

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

BY FAX AND BY HAND

TO: GANNETT SUBURBAN NEWSPAPERS

ATT: Ron Patafio, Editorial Page Editor..... 696-8396
Phil Reisman, Metro Editor..... 694-5018
Robert W. Ritter, Editor/Vice President 696-8119
Bill Dentzer, David McKay Wilson,
Ed Tagliaferri, Bruce Golding

FROM: DORIS L. SASSOWER, DIRECTOR

DATE: JANUARY 6, 1998

RE: REPLY -- CORRECTION

Your December 27th news article, "*Judicial Reform Group Challenges O'Rourke Judgeship*" did not report the true facts about the Center for Judicial Accountability, Inc. (CJA), its efforts to stop Mr. O'Rourke's unworthy nomination to the Court of Claims, or the basis of its opposition. Nor did it correctly report the facts as to my status at the bar.

CJA is a national, non-partisan, non-profit citizens organization, working to reform the closed, dysfunctional, and politicized processes of judicial selection and discipline on national, state, and local levels. It is the successor to the local grassroots group, the Ninth Judicial Committee, formed more than eight years ago in the Ninth Judicial District of New York (Westchester, Putnam, Dutchess, Rockland, and Orange Counties) to challenge a 1989 judge-trading deal between Democratic and Republican leaders which disenfranchised voters by running identical slates of judicial candidates and the illegally-conducted judicial nominating conventions that implemented it. Back in November 1991, when we opposed Mr. O'Rourke's nomination to federal bench in the Southern District of New York, Gannett described us as "a group of lawyers and activists". Six years later, with solid achievements to our credit -- virtually all of which Gannett has suppressed -- you seek to impugn our work by calling us "a self-styled judicial reform group" -- as if there is -- or could be -- any doubt on the subject.

Among CJA's achievements, which Gannett has long withheld from the public, is our 50-page critique of Mr. O'Rourke's judicial qualifications, submitted by us to the U.S. Senate Judiciary Committee and Senate leadership in May 1992. Although Gannett also received a copy at that time, it censored *all* coverage about it throughout the summer of 1992, while publishing articles, columns, and editorials about Mr. O'Rourke's "stalled" nomination, which it attributed -- and continues to attribute -- to election-year politics. This, notwithstanding other Southern District judicial nominees were then being processed by the Senate Judiciary Committee -- and confirmed by the Senate. Any honest

appraiser of our critique would conclude that the critique was the death-knell of Mr. O'Rourke's federal court judgeship.

Supported by over 60 documentary exhibits, our critique, based on a six-month study, analyzed Mr. O'Rourke's written responses to a questionnaire he was required to fill out for the U.S. Senate Judiciary Committee. Over and again, we showed that Mr. O'Rourke's responses were false and misleading. The centerpiece of our critique was our analysis of the three cases Mr. O'Rourke described in response to the Senate Judiciary Committee's question asking him about his "ten most significant litigated matters". By investigating the actual case files and interviewing those with first-hand personal knowledge of the facts, we established Mr. O'Rourke's innumerable misrepresentations about those cases. We also showed that he had been an "incompetent and unethical" practitioner when he practiced law -- which was not since 1983.

Your December 27th article falsely claims that the basis of our opposition now -- and back in 1992 -- is Mr. O'Rourke's "lack of litigation experience", as reflected by his failure to supply ten cases to the U.S. Senate Judiciary Committee. You then uncritically repeat Mr. O'Rourke's pretense from 1992 that the reason he supplied only three cases was because the records of his law practice were "lost, misplaced or thrown out by his former law partner". In so doing, you totally ignore what our critique showed, i.e., that the Senate Judiciary Committee's question did not require case files and that to the extent Mr. O'Rourke needed them to refresh his recollection, they could be obtained from various sources, including court files, which are permanently maintained.

Although the readily-accessible court files of Mr. O'Rourke's law practice are clearly relevant to whether he is qualified to be a judge -- and portions of those files are exhibits to our critique analysis -- Gannett has steadfastly concealed from the public any information about what they show and about what our critique says about them. This, even while Gannett has unsuccessfully sued to open Mr. O'Rourke's sealed matrimonial litigation on the alleged ground that it is relevant to his judicial qualifications.

