

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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By Fax: 212-556-3622
7 pages

February 25, 1997

Letters to the Editor
The New York Times
229 West 43rd Street
New York, New York 10036

Att: George Gustines

Dear George:

Enclosed are two modified versions of our previous #2 and #3 Letters, signed by CJA's Director, Doris L. Sassower. Should you wish these letters to be signed by a CJA Board member instead, please let us know immediately and it will be done.

It may be that you will prefer version #2. Being more concrete, it better conveys how procedurally improper, undemocratic, and dysfunctional the process of nomination/confirmation to the lower federal court actually is. It is, we believe, more likely to spark a response.

In the event neither of these Letters is printed, we would greatly appreciate if you would pass on the copy of our June 28, 1996 letter, addressed to Chairman Hatch -- which we dropped off last week -- to someone on the news side in a position to pursue this important story (i.e. Neil Lewis, who authored the Feb. 19th article, "Head of Senate Judiciary Panel Reconsiders ABA Advisory Role") or to the editorial department (i.e. the author of the February 14th editorial "Too Many Federal Court Vacancies").

Please let us know.

Yours for a quality judiciary,



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

Enclosure

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229 West 43rd Street
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VERSION #2

Dear Editor:

In his Feb. 19 letter, Republican Senate Judiciary Chairman Hatch proclaims he will "continue to oversee a fair confirmation process", filling our federal courts with "qualified judges". In a separate Feb. 19 article, he repeats his periodic claim "that the time has come...to decide what role, if any [the American Bar Association] should play in the Senate judicial confirmation process."

This is rhetorical hype. Last year, our citizens' organization made a written presentation to Chairman Hatch, detailing our opposition to a particular judicial nominee and giving an inside account of the ABA's secret pre-nomination screening process -- secret even from the Judiciary Committee. We described the ABA's wilful refusal to investigate documentary evidence of that nominee's unfitness, which we had provided it. How did Chairman Hatch respond to what should have been a gold-mine opportunity to defeat a Clinton nominee and the ABA in one

fell swoop? His Committee failed to interview us or to request from us substantiating documentation as to either the nominee's unfitness or the ABA's malfeasance. He then signed a letter denying, without reasons, our request to testify at the nominee's confirmation hearing. Chairman Hatch's letter further informed us that his Committee has "no written guidelines in evaluating judicial nominees".

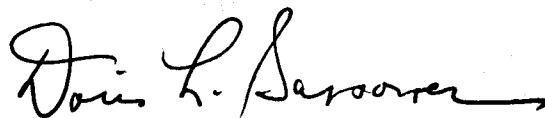
Chairman Hatch thereafter ignored our written request that he reconsider his denial of our request to testify. When his Committee notified us of the nominee's confirmation hearing, it was a mere four hours before the hearing was to begin. Beating the odds, we arrived in D.C. on time, hauling with us the documentary proof the Committee had never asked to see.

Chairman Hatch was not at the hearing. However, in a written submission to him, with copies to the Senate majority and minority leadership, we described what took place: his Committee staff intimidated and harassed us and the hearing was a sham, ceremonial exercise: six nominees introduced amid the self-congratulations of the sponsoring Senators, with the five district court nominees called up, en masse, to answer superficial, generic questions, assembly-line fashion, by the two Committee members then present. When we rose, requesting the opportunity to testify, the presiding chairman peremptorily

denied our request, stating that the record would remain open for three days for written submissions. A day and a half later, Chairman Hatch's Committee passed all six judicial nominees onto the Senate for confirmation.

Did Chairman Hatch, who purports to care about fairness and the integrity of the process, take any steps, as our submission requested, to have his Committee reconsider and reverse its premature and illegal vote, where, additionally, the record showed that the ABA had failed to do proper pre-nomination investigation and that his own Committee had failed to do proper post-nomination investigation? Or did the Senate leaders take any steps to undertake an official inquiry, with a moratorium of all judicial confirmations in the interim, as we requested. Not at all. Rather, they went to work, behind closed doors, hammering out "agreements" for "unanimous consent", such that not one of the 17 judicial confirmations in the second session of the 104th Congress -- including the nominee whose unfitness we had documented -- was the subject of discussion or vote on the Senate floor.

All 17 judicial confirmations followed our formal call for a moratorium.



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

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Letters to the Editor
The New York Times
229 West 43rd Street
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VERSION #3

Dear Editor:

In his Feb. 19 letter, Republican Senate Judiciary Chairman Hatch proclaims he will "continue to oversee a fair confirmation process", filling our federal courts with "qualified judges". In a separate Feb. 19 article, he repeats his recurrent assertion "that the time has come...to decide what role, if any [the American Bar Association] should play in the Senate judicial confirmation process."

This is rhetorical hype. Except in the rarest cases, Senate confirmation of our judicial nominees is not about qualifications. It is about political trading between the Senators. It is the Senators, after all, who are responsible for recommending the nominee to the President in the first place--not necessarily for reasons having to do with professional qualifications. In "I'll scratch your back, you scratch mine" fashion, Senators avoid scrutinizing the qualifications of other Senator-sponsored nominees, lest the qualifications of their

nominees be scrutinized. Besides, their votes on judicial confirmations are an easy barter for votes of other Senators on more concrete projects and issues for their constituents back home. Thus, the Senate leadership, both Republican and Democratic, nail down judicial confirmations in "unanimous consent" agreements, hammered out behind-closed-doors. The result, evident in the second session of the 104th Congress, is that all 17 judicial confirmations were without any debate or vote on the Senate floor.

Last year, before even one of the 17 judicial nominees were confirmed, our non-partisan citizens organization made a written presentation to Chairman Hatch and the Republican and Democratic Senate leadership, documenting the breakdown of pre-nomination ABA screening and post-nomination Senate Judiciary Committee screening of federal judicial nominees. Such breakdown, we demonstrated, was not accidental or in good-faith, but knowing and deliberate. This included the wilful conduct of Chairman Hatch in covering up for the ABA and in subverting the integrity of the confirmation process, including any semblance of fairness, proper procedure, and democratic participation.

Based upon that documentary presentation, the public was entitled to a moratorium of all judicial confirmations, pending an official investigation. This is what we called for.

The response? We never heard from the Chairman Hatch or the Senate leadership from either side of the aisle. Why address concrete evidence when there are closed-door judicial confirmation agreements to attend to?

A handwritten signature in cursive script, appearing to read "Doris L. Sassower".

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