NINTH JUDICIAL COMMITTEE

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FAX COVER SHEET

5/18/92 — DATE

11:00 a.m. — TIME

TO: SENATE MAJORITY LEADER GEORGE J. MITCHELL
c/o SENATE JUDICIARY COMMITTEE

FAX NUMBER: 202-224-9516 (tele: 202-224-5225)

This fax consists of a total of 4 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:

To the Senate Judiciary Committee Staff:

Since no fax number is publicly available for Senate Majority Leader George Mitchell, we ask that you be good enough to transmit our May 18, 1992 letter for Senator Mitchell's immediate attention.

Because of the serious matters therein set forth, we would appreciate your photocopying this letter for Chairman Biden and members of the Judiciary Committee for delivery today. We have, however, already mailed "hard-copies" to each of them--which should be arriving shortly.

Please consider our enclosed letter to Senator Mitchell, as well as our critique of the public portion of Mr. O'Rourke's Senate Judiciary Committee questionnaire as "public" documents. We do.

Thank you very much.

Elena Ruth Sassower

Ex "A"

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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)

Ex "A"

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.

(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

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