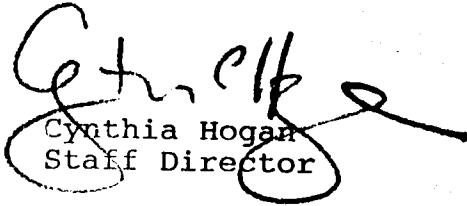
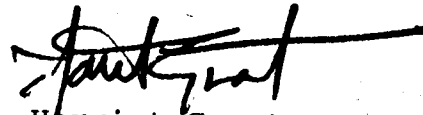


Ms. Elena Sassower
September 21, 1992
Page 2

Once again, your interest in judicial nominees is appreciated.

Sincerely,


Cynthia Hogan
Staff Director


Harriet Grant
General Counsel



®

NINTH JUDICIAL COMMITTEE

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

FAX COVER SHEET

10/1/92

4:00 p.m.

DATE

TIME

SENATE JUDICIARY COMMITTEE
ATT: Cynthia Hogan, Staff Director

TO:

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

FAX NUMBER:

10

This fax consists of a total of _____ 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.

Elena Ruth Sassower, Coordinator

FROM:

Dear Ms. Hogan:

We await an expeditious response.

*Elena Ruth
Sassower*

Ex "W"



®

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
202-224-9516

October 1, 1992

Cynthia Hogan, Staff Director
Senate Judiciary Committee
Washington, D.C. 10510-6275

Dear Ms. Hogan:

Reference is made to your letter, dated September 21, 1992.

I appreciate your expression of "regret" that you were unable to meet with me when I was "in town" last week. However, the very reason I came to Washington was to meet either with you or with someone you might designate for such purpose. If you felt that a week's advance notice was too "short"--or that the crush of work at the end of the Senate session would not make such meeting feasible--you had only to pick up the phone and tell me that. Certainly, you could have easily delegated the responsibility of telephoning me.

I do not appreciate that you failed to do either--particularly since I sent two faxes and placed at least five calls to the Senate Judiciary Committee in the week preceding my September 18th visit, with two additional calls placed to Chairman Biden's office--requesting a return call--as well as confirmation that an appointment for Thursday, September 18th, would be arranged with either you or a responsible person under your authority.

As indicated by my messages, the reason I sought to speak with you--and took the time to go down to Washington--is because the Senate Judiciary Committee staff has consistently failed to return our repeated phone calls or to follow up on basic information requests. The Ninth Judicial Committee has waited patiently for four months for answers to questions which could, and should, have been promptly responded to four months ago. We believed that you, as Staff Director, would not tolerate such inappropriate behavior by your staff and would take rectifying steps as part of your supervisory duties.

However, based on my recent personal experience, it appears evident that your staff is simply acting in accordance with your own standard of permissible behavior.

I believe it would be beneficial if you were to confirm the following list of telephone messages and faxes--since it would place your September 21st letter in proper perspective:

The first message I left for you was on Wednesday, September 10th, via Jamie Schwing, one of the Committee's nominations counsel--confirmed by fax the following day. A copy is annexed (Ex. "A").

I thereafter left two (2) messages for you on Monday, September 14th--neither of which was returned. This fact is confirmed by my fax to you on Tuesday, September 15th (Ex. "B"), which further stated:

"So as to ensure that action will be forthcoming, I am planning to come down to Washington on Thursday--and would appreciate an appointment with an attorney on staff."

I also called on Tuesday, September 15th, as well as on Wednesday, September 16th--when I called twice. Each time I called I left detailed messages that I was coming to Washington on September 18th specifically to meet with either you or some other person authorized by you.

Additionally, I left two (2) detailed messages with the office of Chairman Biden. On September 14th, I spoke with Melissa and on September 16th, I spoke with Christine. Indeed, my later call to Christine was occasioned by the fact that--with less than 24 hours before my scheduled departure--I still had no word from you or anyone else as to whether the appointment had been arranged. Christine thereafter confirmed for me that she put through a lengthy message to you on the computer simultaneous with our telephone conversation of the 16th.

The result of a full week's efforts to reach you and arrange an appointment was that when I arrived at the Senate Judiciary Committee on Thursday, September 17th--after a five-hour trip from White Plains, New York--I was informed by your assistant, Jennifer, that neither you nor Ms. Grant would be available for the balance of the day. Notwithstanding I stated to Jennifer that I would stay over until the next day, Friday, September 18th, so that arrangements could be made for a meeting with any responsible person you would designate, on Friday morning when I arrived at the Senate Judiciary Committee, I was kept waiting for 1-1/4 hours, only to be told by Jennifer that neither you nor Ms. Grant could see me--and that no alternate arrangements to meet with anyone else had been made.

October 1, 1992

I must also protest that I was refused a copy of the Senate Judiciary Staff list, which I requested on September 17th. According to Lisa, the receptionist, she was instructed by Jennifer not to give me a copy. Lisa could not explain to me the reason for Jennifer's instruction, although she conceded that such list is a public document, obtainable through the Library of Congress.

It is significant that your September 21st letter makes no reference whatever to the substantive matters which were of concern to us and about which I wished to speak with you--be it by phone or in person: (a) the non-responsiveness of your Committee staff--which your own actions have further highlighted; and (b) the question as to who at the Senate Judiciary Committee is in a position to discuss our critique with us and provide us with answers to specific inquiries our committee members have concerning the failure of the screening process, documented therein.

