



NINTH JUDICIAL COMMITTEE

Box 70, Gedney Station  
White Plains, New York 10605-0070  
Tele: (914) 997-8105 / Fax: (914) 684-6554

By Fax and Mail

June 2, 1992

Hon. George J. Mitchell  
Senate Majority Leader  
U.S. Senate  
Washington, D.C. 20510-1902

RE: Confirmation of Judicial Nominees

Dear Senator Mitchell:

Herein enclosed is a copy of our May 26, 1992 letter to President Feerick of the Association of the Bar of the City of New York, which should be considered an update and supplementation to our Law Day submission to the Senate Judiciary Committee.

Whereas our submission to the Senate Judiciary Committee documented the failure of the Justice Department and the American Bar Association to conduct appropriate investigation of prospective judicial nominees, our letter to President Feerick details an even greater abuse by the City Bar, i.e., the deliberate screening out of information adverse to the nominee.

Since the City Bar is one of the most prestigious and respected bar associations in the country, this latest evidence powerfully confirms the conclusion set forth in our submission and in our May 18, 1992 letter to you:

"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."

June 2, 1992

Based upon the evidence we have presented, the public can have no further confidence in either the process leading up to the President's nomination or in the judicial nominees resulting therefrom.

The documented failure of the screening process warrants an immediate halt to Senate confirmation of pending judicial nominations until appropriate investigation is undertaken and safeguards put in place to protect the public from elevation of "unsuitable" individuals to life-time federal court judgeships.

It is respectfully submitted that it is far better that the initiative for such decisive action come from the Senate itself, rather than from the clamor of the press and the public--resulting from dissemination of the evidence we have heretofore provided.

Yours for a quality judiciary,



ELENA RUTH SASSOWER  
Coordinator, Ninth Judicial Committee

Enclosures:

- (a) 5/26/92 ltr to City Bar President Feerick
- (b) 5/7/92 ltr from the City Bar to Chairman Biden

cc: Chairman Joseph Biden, Senate Judiciary Committee  
Senator Daniel Patrick Moynihan  
People for the American Way  
Alliance for Justice



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By Hand

May 26, 1992

John D. Feerick, President  
Association of the Bar of the City of New York  
42 West 44th Street  
New York, New York 10036-6690

Dear President Feerick:

We congratulate you on your induction as President of the City Bar and wish you well as you assume its leadership. We trust you will accord priority to matters which effect not only the legal community, but impact directly upon the general public.

As you know, the Ninth Judicial Committee submitted to the Senate Judiciary Committee, as its Law Day contribution, a critique of the qualifications of Andrew O'Rourke, establishing his unfitness for the federal judgeship to which he was nominated by President Bush.

As part thereof, we chronicled the failure of the screening process (at pp. 29-38)--including screening by the City Bar (pp. 35-38). We established the manner in which the City Bar shut out public input and asserted "confidentiality" to ward off wholly legitimate inquiry as to whether it had evaluated Mr. O'Rourke or was planning to do so.

We also documented the City Bar's refusal to provide verification for information about its screening of Mr. O'Rourke which Mr. O'Rourke had himself made public when he answered the "public" portion of the Senate Judiciary Committee's questionnaire. Thus, although Mr. O'Rourke responded to III-Q3 (Ex. "A", p. 12) that he had been interviewed by the City Bar's Committee on the Judiciary in January 1991 and that--as of a full year later--he was "unaware" of any rating by that Committee, the City Bar refused to confirm such unusual time lag.

May 26, 1992

Our critique documented the appalling manner which we, as concerned members of the public, were treated by the City Bar, as well as the absolute unconcern shown by the Chairman of its Committee on the Judiciary for the documentary and testimonial evidence of Mr. O'Rourke's unfitness which we sought to present.

Indeed, as shown by Exhibit "XX-1" to our critique, we directly apprised your predecessor, President Conrad Harper, of the arrogant manner in which the City Bar was conducting itself--and treating those who wished to present it with information bearing on Mr. O'Rourke's qualifications. The concluding paragraph to our February 24, 1992 letter is particularly pertinent:

"We also find it hard to conceive--and regard it as profoundly disappointing--that the City Bar's Committee on the Judiciary should have expressed no interest in our offer of material information, including first-hand testimony as to the competence, integrity, and temperament of this nominee." (Ex. "XX-1")

Neither President Conrad Harper nor anyone on behalf of the City Bar's Committee on the Judiciary communicated with us then or thereafter to ascertain the nature of the disqualifying information we had proffered on several different occasions.

