

SENATE JUDICIARY COMMITTEE
CONGRESS OF THE UNITED STATES

-----X
In the Matter of the Appointment of

ANDREW P. O'ROURKE

To a Lifetime Position as

A Federal Judge for the
Southern District of New York

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STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

RICHARD BARBUTO, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the courts of the State of New York. I am also admitted to the bar of the federal court for the Southern District of New York.

2. By way of background, I am presently employed as Vice-President and General Counsel at Towers Financial Corporation. In the interest of expediency, I annex a copy of my curriculum vitae, setting forth my credentials in greater detail.

3. At the outset, I wish to make known the fact that I have been politically active for many years. I am a registered Democrat. I have been both a town and village chairman, and I have been a candidate for elective office ten (10) times since 1979, including for the Westchester County Board of Legislators (1981), New York State Senate (1986), Village Justice (1990) and U.S. Congress (1990). I served once, when elected in 1986, as a Village Trustee of Croton-on Hudson, New York. I actively campaigned against Mr. O'Rourke when he sought re-election to the

EX "F"

Westchester County Board of Legislators in 1981 and when he ran for County Executive in 1983.

4. This Affidavit is submitted to express my opposition to the proposed appointment of Andrew P. O'Rourke to a lifetime position as a United States Judge. I have long been opposed to any judicial nomination of Mr. O'Rourke--ever since I first learned of his judicial aspirations, which have been a matter of public knowledge for many years, as I pointed out in my Letter to the Editor, published by the Gannett-Westchester Newspapers, on December 17, 1982 (Ex. "A" hereto). My opposition is based on personal knowledge of his character, conduct and competence, focusing--for present purposes--on two specific, direct actions by him and one general observation I have about Mr. O'Rourke.

5. I first publicly stated my opposition to Mr. O'Rourke's legally and ethically questionable behavior in the aforesaid Letter to the Editor. The occasion then was the "blatant disregard for the law" shown by Mr. O'Rourke, which enabled him to become County Executive.

6. The second instance involves the appointment of one of Mr. O'Rourke's campaign managers to a County Legislator position to provide a political "pay-off" for his services in getting Mr. O'Rourke state-wide visibility as a 1986 gubernatorial candidate and a further "YOM" ("you owe me") credit from the state and national Republican organizations. In that connection, I also wrote a Letter to the Editor, published

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in the Gannett Newspapers on March 29, 1985 (Ex. "B"), criticizing a similarly offensive manipulation of our system, in which Mr. O'Rourke was a participant.

7. In both cases mentioned, Mr. O'Rourke's involvement demonstrated utter lack of concern for the "appearance of impropriety", as well as its actuality.

POINTS OF OBJECTION

COUNTY EXECUTIVE APPOINTMENT:

8. In 1982, the question as to who would be Westchester's new County Executive arose as a result of the decision of the then County Executive, Alfred Del Bello, to run for Lieutenant-Governor in New York's gubernatorial race that year. It was widely reported that Mr. O'Rourke, then Chairman of the County Board of Legislators, was campaigning actively to gain support for that job from Anthony Colavita, then Chairman of the Westchester Republican Party.

9. Under the County Charter, a vacancy in the office of County Executive is filled at the next general election. Pending election, an interim appointment is made by the County Board of Legislators. When it was reported that Mr. O'Rourke was about to be appointed, public objection was raised that such an appointment would violate the County Charter, which prohibited appointment by the County Board of Legislators of one its members to serve as County Executive. As a result, Mr. O'Rourke participated in a transparent scheme to circumvent that absolute prohibition. A copy of the County Charter provision prohibiting

such appointment is annexed hereto as Ex. "C".

10. Despite the clear and unequivocal language of the County Charter, the strategy that Mr. O'Rourke, Mr. Colavita and the Republican majority of the County Board of Legislators undertook to have Mr. O'Rourke resign his position as Chairman and member of the County Board of Legislators, it being a sine qua non of such resignation that the Republican Board majority would then "rubber-stamp" Mr. O'Rourke's pre-arranged appointment. The entire process thus became a charade, rather than a reflection of democracy "under law".

