

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY HAND

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December 26, 1997

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

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

Dear Mr. O'Rourke:

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours for a quality judiciary,



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

Enclosures

cc: See next page

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