Nonetheless, on May 14, 1992, the public was informed by the local Gannett newspaper that the City Bar had "approved" Mr. O'Rourke's nomination. The article included a direct quote from the Chairman of the City Bar's Committee on the Judiciary, who stated for the benefit of the press:

"It's a detailed investigation, including talking with many people who have come into contact with the candidates in their professional careers."

We regard the foregoing statement as exemplifying the dangerous illusion created by organizations of the bar, such as the American Bar Association and the City Bar, that the "ratings" those groups submit to the Senate Judiciary Committee reflect meaningful investigation and review--when, in reality, they constitute a fraud on the American public.

As hereinabove discussed, the "investigation" made by the City Bar did not include any attempt to "talk" with us in order to learn the details as to the disqualifying information we proffered or to obtain from us the dispositive documentation establishing Mr. O'Rourke's unfitness.

May 26, 1992

Inasmuch as the City Bar purports that it conducted a "detailed investigation", but neither provides the public nor the Senate Judiciary Committee with any evidence in support thereof, we urge you to review our critique of Mr. O'Rourke, which we submitted to the Senate Judiciary Committee. Unlike the City Bar, we fully documented the thoroughness of our investigation as to Mr. O'Rourke's absolute lack of qualifications, as well as our position 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." (5/1/92 critique, at p. 2)

Based upon the evidence presented by our critique, we call upon the City Bar to reconsider and retract the favorable rating it gave Mr. O'Rourke on May 7, 1992--a full sixteen months after Mr. O'Rourke claims it interviewed him, and six months after his nomination by President Bush.

It plainly appears that the City Bar, the American Bar Association, and the Justice Department are not screening out "unfit candidates", but rather information bearing upon their unfitness. Consequently, we are soliciting support from leaders of the bar for a moratorium on confirmations of judicial nominations pending before the Senate. In recognition of the extraordinary danger to the public represented by the elevation of unfit nominees to life-tenure on the federal bench, we expect the City Bar will add its support.

Yours for a quality judiciary,



ELENA RUTH SASSOWER  
Coordinator, Ninth Judicial Committee

Enclosures:

- (a) 5/14/92 Gannett, "NYC Bar Backs O'Rourke for Seat on Federal Bench", by Ed Tagliaferri
- (b) 5/18/92 ltr to Senate Majority Leader Mitchell
- (c) 5/19/92 ltr to ABA President D'Alemberte
- (d) 5/26/92 ltr to Federal Bar Council President Nussbaum

cc: Senate Majority Leader George Mitchell  
Chairman Joseph Biden, Senate Judiciary Committee  
Alliance for Justice  
People for the American Way  
ABA President D'Alemberte  
Federal Bar Council President Nussbaum

## NYC bar backs O'Rourke for seat on federal bench

By Ed Tagliaferrri  
Staff Writer

There's no news from Washington, D.C., but Westchester County Executive Andrew O'Rourke's chances for a federal judgeship got a boost this week out of New York City.

The Association of the Bar of the City of New York approved him for a seat on the U.S. District Court in New York's Southern District.

O'Rourke is still waiting for a call from the U.S. Senate's Judiciary Committee. Only after he is reviewed by the Senate committee can he be sent to the full Senate for confirmation.

If O'Rourke does not get his Senate hearing before the summer recess in July, it is unlikely he will be appointed to the federal bench this year. His name would then have to be resubmitted in January by the presi-

dent, and that would be likely only if George Bush was re-elected.

Robert Haig, chairman of the city bar association's Committee on the Judiciary, said O'Rourke was eligible for a rating of "approved" or "disapproved."

While he said he could not discuss the specifics of a review of a particular candidate, Haig said the committee will generally ask candidates to fill out questionnaires and provide information on their careers and qualifications.

"It's a detailed investigation, including talking with many people who have come into contact with the candidates in their professional careers," he said.

"This is probably the most prestigious bar association in the United States of America," O'Rourke said. "This is truly an honor."



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By Fax and Mail

May 18, 1992

Hon. George J. Mitchell  
Senate Majority Leader  
U.S. Senate  
Washington, D.C. 20510-1902

RE: Confirmation of Judicial Nominees

Dear Senator Mitchell:

We are a non-partisan citizens' group, formed in the Ninth Judicial District of New York, dedicated to a quality judiciary.

