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11 pages

January 8, 1998

Jerome J. Shestack, President
American Bar Association
c/o Wolf, Block, Schorr & Solis-Cohen
12th Floor Packard Building
S.E. Corner 15th & Chestnut Streets
Philadelphia, Pennsylvania 19102-2678

Dear President Shestack:

Following up our telephone conversation on Tuesday, January 6th, I will be sending you, by express mail, CJA's correspondence relative to Governor Pataki's appointment of Andrew O'Rourke to the Court of Claims. Such appointment required that Mr. O'Rourke be found "highly qualified" by the State Judicial Screening Committee.

For immediate purposes, I enclose the December 22nd Gannett article, "*O'Rourke Could Be Wearing Judge's Robes in January*", showing that the State Judicial Screening Committee had reservations about Mr. O'Rourke's qualifications inasmuch as he had not practiced law for 15 years. Mr. O'Rourke allayed its concerns by "remind[ing] the committee that he was rated qualified by the New York City Bar Association and the American Bar Association when he was nominated for the federal judgeship."

Our critique -- which was transmitted to you under a May 22, 1992 coverletter -- pierced the veil of secrecy that surrounds the federal judicial screening process and exposed that the ABA rating was not the product of meaningful investigation at all. The pivotal question on the ABA's questionnaire requiring the prospective nominee to describe his "ten most significant litigated matters" is virtually identical to the question that appears on the U.S. Senate Judiciary Committee's questionnaire. Indeed, Mr. O'Rourke admitted to a Gannett reporter that the three cases that he provided to the Senate Judiciary Committee in response to that question were the only cases he provided to the ABA's Standing Committee on Federal Judiciary. A copy of our November 2, 1992 fax to the reporter, reflecting that fact, is enclosed.

As you know, Mr. O'Rourke's response to the question as to his "ten most significant litigated matters" was the centerpiece of our critique, which devoted the first 20 pages to it. We demonstrated, over and over again, Mr. O'Rourke's multitudinous misrepresentations about those cases -- and that our investigation of the case files and interviews with persons having first-hand knowledge of the facts revealed him to

have been an incompetent and unethical practitioner. Indeed, our critique showed that his incompetence and insensitivity to basic conflict of interest principles had actually generated one of the three cases he identified as being among his "most significant".

The ABA's failure to meaningfully investigate Mr. O'Rourke's representations of his credentials -- and its professional and ethical duty to take steps to withdraw the rating of "qualified", which a "substantial majority" of its Standing Committee on Federal Judiciary conferred upon him, has been the subject of enormous correspondence from us. This includes our enclosed November 11, 1992 letter to then ABA President J. Michael McWilliams. Quoting Rule 8.2(a) of the ABA's Model Rules of Professional Conduct, our letter stated:

"In the event the ABA leadership does not recognize its obligation to retract a rating it knows to be false, we ask that you, as ABA President, refer our critique and all correspondence relative thereto to the ABA's Standing Committee on Ethics and Professional Responsibility with a request for a formal opinion."

That remains our unequivocal position -- and we urge that such an opinion be expeditiously obtained, if the rating is not withdrawn. Pending such opinion, we request that the ABA *immediately* notify the New York State Senate Judiciary Committee, presently scheduled to rubber-stamp this nomination on Tuesday, January 13th, that it is examining our critique and its ethical and professional obligation in light of the fact that Mr. O'Rourke used the ABA rating for the federal judgeship to bootstrap the issue of his qualifications for a state judgeship. Indeed, enclosed is a copy of our December 26th letter to Mr. O'Rourke who has not denied that he did so use the ABA rating to procure his "highly qualified" rating from the State Judicial Screening Committee. The exhibits annexed to that letter include our New York Times' Letter to the Editor, published on July 17, 1992, under the title "*Untrustworthy Ratings?*" -- which is faxed herewith, together with our November 16, 1996 published Letter to the Editor, "*In Choosing Judges, Pataki Creates Problems*".

It should be obvious that had the ABA acted in accordance with its ethical and professional duty five years ago -- when we first sent it our critique and implored it to take corrective steps -- Mr. O'Rourke would never have been able to parlay that rating for a state court appointment. A similar request has been made to the City Bar.

We look forward to your leadership. Thank you.

Yours for a quality judiciary,



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

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