11. It was this patent subversion of the County Law that I protested in the aforesaid December 17, 1982 "Letter to the Editor", as well as Mr. O'Rourke's role in causing other members of the County Board of Legislators to do so.

12. I still believe, as I did nearly ten years ago, that such conduct by Mr. O'Rourke reveals a gross disrespect for law, incongruous with the integrity of character which must be required for any judicial nomination--let alone for one of non-electoral lifetime tenure.

MR. O'ROURKE'S CAMPAIGN MANAGER'S APPOINTMENT TO THE WESTCHESTER COUNTY BOARD OF LEGISLATORS:

13. After Mr. O'Rourke took office as County Executive on January 1, 1983, and after his election that November as an incumbent, Mr. O'Rourke decided in 1986 that he would run as the Republican candidate for New York Governor.

14. Mr. O'Rourke's campaign manager was a Republican political consultant named Timothy Carey. It is fair to say that

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the quid pro quo for Mr. Carey's services as Mr. O'Rourke's campaign manager was a political appointment on the County Board of Legislators. With the identical strategy that proved so successful in making Mr. O'Rourke County Executive, as outlined above, Mr. O'Rourke enabled Mr. Carey also to frustrate the democratic process. An interim appointment by the Board was arranged for Mr. Carey by having a Republican County Board member resign--leaving an unexpired term. By law, such term is filled in the same way as the position of County Executive--by appointment of the County Board itself. Thus, Mr. Carey was appointed by the Republican majority of the County Board of Legislators--and, thereafter, enjoyed the benefits of incumbency in the subsequent general election.

15. Specifically, the way this was arranged was to have the incumbent Republican Board Member, Edward Gibbs, resign mid-term, after announcing he was "retiring". In fact, Mr. Gibbs moved into a \$70,000 job as a "consultant" to the County, as a reward for his cooperation. That done, Mr. Carey was, predictably, appointed by the Republican majority to this conveniently vacant seat. It must also be noted that in the 1983 redistricting process, my district was consciously redistricted--in obvious retaliation for my previously having spoken out, in print, about Mr. O'Rourke's "blatant disrespect for the law" in connection with his appointment as County Executive and for my 1981 campaign as the Democratic opponent of Edward Gibbs. Needless to say, from that point on, I was targeted as "an enemy"

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of Mr. O'Rourke's, who had to be gotten out of the way. Thus, my predominantly Democratic Village of Croton-on-Hudson and my announced candidacy for the County Board were at one and the same time eliminated as a future threat to continued Republican control of the County Board.

It must be noted further that because Mr. O'Rourke successfully "got away with it" when he became Westchester County Executive in January 1983, the tactic he used, relying on "incumbency power" and the technique of using "contracted-for" resignations as a means of giving the party in power the edge in political races, became the deplorable model for similar resignations and appointments of Republicans in local legislative races. I again wrote to the newspapers complaining about this pernicious practice in a Letter to the Editor, published in the Peekskill Evening Star on March 29, 1985 (Ex. "B"). Indeed, I was so concerned about it that I brought it to the attention of the Westchester County Board of Elections by my letter to that body, dated April 9, 1985 (Ex. "D").

JUDGESHIPS AS PARTISAN CAREER/PENSION PERKS:

16. The above story is one whose pattern is repeated throughout Westchester County, as to the Republican Party, and doubtless, nationwide, as to both parties. Gerrymandering by the party in power has come to be the way to get rid of political enemies, as well as to prevent the democratic process from altering incumbencies which do not reflect changing demographics. The result is crass political practices that result in rewarding

with judicial appointments those who assist in the subversion of the democratic process. It is clear that Mr. O'Rourke not only engaged in such subversive practices, but profited personally from them, through his callous participation in deliberate manipulations of elective office and vacancy laws that were designed to protect the democratic process by elimination of such corrupting use of governmental employment. Such involvement by Mr. O'Rourke requires rejection of his own proposed judicial appointment.

17. Such partisan political activity by a lawyer must no longer be the way to attain a judgeship, but, instead, should be viewed as a disqualification for a judicial aspirant. Only the most cynical could objectively view Mr. O'Rourke as even remotely qualified for a federal judgeship, or, indeed, for a judgeship of any kind.