Gannett is well aware that our critique not only documented Mr. O'Rourke's absolute unfitness for any judicial office, but pierced the "veil of secrecy" surrounding the federal judicial screening process, exposing that the American Bar Association and Association of the Bar of the City of New York failed to properly investigate Mr. O'Rourke's representations of his credentials when they approved him for a federal judgeship. From Gannett's December 22nd article, "*O'Rourke Could Be Wearing Judge's Robes in January*", it is plain that the State Judicial Screening Committee, which rated Mr. O'Rourke as "highly qualified" for the Court of Claims, had reservations because he has not practiced law for 15 years, but that Mr. O'Rourke used those ABA and City Bar ratings to bootstrap his qualifications.

Mr. O'Rourke knew those ratings were insupportable -- because our critique had exposed them as such. He was obligated to disclose the existence of the critique to the State Judicial Screening Committee -- an obligation which may have been reinforced by the questionnaire he was required to complete for the State Judicial Screening Committee -- if he completed one. Tellingly, the State Judicial Screening Committee has refused to provide us with even a blank copy of that questionnaire and Mr. O'Rourke has ignored our hand-delivered letter for a copy of that form -- or, better still, that he waive confidentiality and disclose his written responses, in particular his written response to any question calling upon him to provide cases. We believe that just as Mr. O'Rourke

obtained his federal court nomination by fraudulent representations that were never investigated, so, too, his state court nomination has been procured by fraud and his failure to disclose CJA's negative rating, which the State Judicial Screening Committee would have uncovered -- had it done a proper investigation.

By law, the State Judicial Screening Committee was prohibited from bestowing upon Mr. O'Rourke a "highly qualified" rating unless it first conducted a "thorough inquiry". Any "thorough inquiry" would have required the Judicial Screening Committee to contact us about the critique -- which it never did. By law, it is also required to write a written report of judicial candidates it determines to be "highly qualified". That report is supposed to be available for "public inspection" "upon the announcement by the Governor of [the] appointment". Mr. O'Rourke was appointed by the Governor more than three weeks ago, yet the Screening Committee report has not been disclosed. Indeed, your December 27th article quotes the Governor's spokesman as saying that he doesn't even think there is a Committee report.

The public is entitled to substantiation of Mr. O'Rourke's "highly qualified" rating and to verify that proper procedures were followed in connection with his screening and nomination. CJA has called upon Mr. O'Rourke, the Governor, and the State Judicial Screening Committee to provide such substantiation. They have not done so. This deserves a front-page news story -- with an editorial demand that such substantiation be given. Since Gannett has already litigated for access to Mr. O'Rourke's matrimonial file, which it deemed relevant to assessing his fitness to be a judge, it should not hesitate to immediately commence a lawsuit against the Governor for the Screening Committee report on Mr. O'Rourke's qualifications.

Likewise deserving of Gannett coverage is CJA's round-the-clock, unstinting efforts to get the Governor to withdraw the nomination and the State Judicial Screening Committee to retract its "highly qualified" rating. Instead, Gannett has done its best to bury this extraordinary story of citizen opposition to Mr. O'Rourke's nomination and to gratuitously defame me and my public interest work.

So that the record is clear, Gannett's false assertion -- appearing twice, in your December 27th story -- that I am "disbarred" -- is an outright lie. I am not and have never been disbarred. Nor was I "suspended in 1991...for failing to undergo a court-ordered competency test". The 1991 suspension order contains no findings of any kind or any reasons -- and there is no factual or legal basis for it. Such suspension order was not based on written charges, was not preceded or followed by any hearing relating thereto, and afforded me no right of appellate review in the state courts. It is a vicious and heinous retaliation against me for my judicial whistle-blowing. Gannett has been repeatedly invited to do an investigative story about it, based on the actual files. This it has consistently refused to do, even while my civil rights lawsuit against the state judges who suspended me winds its way through the federal courts and is now headed for the U.S. Supreme Court. Likewise, Gannett has refused to run a story about my winning the Giraffe Award, a national honor given to individuals who "stick their necks out for the public good". Announcement of that newsworthy award came to Gannett well before Mr. O'Rourke got his judicial nomination.

DORIS L. SASSOWER, Director
Center for Judicial Accountability, Inc.