Since November 1991, when President Bush nominated Andrew O'Rourke to a federal judgeship, we have tracked that nomination. Last week, the Senate Judiciary Committee received from us a critique of the public portion of Mr. O'Rourke's Senate Judiciary Committee questionnaire.

We urge you to immediately review our critique and join us in calling upon the Senate Judiciary Committee to halt any and all further confirmation hearings on President Bush's judicial nominees and to halt any and all judicial confirmations by the full Senate.

Such immediate action is essential since our critique--a document of almost 50 single-spaced pages, supported by approximately 60 exhibits--showed:

"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." (at p. 2)

May 18, 1992

In a section entitled: "Failure of the Screening Process" (at pp. 29-38), we directly quote from the December 18, 1991 report of the Task Force on the Confirmation Process, which you convened last fall:

"The most critical evaluation of potential nominees occurs before submission to the Senate. If the process functions properly, unsuitable candidates will be screened out by the President before they are nominated. The responsibility for screening nominees lies first and foremost with the President and his administration. Their investigation must be thorough and complete. It is not in the interest of any party for unfit candidates to be nominated, with the Senate left to identify and reject such an unfit nominee." (12/18/91 report, pp. 11-12) (emphasis added)

Our critique details that the nomination of Andrew O'Rourke by President Bush is a case study demonstrating that "the process" does not function "properly" and

"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" (at p. 2).

We have not only shown that President Bush nominated Mr. O'Rourke notwithstanding a "Not Qualified" minority rating of the American Bar Association's Standing Committee on Federal Judiciary, but that there was no basis for any rating of "Qualified" by a "majority" of the ABA's Committee--let alone by a "substantial majority". Indeed, because the public portion of the Senate Judiciary Committee's questionnaire is virtually identical to the questionnaire Mr. O'Rourke was required to fill out for the ABA, we readily established this scandalous fact as part of our critique.

Our critique also outlines the manner in which effective judicial screening has been eroded:

(a) documenting the unhealthy relationship between the ABA and the Justice Department which has made it possible for the Justice Department to pressure the ABA into altering its evaluation procedures and standards as a price for the ABA retaining its premier role in the evaluation process.

May 18, 1992

(b) documenting the Justice Department's effort to prevent other bar groups--presumably more independent--from sharing in the screening of prospective judicial nominees.

In fact, we have drawn a direct link between Mr. O'Rourke's nomination and the Justice Department's extraordinary letter to the Association of the Bar of the City of New York last year, which stated:

"Your interference in the constitutional process of selecting and appointing Federal judges must end."

Because the Justice Department has so compromised and constricted the screening of judicial candidates--fostering a situation where "unsuitable candidates" are nominated by the President--there is reason to believe that the Senate will be confirming nominees who are as unfit for judicial office as Mr. O'Rourke.

To the extent that the Senate Judiciary Committee relies on the accuracy and thoroughness of screening by the ABA and the Justice Department to report nominations out of Committee--with the Senate thereafter functioning as a "rubber stamp" by confirming judicial nominees without Senate debate--a real and present danger to the public currently exists.

It is not the philosophical or political views of the judicial nominees which are here at issue. Rather, the issue concerns whether present screening is making appropriate threshold determinations of fundamental judicial qualifications--i.e. competence, integrity, and temperament. Our critique of Andrew O'Rourke's nomination leaves no doubt that it is not.

Most Respectfully,



ELENA RUTH SASSOWER  
Coordinator, Ninth Judicial Committee

Enclosures

cc: Members of the Task Force on the Confirmation Process  
Members of the Senate Judiciary Committee  
Senator Daniel Patrick Moynihan  
Alliance for Justice  
People for the American Way



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By Priority Mail

May 19, 1992

President Talbot S. D'Alemberte  
American Bar Association  
750 North Lake Shore Drive  
Chicago, Illinois 60611

Dear President D'Alemberte:

Transmitted herewith is a copy of our critique of the qualifications of Andrew O'Rourke, documenting his unfitness for the federal judgeship to which he has been nominated by President Bush.

Based thereon, we call upon the American Bar Association to reconsider the favorable rating it gave to Mr. O'Rourke's nomination--and retract it.

In view of the clear evidence that appropriate screening is not taking place--a situation affecting not only Mr. O'Rourke's nomination, but other federal judicial nominations as well--we invite the American Bar Association to join us in urging the Senate to declare a moratorium on confirmations of pending judicial nominations.