18. I believe that the time has come for the Senate Judiciary Committee, as the highest body on judicial appointments in our nation, to express the moral leadership that has been avoided by state bodies and abdicated by the so-called "professional" organizations, such as the Westchester County Bar Association that avoided taking any position, and the American Bar Association that has--without any real investigation or analysis--expressed their approval of Mr. O'Rourke's "qualifications". I have read the critique prepared by the Ninth Judicial Committee on that subject, raising very serious questions as to the screening process which preceded the ABA's

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questions as to the screening process which preceded the ABA's "qualified" rating. I am pleased to state that I consider the work of the Ninth Judicial Committee as representing a major public service contribution to the improvement of the quality of the judiciary. Furthermore, I wish to state my full agreement with the views expressed by the Ninth Judicial Committee as to Mr. O'Rourke's lack of the requisite judicial qualifications.

CONCLUDING OBSERVATIONS

19. I attended and graduated from St. John's University Law School in 1965. It was a difficult three years. What caused me the most anguish was trying to understand THE LAW and justice; the black letter law and the spirit of the law. I made it through, and it was my deepest satisfaction to know that in becoming an "officer of the court", I was more than just an advocate for one side, but rather a participant in our system of justice.

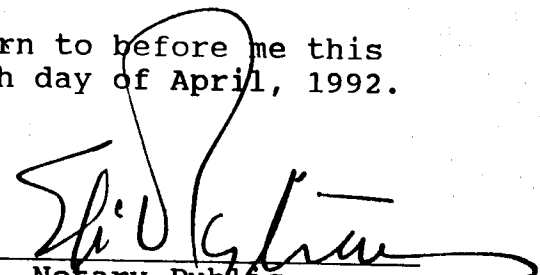
20. When Mr. O'Rourke did what he did, in each instance I have described, with my legal training, I could not help but feel outraged. I did what I could by writing Letters to the Editor and undertaking various political campaigns. A deep sense of concern still haunts me since I wrote my "Letter to the Editor" some ten years back: if this man could blind himself and his conscience to take a public office by such fraudulent means, and intends to become a judge, what kind of justice can we expect from him?

concern for your deliberation, too. At a time when individual lives and entire communities are sorely tried by darkly engineered political schemes, those who enjoy positions of public trust should be held to the highest ethical standards, and when they depart from it, should be impeached--not elevated.

22. Finally, I respectfully state that, if deemed necessary or appropriate, I am prepared to appear before the Senate Judiciary Committee to give oral testimony, subject to any questioning members might care to put to me.


RICHARD BARBUTO

Sworn to before me this
26th day of April, 1992.


Notary Public

ELI VIGLIANO
Notary Public, State of New York
No. 4967383
Qualified in Westchester County
Commission Expires June 4, 1992

RICHARD BARBUTO
45 Radnor Avenue
Croton-on-Hudson, New York 10520
(914) 271-6563 (212) 696-0505

EXPERIENCE: Loan risk/asset recovery management, workout and collection.

1974-Present Increasing hands-on and administrative responsibility and authority to restructure, negotiate workouts and collect hundreds of loans (commercial, real estate, equipment-lease), to prepare legal documentation and represent bank for loan restructure closings, to supervise computerized collection systems (CIC, TFC), to collaborate with lending, credit, and loan review officers for documentation and risk data, to prepare (own) and supervise (bank-wide) reports on classified and charged-off loans, to work directly with bank operations officers and senior management, to refer matters to outside bank counsel and to consult with other creditor and debtor attorneys. Positions with CNB and TFC also included direct legal representation and litigation against debtors through own law firm; currently outside counsel to both.

Richard Barbuto, Esq. 1989 - Present

- V.P. Community National Bank, 1987-1989
- V.P./Dir. Towers Financial Corporation, 1985-1987
- V.P. Central National Bank of New York, 1983-1984
- A.V.P. Citicorp Industrial Credit Inc., 1982-1983
- A.V.P. National Westminster Bank (USA), 1974-1981

1970-1974 Trial counsel: Miller Ouimete & Moran, Poughkeepsie, NY, New York City Corporation Counsel, Family Court Division, Michigan Mutual Insurance Company, Brooklyn, NY.

