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NINTH JUDICIAL COMMITTEE

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FAX COVER SHEET

5/8/92

12:35 p.m.

DATE

TIME

TO: ALLIANCE FOR JUSTICE: LISA BRETT

FAX NUMBER: 202-265-2150

This fax consists of a total of 5 pages, including this cover sheet. If you do not receive the indicated number of pages, or if there is a question as to the transmittal, please call (914) 997-8105.

FROM: Elena Ruth Sassower, Coordinator

MESSAGE:

Per our telephone conversation, the enclosed is a preview of what we are sending you today by Express Mail.

The original is already in the possession of the Senate Judiciary Committee.

Regards,

Elena Sassower



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Express Mail

LAW DAY, U.S.A.
May 1, 1992

Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Nomination of ANDREW P. O'ROURKE

Dear Committee Members:

Transmitted herewith is our contribution to Law Day: our critique of Andrew O'Rourke's qualifications for a federal judgeship.

This submission is based on investigation and analysis of Mr. O'Rourke's answers to the public portion of the Senate Judiciary Committee's questionnaire (Ex. "A")¹, review of relevant documentary evidence, and interviews with individuals having first-hand personal knowledge of the facts².

It is our intention to appear at the public confirmation hearings to be held on Mr. O'Rourke's nomination so that we can oppose it with live testimony.

¹ Mr. O'Rourke's public questionnaire was provided to us by the Senate Judiciary Committee, pursuant to our letter requests, dated November 20, 1991 (Ex. "B") and January 10, 1992 (Ex. "C").

² Further materials may be forthcoming to us from additional sources and will be passed on to you with our comments at a later date.

OVERVIEW:

We believe the within critique decisively supports the following findings:

- (1) that no reasonable, objective evaluation of Mr. O'Rourke's competence, character and temperament could come to any conclusion but that he is thoroughly unfit for judicial office; and
- (2) that a serious and dangerous situation exists at every level of the judicial nomination and confirmation process--from the inception of the senatorial recommendation up to and including nomination by the President and confirmation by the Senate--resulting from the dereliction of all involved, including the professional organizations of the bar.

The latter finding results directly from the first, which the Ninth Judicial Committee--a small unfunded citizens' group--has been able to establish in a relatively short time and without great difficulty.

THE RESULTS OF OUR INVESTIGATION AND ANALYSIS:

Legal Competence and Integrity

Even the most cursory examination of Mr. O'Rourke's responses to the Senate Judiciary Committee questionnaire reveals their patent inadequacy. This submission will document that Mr. O'Rourke's responses disclose not only his lack of professional competence, but--as reflected by his multitudinous evasions and misrepresentations of material facts--his fundamental lack of integrity as well.

We believe that Mr. O'Rourke's responses to I-Q18 (Ex. "A", pp. 7-9) and II-Q2 (Ex. "A", p. 11) should be the Committee's starting point in evaluating this nominee since they particularly highlight his deficiencies in those two areas. Based upon Mr. O'Rourke's answers to I-Q18 and II-Q2, there can be no doubt that Mr. O'Rourke's nomination to the U.S. District Court for the Southern District must be rejected.

I-Q18 (Ex. "A", pp. 7-9):

Question I-Q18 makes the following request:

"Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in

detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of the representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties."

Failure to Respond Candidly

At the outset it should be noted that the requested "ten" litigated matters is, by any reasonable standard, a minimal number, a fair prerequisite for any serious contender for a federal judgeship. Mr. O'Rourke supplies only three (3) cases-- which he purports is the extent of his ability to comply.

Such inadequate response is made notwithstanding that Mr. O'Rourke was looking at a reservoir of over twenty years of private practice (Ex. "A", pp. 1-2, I-Q6) and represents himself as having done "all the trial work in whatever firm I belonged to" (Ex. "A", p. 7, I-Ab2).

Mr. O'Rourke attempts to explain his failure to provide the requisite ten cases by stating that he has "not engaged in the active practice of law" since he became Westchester County Executive on January 1, 1983, and that without his files from the years prior thereto he is unable to supply more than the three (3) cases--whose files were "still available" to him (Ex. "A", p. 8, I-A18).

It should be borne in mind that by the time Mr. O'Rourke filed his Senate Judiciary questionnaire in mid-January 1992, he had already been interviewed by screening committees of the American Bar Association ("ABA") and the Association of the Bar of the City of New York ("City Bar") (Ex. "A"; p. 12, III-A3). Both those organizations make similar--if not more exacting--inquiries of prospective nominees. The identical ABA question³

³ The importance the ABA can be presumed to attach to this particular question may be seen from the statement contained in the ABA pamphlet: "Standing Committee on Federal Judiciary: What It Is and How It Works":

"The Committee considers that civic activities and public service are valuable experiences, but that such activity and

adds the requirement that the nominee provide "a succinct statement of what you believe to be the particular significance of the case" (Ex. "D" #13). The City Bar's inquiry is actually more restrictive and less susceptible to self-selection, calling upon the nominee to provide information relative to "the last ten cases handled", including copies of appellate briefs (Ex. "E", #40).

In light of the explicit requests for case information in both the ABA and the City Bar questionnaires, Mr. O'Rourke's claim that, as of January 10, 1992, he could only provide three cases to the Senate Judiciary Committee must mean that he was also unable to provide the ABA and City Bar with the requisite ten cases they had requested the previous year⁴.

As to the three cases Mr. O'Rourke does supply--two of which are state court cases--he does not set forth their significance from a constitutional or social standpoint or their relevance to his prospective position as a federal trial judge. Indeed, as described by Mr. O'Rourke, it is fair to say that the three cases are not of significance to anyone beyond the parties involved. By that standard, Mr. O'Rourke should have had no difficulty in coming up with another seven.

Clearly, well-maintained law offices keep inventories of their cases. By applicable law and rules, lawyers are required to maintain client records. It is common knowledge, widely reported in the press, that Mr. O'Rourke sought a judgeship long before he became County Executive (Ex. "B", p. 2)(Ex. "F", para. 4)(Ex. "W"). Except to the extent Mr. O'Rourke felt confident that his political activities and connections would secure him a judicial post without the necessary qualifications, he knew such records would be relevant, if not essential, to any future review of his legal experience and other qualifications.

Mr. O'Rourke does not explain why--if he required his "trial files" in order to provide a full response--he could not have accessed the court files maintained by the Westchester County

service are not a substitute for significant experience in the practice of law, whether that experience be in the private or public sector." (Ex. "WW", p. 4) (emphasis added)

⁴ Neither the ABA nor the City Bar disclose to the public or even the Senate Judiciary Committee the questionnaires which Mr. O'Rourke completed for those organizations. Their position is that "confidentiality" is essential to their "effective" evaluation of judicial candidates.

