, 1973; "Marital Bliss: Till Divorce Do Us Part," *Juris Doctor,* April, 1973; "Women's Rights in Higher Education," *Current,* November, 1972; "Women and the Law: The Unfinished Revolution," *Human Rights,* Fall, 1972; "Matrimonial Law Reform: Equal Property Rights for Women," *New York State Bar Journal,* October, 1972, "Judicial Selection Panels: An Exercise in Futility?", *New York Law Journal,* October 22, 1971; "Women in the Law: The Second Hundred Years," *American Bar Association Journal,* April, 1971; "The Role of Lawyers in Women's Liberation," *New York Law Journal,* December 30, 1970; "The Legal Rights of Professional Women," *Contemporary Education,* February, 1972; "Women and the Legal Profession," *Student Lawyer Journal,* November, 1970; "Women in the Professions," *Women's Role in Contemporary Society,* 1972; "The Legal Profession and Women's Rights," *Rutgers Law Review,* Fall, 1970; "What's Wrong With Women Lawyers?", Trial Magazine, October-November, 1968. Address to: The National Conference of Bar Presidents, Congressional Record, Vol. 115, No. 24 E 815-6, February 5, 1969; The New York Womens Bar Association, Congressional Record, Vol. 114, No. E5267-8, June 11, 1968. Director: New York University Law Alumni Association, 1974; International Institute of Women Studies, 1971; Institute on Women's Wrongs, 1973; Executive Woman, 1973. Co-organizer, National Conference of Professional and Academic Women, 1970. Founder and Special Consultant, Professional Women's Caucus, 1970. Trustee, Supreme Court Library, White Plains, New York, by appointment of Governor Carey, 1977-1986 (Chair, 1982-1986). Elected Delegate, White House Conference on Small Business, 1986. Member, Panel of Arbitrators, American Arbitration Association. *Member:* The Association of Trial Lawyers of America; The Association of the Bar of the City of New York; Westchester County, New York State (Member: Judicial Selection Committee; Legislative Committee, Family Law Section), Federal and American (ABA Chair, National Conference of Lawyers and Social Workers, 1973-1974; Member, Sections on: Family Law; Individual Rights and Responsibilities Committee on Rights of Women; 1982; Litigation) Bar Associations; New York State Trial Lawyers Association; American Judicature Society; National Association of Women Lawyers (Official Observer to the U.N., 1969-1970); Consular Law Society; Roscoe Pound-American Trial Lawyers' Foundation; American Association for the International Commission of Jurists; Association of Feminist Consultants; Westchester Association of Women Business Owners; American Womens' Economic Development Corp.; Womens' Forum. Fellow: American Academy of Matrimonial Lawyers; New York Bar Foundation.

"AV" rating
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