1967-1970 Manufacturers Hanover Trust Co., International Division Credit Analyst, Territory Assistant, Foreign governments.

1965-1967 Security Insurance Group, Workers' Compensation hearing attorney; Allstate Insurance Company, Casualty claims adjuster.

1966

Admitted to practice, New York and Federal Courts.

EDUCATION

B.A. (Economics) Iona College, New Rochelle, NY 1962. President, Tara Knights Society (campus leaders). J.D. St. John's University, School of Law, Brooklyn, NY, 1965. President, first and third year classes.

**TEACHING/
COMMUNITY**

Henry George School of Social Science, New York, NY: Trustee; Lecturer, Money and Banking, 1985-Present. Prior adjunct positions 1979-1988: Manhattanville College and Elizabeth Seton College (paralegal studies program); American Institute of Banking (law and banking).

Bread for the World, Washington, D.C.: Co-founder, 1969. Catholic Archdiocese of New York, 1970-Present: co-lecturer with wife in marriage, youth and family planning programs. Village Trustee, Croton-on-Hudson, NY, elected: 1986-1988 Term. Candidate (D) for New York State Senator, 1986 (38 S.D.) and for U.S. Congress, 1990 (21 C.D.N.Y.). Charter member, Issues Management Association, 1984.

PERSONAL

Married 1965. Five children. Health excellent.

Gannett Westchester Newspapers
Friday, December 17, 1982

Blatant disregard for law

Suddenly, after a year of speculation and maneuvering about who will be Westchester's county executive, a news item brings to the public eye a point of law that "a county legislator cannot be appointed county executive."

Incredibly, the report then goes on to describe a blatant abuse of that law by none other than the legislator who is actually the chairman of the Board of Legislators, the Honorable (?) Andrew O'Rourke.

His strategy is to resign as a legislator and wait a few days and then be appointed as Westchester's next county executive and then to seek confirmation by the majority of Republican legislators who are expected to rubber stamp what their party's leaders have ruled is in the best interests of Westchester's citizens. What a sham!

Interestingly, this farce is being executed to put into the executive branch of government a public official who has been reported for

years as wanting to be a judge. Imagine the "interpretations" of law that the public would experience.

What does "law," what does the democratic electoral process mean when such abuses are perpetrated on the voters of this county? It is enough of a farce to have this one county legislator push his political

Your views

party to abuse the law. What the public is next expected to accept is the vote that Mr. O'Rourke must obtain from his Republican colleagues who are also pledged as county legislators to uphold the law.

RICH BARBUTO
Croton

EX "A" (to "F")

From Our Readers

Selected, not elected

To the editor:

"Is the policy of selected, not elected, fast becoming the mainstay in our city's political system?" This question was asked by Paul Burns, Peekskill's Democratic Chairman, about the recent appointments of Republicans by Republicans to replace resignees on Peekskill's Common Council.

My answer is that it obviously is a policy. It is also a practice that calls out for legislation to stop it. This insidious use of incumbency power is clearly undermining our democratic form of government. Such a practice is no part of the American ideal of "government of the people, by the people..." Peekskill's leaders have made their government simply government of and by Republicans for the people. My interest in writing this is to help stop such political pollution.

I use the famous line from Abraham Lincoln's Gettysburg Address to question whether the way that Lincolnophile, Edward Gibbs obtained his present job in Republican-controlled County government, set a gross example for what is going on now in Peekskill.

Remember, Edward Gibbs ran for and won his 6th term on the Westchester County Board of Legislators. He then promptly resigned and the County's Republicans turned over his position to now-County Legislator Tim Carey. Mr. Carey then had just enough time to establish himself and them run as an incumbent.

I ask, "Did both the last Gibbs elections and the Carey election give voters and other politicians a good example of Republican abuse of incumbency power?" I ask "was Mr. Gibbs' easily won Republican seat,

made even easier with Croton and me gerrymandered out of his district, traded-in for the appointed Westchester County job he has now at \$70,000? I ask," was the trade arranged so that his selected Republican successor, Timothy Carey, could be paid back for his work on Republican campaigns: Lew Lehrman's for governor and Andrew O'Rourke's for County Executive?"