Very truly yours,

ELENA RUTH SASSOWER  
Coordinator, Ninth Judicial Committee

Enclosures:

- (a) critique and compendium of exhibits
- (b) 5/18/92 ltr to Senator Mitchell

cc: Senate Majority Leader George Mitchell  
Chairman Joseph Biden, Senate Judiciary Committee  
Alliance for Justice  
People for the American Way



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May 26, 1992

Bernard W. Nussbaum, President  
Federal Bar Council  
145 East 49th Street, Suite 4-B  
New York, New York 10017

Dear President Nussbaum:

Perhaps you will recall our January 29, 1992 letter wherein we expressed our concerns about President Bush's nomination of Andrew O'Rourke to a Second Circuit judgeship. We inquired as to whether the Federal Bar Council had screening procedures of its own and would be evaluating Mr. O'Rourke's qualifications. We also asked whether the Federal Bar Council would endorse evaluation of Mr. O'Rourke by the City Bar.

In pertinent part, your expeditious February 6, 1992 response stated:

"The Federal Bar Council as a matter of course does not have a screening process and does not evaluate nominees to the federal court. We leave that to the City Bar Association for whose processes we have great respect. (I was a Vice President of the City Bar Association and a member of the Judiciary Committee for a period of time.)"

Because of the confidence you placed in the City Bar, you will doubtless be distressed by the manner in which it reviewed Mr. O'Rourke's credentials--and rejected adverse testimonial and documentary information offered it by the Ninth Judicial Committee. Indeed, because we were so completely repulsed by the City Bar, we were obliged to undertake our own critique of Mr. O'Rourke's qualifications--which we set forth as our Law Day contribution to the Senate Judiciary Committee.

May 26, 1992

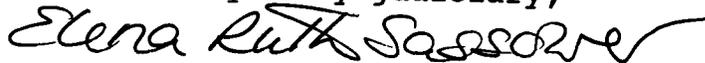
Enclosed herewith is a copy of that critique, as well as our letter to the City Bar's new President John Feerick. You will note that our letter to President Feerick updates our critique with information as to the City Bar's favorable rating of Mr. O'Rourke nomination--and calls for the City Bar to retract it.

We have, likewise, called upon the ABA to retract its favorable rating of Mr. O'Rourke.

Your examination of our critique will leave no doubt but that appropriate screening is not taking place by the City Bar, the ABA, and the Justice Department and that a dangerous situation currently exists. We call upon you to read our enclosed letter to Senate Majority Leader George Mitchell and--based upon the evidence set forth by our critique--join us in urging a moratorium on confirmations of judicial nominations pending before the Senate.

Your expression of public support for our efforts would be greatly appreciated.

Yours for a quality judiciary,



ELENA RUTH SASSOWER  
Coordinator, Ninth Judicial Committee

Enclosures:

- (a) critique and compendium of exhibits
- (b) 5/18/92 ltr to Senate Majority Leader Mitchell
- (c) 5/26/92 ltr to President Feerick
- (d) 5/19/92 ltr to President D'Alemberte

cc: Senate Majority Leader, George Mitchell  
Chairman Joseph Biden, Senate Judiciary Committee  
City Bar President Feerick  
ABA President D'Alemberte  
People for the American Way  
Alliance for Justice

THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK  
42 WEST 44TH STREET  
NEW YORK 10036-6690

COMMITTEE ON THE JUDICIARY

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101 PARK AVENUE  
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May 7, 1992

Hon. Joseph R. Biden, Jr.  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

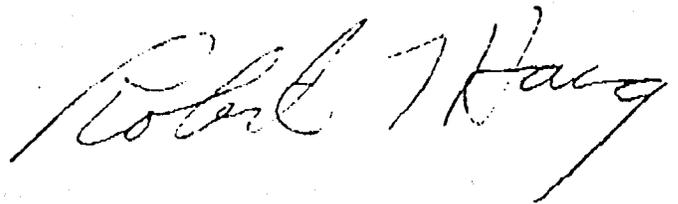
Dear Senator Biden:

I am pleased to inform you that the Committee on the Judiciary of the Association of the Bar of the City of New York has found Dennis G. Jacobs APPROVED for appointment as United States Circuit Judge for the Second Circuit Court of Appeals.

In addition, I am pleased to inform you that the Committee on the Judiciary of the Association of the Bar of the City of New York has found the following individuals APPROVED for appointment as United States District Judges for the Southern District of New York:

Andrew P. O'Rourke  
Loretta A. Preska  
Paul L. Shechtman

Very truly yours,



RLH:mah  
2072y