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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

October 15, 1992

Ms. Elena Sassower
Coordinator, Ninth Judicial Committee
Box 70, Gedney Station
White Plains, New York 10605-0070

Dear Ms. Sassower:

I am sorry for the delay in responding to your October 1, 1992 letter, but I wanted to take the time to give you a complete response.

First, with respect to your recent trip to Washington, D.C.: Although you contacted my staff to request an appointment prior to your arrival, you were told that I could not schedule such an appointment during the busiest and least predictable final legislative period of the congressional session. It is my understanding that, in response, you told my staff that you were coming to Washington to meet with staff for another Senator, and hoped to see me if my schedule permitted. If the sole purpose of your trip was to meet with me, I am sorry you were inconvenienced, but you had been warned not to rely on my availability.

I must take exception as well to your characterization of the committee staff as being unresponsive to you during the past year. Indeed, you have had the opportunity both to share your views with committee staff and receive from the committee information concerning the confirmation process. Our files indicate that staff has written to you on roughly half a dozen occasions regarding your concerns with Mr. O'Rourke's nomination and the selection process; in addition, several staff members have spoken with you at length and on numerous occasions, particularly during March and April of this year when the Ninth Judicial Committee was preparing its critique of this nomination. I can assure you that committee staff devoted a significant amount of their time responding to your letters and telephone calls.

With respect to your continuing concerns about the "failure of the screening process" for judicial nominees, once again, let me assure you that the committee conducts its own independent investigation of each nominee submitted by the Administration. Although you have stated that a thorough investigation by the committee is "irrelevant" if the pre-screening process is flawed,

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the facts belie your assertion.

For example, while the committee considers the ratings provided to it by the American Bar Association, such ratings alone do not determine how the committee will ultimately vote on a given nomination. Thus, last year, a substantial majority of the ABA's Standing Committee rated Judge Kenneth Ryskamp "well qualified" (and a minority rated him "qualified") for a seat on the Eleventh Circuit. His nomination was defeated in committee nonetheless.

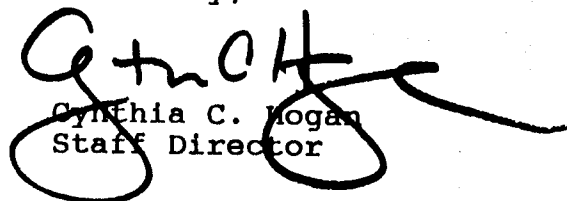
You also specifically criticize the ABA's "qualified" rating for Mr. O'Rourke. What you fail to note, surprisingly, is that a minority of the ABA's Standing Committee on the Federal Judiciary -- in apparent agreement with your conclusion about Mr. O'Rourke -- rates him "not qualified."

In short, any "failures of the screening process" have not (as you suggest) -- and should not -- result in a moratorium on moving judicial nominees. The judicial vacancy problem across the nation, both in district and circuit courts, overburdens our federal bench and threatens our judicial system's effectiveness and fairness. Accordingly, the committee has worked to fill as many judicial vacancies as possible, but only after independently reviewing fully each nominee's qualifications and fitness for the federal bench.

Finally, please note that on September 24, 1992, the Senate Judiciary Committee held its last hearing on judicial nominations for the 102nd Congress. Mr. O'Rourke's nomination was not considered at that time. Therefore, his nomination -- as well as all other nominations pending in committee -- was returned to the President when the Senate adjourned last week. Should Mr. O'Rourke be re-nominated next Congress, the committee will continue its investigation into his qualifications for the federal bench.

Once again, your interest in judicial nominations generally and Mr. O'Rourke's nomination in particular is appreciated.

Sincerely,


Cynthia C. Hogan
Staff Director