



NINTH JUDICIAL COMMITTEE

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November 4, 1992

Cynthia Hogan, Staff Director
Senate Judiciary Committee
Washington, D.C. 20510-6275

Dear Ms. Hogan:

Reference is made to your October 15, 1992 letter, which you characterize as a "complete response". Unfortunately, you have substituted unsupported self-serving statements for answers to the specific matters discussed in my October 1st letter.

Although you state that I was "told" that you could not schedule an appointment for me--you do not disclose who allegedly "told" me this--or when.

The fact that I was told no such thing should be evident from the number of telephone messages I left for you in the week preceding my visit--as well as their content. Since I understand that messages are recorded via computer, I request that such messages be retrieved, compiled, and sent to Chairman Biden to support my October 13th letter--request for a meeting with him. I also request that a duplicate of those messages be sent to me.

For present purposes, my faxes of September 11th and September 15th--copies of which were attached as Exhibits "A" and "B" to my October 1st letter to you--offer the clearest picture of the true facts.

As set forth therein, we sought to speak either with you or "someone else in authority" (Exhibit "A", para. 3) so as to obtain to obtain authorization for review of our critique. Yet as of this date--over a month and a half after our September 15th fax to you (Exhibit "B") and almost a month since the Senate recessed--you have still not seen fit to call us--preferring instead to write two irrelevant letters.

EX "HH"

November 4, 1992

Your October 15th letter does not deny our most salient assertion: that our critique has not been reviewed by the Senate Judiciary Committee. Rather, you seek to deflect the Senate Judiciary Committee's obligation to address clear-cut evidentiary issues by putting in quotation marks "failure of the screening process".

In so doing, you do not address:

- (a) the December 18, 1991 Report of the Task Force on the Confirmation Process which expressly defines the critical phase of screening--"if the process functions properly"--as taking place before nomination by the President (at p. 4 of my 10/1/92 ltr).
- (b) the on-the record statements of four of the Senators of the Senate Judiciary Committee as to the Committee's reliance upon the ABA's investigation and the determinative weight given its ratings (at pp. 4-5 of my 10/1/92 ltr).
- (c) any of the documentary evidence presented by our critique relative to the screening process (critique (pp. 1-48) and our 6/2/92 ltr to Senate Majority Leader Mitchell).

It is in the context of the foregoing omissions that your bad-faith statement "the facts belie [our] assertion" must be viewed.

Moreover, as you well know, the defeat of the Ryskamp nomination was the exception to a virtually unbroken record of judicial confirmations by the Senate Judiciary Committee of District Court and Circuit Court nominees. Indeed, Judge Ryskamp's defeat was not the result of the process quietly working by itself. Rather, defeat resulted from a vigorous coalition of organizations opposing Judge Ryskamp's confirmation for a period of months, including the opposition of Senator Bob Graham (D-Florida)--who possessed a "blue slip" prerogative.

Their opposition was based, inter alia, upon (a) Judge Ryskamp's record in civil rights and constitutional cases; (b) his intemperate and insensitive remarks from the bench; and (c) his membership in a discriminatory club. In view of the foregoing, questions should rightfully arise as to how Judge Ryskamp obtained a rating of "Highly Qualified" from a "substantial majority" of the ABA's Standing Committee on Federal Judiciary.

November 4, 1992

Certainly, the fact that Judge Ryskamp failed to win approval of the selection panel established by Senator Connie Mack (R-Florida) lends support for the view that Judge Ryskamp did not deserve the majority rating the ABA thereafter gave him.

In the case of Judge Ryskamp, the danger of the ABA's rating may have expressed itself in the exceedingly narrow vote against him in the Senate Judiciary Committee: a vote of 8-6. The adherence of 6 senators to the belief that Judge Ryskamp was fit for elevation to the Circuit Court of Appeals may have derived from his high ABA rating--and the Senators' reliance thereon. This would be consistent with the quoted remarks of Senate Judiciary Committee members (at pp. 4-5 of my 10/1/92 ltr)--which you have simply ignored.

Our critique documents that the ABA screening is grossly deficient and its ratings unreliable. Although you point out that a minority of the ABA Standing Committee rated Mr. O'Rourke "Not Qualified", this plainly does not negate the fact that a "substantial majority" of that Committee adjudged him "Qualified"--without investigation of Mr. O'Rourke's patently fraudulent representations of his credentials.

If you do not view seriously the danger of the ABA giving qualified ratings to unqualified candidates--and nominations by the President based thereon--please apprise the five Senate Chairmen--including Chairman Biden--who constituted the Task Force on the Confirmation Process.

To ensure that the judicial screening process will "function properly" when the new administration begins to send you judicial nominations in January, these intervening months should be used to investigate the failure of the screening process which we have meticulously documented in our critique. Unless the deficiencies are now rectified, they will continue to plague the screening process in the future--endangering the public thereby.

Finally, you have not responded to our suggestion appearing at page six of my October 1st letter. Because we regard it as eminently sensible and worthy of consideration, we repeat it verbatim:

"In light of the Senate Judiciary Committee's limited staff and its long-standing reliance on the ABA, we would have no objection to the Senate Judiciary Committee requesting the ABA to evaluate our critique and submit a report thereon. Indeed, because of what our critique documents relative to ABA screening, we believe such approach would not only be appropriate--but salutary."

November 4, 1992

We would add that the Association of the Bar of the City of New York should also be called upon to evaluate the serious evidence of its misfeasance which our critique, supplemented by our June 2, 1992 letter to Senate Majority Leader Mitchell, painstakingly sets forth.

We await your expeditious response to the foregoing specific items. We also await the opportunity--heretofore denied us--to detail the conduct of the Senate Judiciary Committee staff which has been--and continues to be--non-responsive, irresponsible, unprofessional, and inefficient.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

cc: Chairman Joseph Biden