

CENTER for
JUDICIAL
ACCOUNTABILITY



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By Fax and Priority Mail

August 2, 1994

Ralph Nader, Esq.
Center for Responsive Law
P.O. Box 19367
Washington, D.C. 20036

Dear Mr. Nader:

It is hard to know whether to begin with an introduction as to who we are or--as is the purpose of this letter--with an expression of our great thanks and appreciation to you for your superb presentation in opposition to the confirmation of Judge Stephen Breyer to the U.S. Supreme Court at the Senate Judiciary Committee's public hearings.

Your presentation not only offered important insight as to how and why the President chose his nominee, but identified critical issues affecting Judge Breyer's fitness to sit on our highest court.

Unfortunately, the Senate Judiciary Committee--whose members see nothing wrong with announcing, in advance of the hearings, their support for the nominee--did not see fit, as it should have, to call Judge Breyer back to respond to the opposition testimony.

Because of our own past experience in presenting testimony before the New York State Senate Judiciary Committee in opposition to judicial nominations to that state's highest court, we were struck by what clearly is the modus operandi of these committees at such hearings: to trivialize and mischaracterize the opposition testimony so as to avoid requiring the nominee to directly confront issues that might jeopardize his confirmation and to try to embarrass and demean opposition speakers, not sparing even the legendary Ralph Nader.

Compounding this is a press which seems unable to provide a proper report of the stalwart few, brave enough to appear in opposition with important things to say. Although we cannot comment on the coverage nationwide, The New York Times, purportedly "All the News that's Fit to Print", did not give you--or the other members of the opposition panel--the coverage you deserved. We searched in vain the Times' July 17th article entitled "Why Breyer's Hearing Was Meant To Be Dull" for

reference to the powerful opposition testimony and the lively and riveting exchanges between yourselves and the Senators. There was none.

The Center for Judicial Accountability, a non-profit, non-partisan citizens' group working to improve the quality of the judiciary, is concerned with the "rubber-stamp" fashion in which confirmation hearings are conducted, the confidential "backroom" process that presents us with judicial nominees, and the media's failure to meaningfully expose the patronage and "horse-trading" in judgeships that takes place "behind the scenes".

Indeed, back in 1992, our group--then known as the "Ninth Judicial Committee"¹--submitted to the Senate Judiciary Committee a critique demonstrating, by a case study of one judicial nominee, the complete failure of the federal judicial screening process to screen out unqualified candidates. As documentarily established by us:

"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."
(at p. 2)

So that you can appreciate the fully documented nature of our above-quoted finding and the necessity for the Senate Judiciary Committee to have promptly responded with corrective steps--including, as we requested, a moratorium of all judicial confirmations pending official investigation--we enclose a copy of our critique and our May 18, 1992 coverletter to Senate Majority Leader George Mitchell (Correspondence Compendium I, Exhibit "A"), as well as our ensuing correspondence with the Senate leadership and the Senate Judiciary Committee (Correspondence Compendium I)².

¹ A biographic profile appears at the end of our enclosed critique.

² Our June 2, 1992 letter to Senate Majority Leader Mitchell (Exhibit "F" to Correspondence Compendium I) is an update and supplementation to the critique, establishing the Association of the Bar of the City of New York's "deliberate screening out of information adverse to the nominee."

Because the press refused to provide coverage of our critique or our call for a moratorium--and established public interest organizations would not take up the cudgels on our behalf--the Senate leadership was able to ignore the scandalous situation we had uncovered and to carry on "business as usual"³.

Likewise, the American Bar Association and the Association of the Bar of the City of New York were able to get away with the malfeasance and misfeasance which our critique exposed and, much as they did at the Breyer hearings, present themselves as serving the public by their participation in the process⁴.

Twenty years ago, your book, Verdicts on Lawyers, specifically described the failure of associations of the bar to meet their professional responsibilities and the need for public interest citizens groups--like ours--to fill the leadership vacuum. We, therefore, believe you will be particularly interested in our correspondence with the American Bar Association and the Association of the Bar of the City of New York in the wake of our critique--which we also enclose (Correspondence Compendia II and III). Such correspondence is as shocking as the critique itself⁵.

³ Part of that "business as usual" was to have me physically removed by Capitol Hill Police when I personally travelled to Washington and went to Chairman Biden's office to complain about the inaction and negligence of his Committee. (See Exhibit "Z" to Correspondence Compendium I)

⁴ Such posturing was encouraged by Chairman Biden, who--notwithstanding our critique and our devastating correspondence with the ABA in his possession (Correspondence Compendium II)--made the following statement at the Breyer hearings:

"In the 22 years I've been here, I've never questioned the motivation, scholarship, nor intensity of effort of the ABA."

⁵ You will note that our last letter to the American Bar Association (Exhibit "O" of Correspondence Compendium II)--to which we received no response--was addressed to Michael Greco, Esq. Mr. Greco, of course, appeared at the Breyer hearings as the First Circuit representative who had conducted the investigation of Judge Breyer for the ABA's Standing Committee on Federal Judiciary.

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After you have reviewed the enclosed materials, perhaps you would be good enough to meet with us and give us the benefit of your guidance and support in developing our organization. Our work on the federal judicial screening process is only one of many extraordinary projects we have undertaken in the past years--accomplished pro bono, without funding, and in the face of apathy, hostility, and vicious retaliation for our judicial whistle-blowing.

Your unwavering efforts over the past three decades to protect the public interest is an inspiration to groups such as ours, endeavoring to follow your ground-breaking work. We thank you for that and take this opportunity to thank you, as well, for the two books you were kind enough to send us several weeks ago--Verdicts on Lawyers and Whistle-Blowing. They already have a most honored place in the library we are building.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability

Enclosures:

- (1) Critique and Compendium of Exhibits
- (2) Correspondence Compendium I: Senate leadership and Senate Judiciary Committee
- (3) Correspondence Compendium II: American Bar Association
- (4) Correspondence Compendium III: Association of the Bar of the City of New York