



NINTH JUDICIAL COMMITTEE

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FAX COVER SHEET

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TIME

TO: NEW YORK OBSERVER, ATT: Terry Golway

FAX NUMBER: 212-688-4889 (tele: 212-755-2400)

This fax consists of a total of ⁴ pages. If there is a question as to the transmittal, please call (914) 997-8105.

FROM: Elena Ruth Sassower, Coordinator

Dear Terry:

Thanks ever so much for meeting with me yesterday. I promise you this will be one of your "ten most significant" stories.

In answer to your question as to what I believed were Mr. O'Rourke's chances for getting the federal judgeship--I refer you to yesterday's Gannett column by Milt Hoffman, the title of which reads: "O'Rourke's chances for judge -- 1 in 4" and concludes with the line "...you can't be too sure that White House phone won't ring for O'Rourke again".

The foregoing is a perfect example of the kind of nonsense that Gannett has been presenting the public--to boost O'Rourke's poll ratings--while, simultaneously, suppressing the documentary evidence--presented by our critique--as to the political deal that produced the nomination and Mr. O'Rourke's lack of actual judicial qualifications.

The press continues to waive Mr. O'Rourke's judicial nomination before the public as a meaningful credential. Our prediction is that when O'Rourke publicly announces his decision to run for re-election as County Executive, it will be in the context of his great dedication "to the people of Westchester"--compelling him

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to "sacrifice" his "1 in 4" chance for a federal judgeship. Undoubtedly, the press will be at his side giving running commentary on Mr. O'Rourke's noble "sacrifice" of his long-standing judicial ambitions.

I'm sure I don't have to tell you that there are many many important stories in this one story--including the role being played by Senator Moynihan. Indeed, the claim made in Mr. Hoffman's column that the arrangement between Moynihan and D'Amato "takes some political partisanship out of the federal judicial selection system" CAN AND SHOULD be challenged with the evidence that such arrangement permitted--with Moynihan's approval--D'Amato's recommendation of the 1986 Republican gubernatorial ticket of O'Rourke and Kavanaugh.

I was very impressed by your question to me regarding the accolades heaped on Wachtler--because it shows your independence and willingness to examine contrary evidence. In that connection, we wrote 3 important letters to Governor Cuomo last year--copies of which we sent to then Chief Judge Wachtler. In pertinent part, our October 24, 1991 letter stated:

"...Castracan v. Colavita and Sady v. Murphy...presented to the Court of Appeals an historic opportunity to reverse the political impingement on the essential independence and integrity of the judiciary, which would have promoted judicial selection on merit, not party labels. In so doing, the Court would have fulfilled the intent of the framers of our State Constitution--who meant what they said when they gave 'the people' of New York the right to vote for their Supreme Court, Surrogate, and County Court judges. Instead, the Court of Appeals abandoned 'the people' of this State to the manipulations of politicians who see the voters' sole function as 'to be a rubber stamp'. These politicians have now gotten the 'go-ahead' from our highest court that they can freely commit the 'crimes against the franchise' which the Election Law was designed to prevent.

The Court of Appeals' refusal to hear those cases--affecting as they did the lives, liberty and fortunes of millions of people in this State--says more about that Court's commitment to a quality judiciary and the true administration of justice--than all of its public posturing in justification of Chief Judge Wachtler's current law suit against you..."

I will be in the City tomorrow--and will drop off a copy of those letters in the late afternoon. Should you wish to see them before then, let me know and I'll fax them to you.

Unlike Mr. O'Rourke, we do have files. Should you wish to review them, we would be glad to share them with you. They are devastating.

Warm regards.

Elena

P.S. I've written a letter to AP's top man, Louis Boccardi, which I'll also deliver to you tomorrow.

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O'Rourke's chances for judge — 1 in 4

Westchester County Executive Andrew P. O'Rourke's proposed 1993 budget released over the weekend is more than just a financial document, it is a political one as well. It is more than just a budget to stand on. It is a budget to run on.

You didn't have to delve very deeply into O'Rourke's two-inch thick main budget document to find the political message. There it was right in the opening sentence:

"The budget I present to you today is the second no-tax-levy-increase budget of three no-tax-levy increase budgets I intend to produce for this county."

Translation: Not only will he run for re-election next November on the fact that two straight budgets contained no increase in the tax levy, O'Rourke promised voters that 13 days after next year's election he plans to hold the line on the tax levy for a third straight year.

O'Rourke certainly sounded like someone who is concentrating on extending his service as county executive another four years. He is now finishing his 10th year and will have had almost 11 years in office next November when budget time rolls around again. But will he still be here then?

A year ago, very few people expected O'Rourke to still be here this year at budget time. Sen. Alfonse D'Amato had recommended to President Bush that he appoint O'Rourke as a federal judge, and Bush did just that, sending O'Rourke's name to the Democratic-controlled Senate where it languished in the Judiciary Committee with several dozen others.

Most people now believe that O'Rourke's chances of getting to the federal bench died Nov. 3 with the defeat of Bush, a fellow Republican. But



MILTON HOFFMAN

The decision on O'Rourke rests not so much with Bill Clinton but with Al D'Amato.

he still has a chance, a one-in-four chance, you might say.

The decision on O'Rourke's appointment to the federal court rests not so much with Democratic President-elect Bill Clinton but with D'Amato. That's because New York state's senators, thanks to the lead of Democratic Sen. Daniel Patrick Moynihan and with the concurrence and cooperation of Republican D'Amato, have formed and nurtured a unique agreement that takes some political partisanship out of the federal judicial selection system, as it pertains to New York state.

The policy states that the New York senator whose party occupies the White House makes recommendations for three of every four federal district court vacancies.

Moynihan started the practice in 1977, the first year he was in office. Up to that time, Republican Sen. Jacob Javits got to recommend all the judge-ships to Republican presidents Richard

Nixon and Gerald Ford. Moynihan took office at the same time Democratic President Jimmy Carter moved into the White House. Moynihan and Carter could have had a judge-nomination monopoly, but Moynihan established a bipartisan policy allowing Javits to recommend one of every four nominees. Moynihan said that no political party should have a monopoly on judicial appointments.

When he came into office with Republican President Ronald Reagan in 1981, D'Amato retained the policy. He got to recommend three of every four judges, and Moynihan one of every four.

The pendulum now swings back to Moynihan, who will get to select three of the four. But the fact D'Amato gets to select 25 percent of the judges keeps alive the O'Rourke dream of getting to the federal bench.

For the time being, however, O'Rourke must like the odds he is getting in his county job. In a public opinion poll taken last month for Gannett Suburban Newspapers, O'Rourke was found to have a favorable rating of 47.2 percent among Westchester voters compared with an unfavorable rating of 27.1 percent. Better yet, 52.4 percent approved of the way the county was managed and 27.5 percent disapproved.

As a practical politician, O'Rourke most certainly realizes that staying in office in White Plains is a better prospect than expecting a call from the White House. But then, you can't be too sure that White House phone won't ring for O'Rourke again.

Milton Hoffman is Editorial Page editor.