

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY CERTIFIED MAIL: RRR- Z-203-707-606

January 2, 1998

New York State Senate Judiciary Committee
Senator James J. Lack, Chairman
Room 413, The Capitol
Albany, New York 12247

ATT: Susan Zimmer, Clerk

RE: Opposition to Andrew O'Rourke's Confirmation to the
Court of Claims

Dear Ms. Zimmer:

Herein transmitted are three letters from the Center for Judicial Accountability, Inc. (CJA) pertaining to Governor Pataki's nomination of Andrew O'Rourke to the Court of Claims -- and CJA's opposition to it. They are: (1) CJA's December 23, 1997 letter to the Governor's counsel, James McGuire, calling upon the Governor to withdraw the nomination; (2) CJA's December 26, 1997 letter to Andrew O'Rourke, calling upon him to substantiate his "highly qualified" rating; and (3) CJA's December 29, 1997 letter to the members of the State Judicial Screening Committee, calling upon them to withdraw the Committee's "highly-qualified" rating of Mr. O'Rourke.

Additionally, this letter memorializes your statement to me on Wednesday, December 31, 1997, that the *earliest* date for Senate confirmation of Mr. O'Rourke nomination would be Tuesday, January 13th. If there is any change in the date, please let us know IMMEDIATELY. This letter also summarizes my several phone calls to the Senate Judiciary Committee giving notice of CJA's vehement opposition to confirmation and the existence of documentary proof of Mr. O'Rourke's unfitness for judicial office.

CJA's first call to the Senate Judiciary Committee was on December 15th -- the *first* business day after the Governor announced Mr. O'Rourke's nomination on Friday, December 12th. At that time, you had no information whatever about the nomination. Nor did you have any information on December 18th when I again called. Each time, I requested copies of whatever publicly-available materials you had on Mr. O'Rourke, as well as any materials about the Senate Judiciary's procedures

for the processing of these nominations. You told me that I should request same from the Secretary of the Senate -- whose phone number you gave me.

I specifically asked you about any questionnaires that the nominee is required to fill out as part of his confirmation. You indicated that you did not believe that the Senate Judiciary Committee required nominees to complete a questionnaire, but that David Gruenberg, Chairman Lack's counsel, would best be able to answer such inquiry. In each conversation, I repeatedly requested that Mr. Gruenberg or some other Committee staffer contact us, ASAP, about our opposition to Mr. O'Rourke's confirmation.

We received no call from Mr. Gruenberg nor anyone else from the Senate Judiciary Committee as to our announced opposition. True, you had indicated that Mr. Gruenberg was out until January 5th. However, according to an article, "*O'Rourke Could Be Wearing Judge's Robes in January*", which appeared in the Gannett newspapers on Monday, December 22nd,

"State Sen. James Lack, chairman of the Senate Judiciary Committee, said his staff was already at work, checking O'Rourke's references and contacting people who worked with him." (Exhibit "A")

I, therefore, called the Senate Judiciary Committee on December 22nd. In this third call, I spoke at length to Gina D'Antonio, Senator Lack's Administrative Assistant. I pointed out that in view of CJA's articulated opposition to the nominee, we would have expected that the first priority of the Committee staff would have been to contact us. Clearly, dispositive evidentiary proof of Mr. O'Rourke's unfitness for judicial office -- which is what I had stated we had -- would render superfluous any testimonial claims of Mr. O'Rourke's "references" and co-workers.

In fact, I told Ms. D'Antonio that part of that proof -- the Ninth Judicial Committee's 1992 report on Mr. O'Rourke's judicial qualifications -- was already in the possession of the Senate Judiciary Committee. I stated that on December 15, 1993, in conjunction with our testimony against Carmen Ciparick, I had given it in-hand to Ned Cole, the Senate Judiciary Committee's then counsel¹. I asked Ms. D'Antonio to see whether she could locate that 50-page critique and supporting 224-page compendium of exhibits from among the files pertaining to Judge Ciparick's confirmation and, if not, that she let us know ASAP so that another copy could be duplicated and sent up to the Committee.

