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DELIVERED BY SANTA ON CHRISTMAS EVE

December 24, 1997

Jerry Gray, Political Editor
The New York Times
229 West 43rd Street
New York, New York 10036

RE: Our Critique of Andrew O'Rourke judicial qualifications
and the failure of the federal judicial screening process

Dear Mr. Gray:

When I last spoke with you at about 2:00 p.m. yesterday, you were going to reserve a messenger so that as soon as the copy of the critique I lent out was returned -- a messenger would be available to pick it up. I told you that I had arranged to get the critique back within the hour. This conversation followed our two earlier phone conversations. In each, you repeatedly expressed interest in seeing the critique -- whose content and significance I briefly summarized -- and were ready to send out a messenger for the critique, a spare copy of which I didn't then. You will recall that I thanked you for your kindness and stated that I was not use to this kind of treatment from the Times

I trust -- and certainly hope -- that you were not suddenly stricken with illness or tragedy, requiring you to leave the office within ten minutes of our last conversation. However, that's when I next called you -- only to find your answering machine on. It was on throughout the afternoon when I called back several times, each time, except one, leaving a voice message that the critique was ready for transmittal to you and expressing increasing disappointment at not finding you in. Indeed, I explicitly stated that I needed to leave and was waiting for your call.

Your answering machine was also on at 10:30 a.m. today when I telephoned and left a voice mail message. In that message, I stated that I was going to bring the critique down myself -- and would deliver it so that you would have it in advance of your Friday's trip to Albany, which is when you stated you needed it, with time beforehand so that you could review it.

Good to our word, enclosed is our 1992 critique -- WHICH IS COSTLY AND TIME CONSUMING TO REPLICATE AND ASSEMBLE AND WHICH WE WANT BACK *IF YOU'RE NOT INTERESTED IN IT*. You should, however, be thrilled by it. It establishes Mr. O'Rourke's

absolute lack of qualifications to be any kind of judge -- as well as the extraordinary failure of federal judicial screening procedures -- most, particularly those of the American Bar Association and City Bar. This failure of the process was the subject of my Letter to the Editor published in the July 17, 1992 Times under the title "*Untrustworthy Ratings?*" Examination of the critique -- and the June 2, 1992 supplement that is also enclosed -- will convince you that there should be no question mark after that title. If anything, there should be an exclamation mark -- which is the reason we asked that an official investigation be undertaken by Congress, as well as investigations by the ABA and City Bar.

Also enclosed is the front-page Gannett news article that appeared on Monday, December 22nd, "*O'Rourke Could Be Wearing Judge's Robes in January*" -- which makes plain that Mr. O'Rourke bootstrapped the question of his qualifications by using the fact that he had been approved by the ABA and City Bar for the federal judgeship.

It is because we knew that Mr. O'Rourke would parlay these ratings to ally concerns about his qualifications -- something he did in the first item that appeared based on our critique, "*Credentials Gap: Case of the Missing Cases*" New York Magazine, 6/22/92 -- that we worked long and hard to get the ABA and City Bar to retract their insupportable rating approving Mr. O'Rourke. If you would like to see our massive correspondence with those organizations begging them to take corrective steps, consistent with their ethical and professional responsibilities, we will readily provide it, as well as our even more massive correspondence with the Senate Judiciary Committee and Senate leadership. It has all been collected and organized into "Correspondence Compendia".

Our non-partisan, non-profit citizens' organization has an impressive strategy in the works. Based on the critique, we're going to be calling on the Governor to retract the nomination and upon the State Judicial Screening Committee to retract its "highly qualified" rating -- a rating which is not the product of "thorough inquiry" as is required under the Governor's Executive Order #10. We have already demanded our rights of access under Executive Order #10 to the committee report on Mr. O'Rourke's qualifications. The public is entitled to such reports upon announcement of the appointment. Mr. O'Rourke's appointment was on December 12th -- an announcement that we believe was precipitated by our communications with the Executive Director of the State Judicial Screening Committee.

Our high-speed copier -- although now installed -- is not yet operational, so I haven't had a chance to duplicate the correspondence that has already gone out about this nomination, including, most particularly, to the Governor's counsel. By Friday, we'll have written a letter calling upon Mr. O'Rourke to substantiate his "highly qualified" rating, including by waiving confidentiality and releasing the questionnaire he completed for the State Judicial Screening Committee. Also, by Friday, we'll be sending out our letters to the Screening Committee for retracting of the rating -- enclosing with them copies of our critique, etc. I'll fax you copies *early* Friday morning.

Our citizen opposition to this nomination -- and the extraordinary documentation on which that opposition rests -- is a big story. The Times needs to report what is happening. If it doesn't, you can

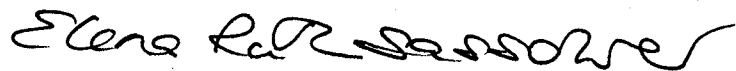
*See 11/2/92 Ltr to Ed Tapiaferri of Gannett
enclosed herewith.*

be sure that Mr. O'Rourke's nomination is going to be rubber-stamped through, just as they all are.

1998 is a gubernatorial election year¹. It's not too soon to let the voting public see what Governor Pataki has been doing with his enormous power over judicial appointments: manipulating the selection process to install party hacks on the state court bench.

Please let us hear from you by Monday. After that, we go up to the top of the Times hierarchy with this story.

Yours for a quality judiciary,



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

Enclosures

¹ It's also a year when the Attorney General is up for re-election. We have much to contribute to Times' coverage of "the Vacco Record" -- as we have on "the Pataki Record". See our \$3,000 public interest ad in the August 27, 1997 New York Law Journal, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" -- a copy of which is enclosed with CJA's informational brochure and other materials.