

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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33 pages

February 9, 1998

Joshua Pruzansky, President
New York State Bar Association

Dear President Pruzansky:

Belatedly, I am mailing to you today the package of materials relative to CJA's opposition to the O'Rourke nomination/confirmation to the Court of Claims -- including our 1992 critique documentint Mr. O'Rourke's absolute unfitness for *any* judicial office. It is imperative that you review them -- and direct them to the appropriate State Bar committees -- particularly in light of the claim of the Governor's office, responding to the State Bar's resolution, as reported on the front-page of last Monday's Law Journal:

"Governor Pataki's appointments are based on merit and the Governor is proud of his record on appointments."

According to that article, the Governor's spokesman stated he could not address the details of the resolution until he received it. We would appreciate if the State Bar would supply us any additional information about its resolution and any further response from the Governor's office.

As you may know, shortly after Mr. O'Rourke's confirmation, he requested to be employed as a "retired person" under Section 211 of the Retirement and Social Security Law so as to obtain -- in addition to his \$113,000 judicial salary -- an \$80,000 government pension. Incredibly, the OCA granted such approval in violation of the *express* requirements of Section 211. To cover up the unlawfulness of its approval, it has been misrepresenting Section 211.

Enclosed are CJA's January 30th letters to the OCA, calling for the waiver to be reconsidered, rescinded, and for an investigation of OCA counsel for misrepresenting Section 211. A copy of Section 211 is annexed as Exhibit "C" to our first letter to OCA deputy counsel John Eiseman. Exhibit "D" thereto is the January 27th letter of Senators Dollinger and Leichter to Chief Administrative Judge Jonathan Lippman.

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In fact, it is more than OCA counsel who has misrepresented Section 211. It is Chief Administrative Judge Lippman himself. Enclosed is a copy of CJA's February 6th memorandum to Senators Dollinger and Leichter, analyzing Judge Lippman's dishonest January 29th response to their letter. Additionally enclosed is the Senators' February 4, 1998 press release relying on that letter.

Based on what Section 211 *expressly* requires for a government employee to be re-employed as a "retired person", the State Bar should join us in calling for Judge Lippman's approval to be rescinded.

As I mentioned when I spoke with you last month, we have been working closely with Daniel Kolb, who chairs the City Bar's Judiciary Committee. May I suggest that you call him to discuss a joint Bar strategy (212-450-4000).

Regards.

Yours for a quality judiciary,



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

Enclosures

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INVENTORY OF TRANSMITTAL TO JOSHUA PRUZANSKY, PRESIDENT, NEW YORK STATE BAR ASSOCIATION

1. **May 1, 1992 Critique of Andrew O'Rourke's judicial qualifications and the federal judicial screening process, with Compendium of Exhibits**
2. **June 2, 1992 Supplement to the Critique**
3. **CJA's December 23, 1997 letter to the Governor's Counsel, James McGuire, calling upon the Governor to withdraw Mr. O'Rourke's nomination**
4. **CJA's December 26, 1997 letter to Andrew O'Rourke, calling upon him to substantiate the "highly qualified" rating**
5. **CJA's December 29, 1997 letter to the members of the State Judicial Screening Committee, calling upon them to withdraw the "highly qualified" rating**
6. **CJA's January 7, 1998 letter to Chief Judge Judith Kaye, requesting her assistance**
7. **CJA's January 9, 1998 letter to State Senate Judiciary Committee protesting its failure to respond to our informational inquiries and our opposition to Mr. O'Rourke's confirmation**
8. **CJA's January 13, 1998 hand-out to the Senators, "WHY YOU MUST VOTE AGAINST CONFIRMATION OF ANDREW O'ROURKE TO A \$113,000 COURT OF CLAIMS JUDGESHIP"**
9. **CJA's January 30, 1998 letter to Chief Administrative Judge Jonathan Lippman, calling for reconsideration and withdrawal of OCA waiver to Mr. O'Rourke and informational requests**
10. **CJA's January 30, 1998 letter to Chief Administrative Judge Jonathan Lippman, updating previous letter**
11. **CJA's February 6, 1998 memorandum to Senators Dollinger and Leichter, analyzing Chief Judge Lippman's misrepresentations about §211 of the Retirement and Social Security Law [Judge Lippman's 1/29/98 ltr and Senators' 2/4/98 press release annexed]**
12. **CJA's February 9, 1998 letter to Chief Administrative Judge Lippman, enclosing CJA's memorandum [referred-to February 1, 1998 letter to Chief Judge Kaye annexed]**