¹ By letter dated December 22, 1993, we requested confirmation, *inter alia*, that the report would be made part of "the permanent record of the proceedings". A copy of that letter is annexed hereto as Exhibit "B", together with the written testimony it enclosed which explicitly identified the report as establishing the "crucial importance of public access to candidates' applications and the proof that screening panels do not necessarily undertake appropriate investigation" (at p. 8).

In our conversation on Wednesday, December 31st, you stated that you thought it would be easier if we just sent up another copy. However, before our non-profit citizens' organization is put to that effort and expense, we don't believe it is unreasonable to ask that you or some other member of the Senate Judiciary Committee staff identify what efforts -- if any -- the Committee has made to locate those documentary materials and articulate the Senate Judiciary Committee's policy -- in any -- for maintaining records pertaining to confirmation of judicial nominees and, in particular, nominees to the Court of Appeals, such as Carmen Ciparick.

In that last phone conversation, you also stated to me that the only materials you have on Mr. O'Rourke's nomination is a certificate of nomination from the Governor's office, dated December 11th. Although you read me its one or two sentence contents, your response to my request for a copy was that I would have to obtain it through the Secretary of State. Yet, later in the day, when I called up the office of the Secretary of State and spoke to Gail Wilson, the Secretary's Executive Secretary, she told me that such a request would go through the Senate Judiciary Committee. Ms. Wilson also stated that a request for resumes and other information about judicial nominees would be referred to the Senate Judiciary Committee for response².

We, therefore, reiterate our past, as well as current requests for information pertaining to the Senate Judiciary Committee's procedures for reviewing the qualifications of judicial nominees. We are, of course, especially interested in knowing what information you will be receiving from the Governor's office in substantiation of the State Judicial Screening Committee's "highly qualified" rating of Mr. O'Rourke's qualifications for the Court of Claims, and whether the Senate Judiciary Committee will be requiring him to complete any questionnaire or other forms. We request that all publicly-available information be provided to us without delay, most particularly, blank copies of any questionnaire or forms. We also request a copy of Mr. O'Rourke's certificate of nomination. You stated that the certificate arrived at the Senate Judiciary Committee during the week of December 22nd, when you were on vacation. Inasmuch as we would have expected the Governor's office to have immediately transmitted such certificate to the Senate Judiciary Committee -- if not on December 11th then shortly thereafter -- we would appreciate if you would provide us with a more precise date as to when it

² On June 11, 1996, I personally filed with the Secretary of the Senate a written request for "All publicly-available information bearing upon the qualifications of Gov. Pataki's 26 judicial nominees (5/26/96) being confirmed by the Senate". I made such written request because Mr. Gruenberg, who refused to provide CJA with copies of the nominees' resumes, told me that that is where I could get them. We received no response to that written request. According to Ms. Wilson, there is no record of it. In speaking with her on December 31st, she stated that it would have been referred to the Senate Judiciary Committee. I asked her that CJA's copy of the June 11, 1996 completed request form -- which I had faxed her after our initial conversation on December 18th (Exhibit "C") -- be considered a new request for that information.

January 2, 1998

arrived at the Senate Judiciary Committee. It seems rather unusual to us that it should have taken ten days or more for the Governor's certificate of nomination to reach you.

Yours for a quality judiciary,



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

Enclosures

cc: James McGuire, Counsel to Governor Pataki
Nan Weiner, Executive Director, Governor Pataki's Judicial Screening Committees
Paul Shechtman, Chairman, State Judicial Screening Committee
Gail Wilson, Executive Secretary to the Secretary of the Senate
Media

TRANSMISSION VERIFIED BY [illegible]

TIME : 01/02/1998 15:09
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE, TIME	01/02 14:51
FAX NO./NAME	15184256984
DURATION	00:17:30
PAGE(S)	24
RESULT	OK
MODE	STANDARD

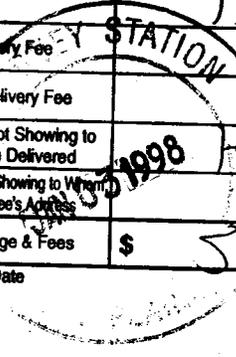
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