I say that the Peekskill Republicans appear to be closely following their upper-level government leaders in a monkey-see, monkey-doo electoral farce. Such practices add mightily to the cynicism and growing lack of participation of voters in our political process.

This all reminds me of my visit to the Washington, D.C. office of my Congressman (Robert Barry, R-Yonkers) when I was a student, possibly at 18-20 years old. I told him of my interest to be active in politics. He asked if I had "money and-or family in politics." When I said that I did not have either, he told me "to forget politics." I haven't forgotten politics, nor the lesson he taught me about what stinks in politics.

Peekskill's Republicans are using another fishy technique for political success: party-appointed incumbencies. We democrats (small d intended) must stop it! There is some law to minimize the effect of money in campaigns; there's nothing the people can do about nepotism. But I think that schemes to use contrived incumbency appointments should be considered some kind of fraud on the voters.

A copy of this letter is going to the Westchester County Board of Elections and to County Legislator Paul Feiner, who has introduced some legislation to deal with some

aspects of these interim-incumbency, electoral system abuses by Republicans in county government.

Richard Barbuto
Croton-on-Hudson

Mr. Barbuto is the chairman of the Croton Village Democratic Committee and ran against Mr. Gibbs in 1981.

EX. "B" (to "F")

WESTCHESTER COUNTY

§ 110.51

§ 110.51. Acting County Executive; vacancy.

1. During the absence or disability of the County Executive, the Deputy County Executive shall serve as Acting County Executive to perform the administrative duties of the County Executive. The County Executive shall designate in writing any one (1) of the following: Budget Director, Commissioner of Finance, Commissioner of Planning, Commissioner of Public Works, Commissioner of Parks, Recreation and Conservation, Commissioner of Social Services, Commissioner of Hospitals, Commissioner of Health, County Attorney, or Personnel Officer, as an Acting County Executive to perform the administrative duties of the County Executive during the absence or disability of the County Executive and Deputy County Executive. Such written designation shall be filed with the County Clerk and may be terminated and superseded at any time by the County Executive by written notice of such termination and supersession filed in the same manner as the original written designation. During the absence or disability of the County Executive, the Deputy County Executive and the Acting County Executive so designated, or during the absence or disability of the County Executive and the Deputy County Executive and while no Acting County Executive has been so designated, the Chairman of the County Board shall designate any one (1) of the above named to perform such administrative duties. The Acting County Executive shall have and exercise all of the powers of the County Executive except the power of removal.

2. If a vacancy occurs in the office of County Executive, either by removal, disqualification, death or resignation, it shall be filled at the next general election for the remainder of the unexpired term. Pending such election, the County Board shall designate the head of one (1) of the county departments, or any qualified elector of the county, other than a member of such board, to serve as County Executive. Pending the designation by the County Board of a County Executive and his subsequent qualification, the Chairman of the Board shall designate the head of one (1) of the county departments as an Acting County Executive.

(§ 20 of the Laws of 1937, Ch. 617; amended by the Laws of 1942, Ch. 625; L.L. No. 3-1960; L.L. No. 2-1969; L.L. No. 8-1985)

Ex "C" (to "F")

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45 Radnor Avenue
Croton-on-Hudson, NY 10520
April 9, 1985

Ms. Marion Cldi, Commissioner
Westchester County Board of Elections
White Plains, NY

Dear Ms. Cldi:

I am writing to bring the Board's attention to an electoral system matter that seems to be escalating in practice in our county.

I have enclosed a copy of a letter I wrote for your information and use. (Peekskill Evening Star, 3/29/85) As indicated in the letter, I also sent a copy to Mr. Paul Feiner, County Legislator, due to his efforts to establish some public control over the abuse he has also identified.

I am available for any other input you may require if further action is considered by the Board.

With kind regards,

Richard Barbuto

Enclosure

pc: The Honorable Paul Feiner

EX. "D" (to "F")