We find it wholly unsatisfactory that your September 21st letter ignores these matters. Indeed, Ms. Grant's May 22nd letter--to which your letter refers--also ignored the critical question we were then asking as to whether the Senate Judiciary Committee would immediately review the critique so that an informed decision as to the appropriateness of a moratorium on all judicial confirmations could be made. Instead, without answering whether such review of our critique would be undertaken, Ms. Grant blithely stated:

"...the Committee will proceed with its work on the nominees currently pending in committee, including Mr. O'Rourke."

Ms. Grant should be called upon to confirm that she did not return our numerous telephone messages to her prior to May 22nd--or thereafter.

As to the substance of your letter, we must point out that our critique does not merely express "concerns regarding the 'screening process'". Rather, it presents irrefutable proof that the ABA's rating of "qualified" did not rest on proper investigation. This fact is evident from Mr. O'Rourke's documentably dishonest responses to the Senate Judiciary Committee questionnaire, a document identical in its most pertinent parts to the ABA's Personal Data Questionnaire.

According to the December 18, 1991 Report of the Task Force on the Confirmation Process, which our critique quoted (at p. 29):

"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."
(at pp. 11-12) (emphasis added)

The fact that our critique documented the failure of the screening process in the period prior to nomination by the President shows the irrelevance of your assertion that the Senate Judiciary Committee "conducts its own thorough and independent investigation on each nominee named by the President".

Moreover, we have not found substantiation for your assertion as to the thoroughness of the Senate Judiciary Committee's investigation. In fact, the contrary view was enunciated during the June 2, 1989 hearing on "The Role of the American Bar Association in the Judicial Evaluation Process". At that time, Senator Kennedy--former Chairman of the Senate Judiciary Committee--submitted the following statement:

"I certainly have not always agreed with the ABA Committee's ratings, and I have not hesitated to express my disagreement. But we all know that the Judiciary Committee's budget and staff are limited. Our practice has not been to send Committee investigators to every district and circuit to canvass knowledgeable persons about the legal qualifications of each nominee. The ABA Committee largely performs this task, and performs it well. The information which it communicates to the Judiciary Committee provides real assistance to our Committee."
(at p. 45) (emphasis added)

Senator Specter was even more specific:

"...I think that we may have permitted the ABA to have too much authority because of the difficulty, candidly, of the Judiciary Committee in doing the kind of a background investigation which the ABA does.

We rely very largely on the FBI and the ABA because we do not have the time or the staff to conduct the kinds of investigations which the FBI and the ABA have the facilities to complete." (at p. 84) (emphasis added)

So that you may be in a better position to appreciate the significance of the findings of our critique relative to the unreliability of the ABA ratings--and its failure to conduct appropriate investigation--we draw your attention to the candid remarks of Senator Hatch who said:

"...the ABA rating of a nominee is given very great weight, if not always the conclusive effect." (at p. 14) (emphasis added)

as well as the statement of the Chairman of the Senate Judiciary Committee, Senator Biden, that:

"...In some respects, the ABA's Standing Committee has become larger than life. I am not sure that is because of its own desire or its own making, but because of the way in which the Senators and the public and the press have responded to ABA recommendations, and that on some nominations its ratings have been viewed by all as nearly dispositive." (at p. 2) (emphasis added)

These on-the-record statements of Senate Judiciary Committee members leave no doubt as to the seriousness of the evidence presented by our critique--and the necessity of the immediate action and investigation called for in our May 18th letter to Senate Majority Leader Mitchell.

To date, however, there has been neither action nor investigation--and no response to the substance of our May 18th letter. Indeed, your September 21st letter only buttresses our belief that our critique has been shoved into some "black hole" at the Senate Judiciary Committee and not reviewed.

We discern this most clearly from your statement:

"Once again, we would like to assure you that the Senate Judiciary Committee will review and consider the information you have provided regarding Mr. O'Rourke should it schedule any action on his nomination." (emphasis added)

The inference is that if Mr. O'Rourke's nomination does not come before the Committee by the end of this Senate session, the critique will not be reviewed--and the patent deficiencies of ABA screening which we documented will not be addressed.

We draw your attention to the "Overview" contained in our critique, appearing at page 2--which we quoted in our aforementioned May 18th letter to Senate Majority Leader Mitchell:

"We believe the within critique decisively supports the following findings:...(2) 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 the nomination by the President and confirmation by the Senate--resulting from the dereliction of all involved, including the professional organizations of the bar." (emphasis added)

Is it the Committee's view that such a serious, fully documented charge as to the failure of the federal judicial screening process can properly be ignored, simply because Mr. O'Rourke's nomination is not acted on?

Our report was not limited to Mr. O'Rourke--who was our "case study"--but concerns transcending public issues as to the integrity of the screening process. It represents six months of investigative effort and approximately \$100,000 in legal time by private citizens.

In light of the Senate Judiciary Committee's limited staff and its long-standing reliance on the ABA, we would have no objection to the Senate Judiciary Committee requesting the ABA to evaluate our critique and submit a report thereon. Indeed, because of what our critique documents relative to ABA screening, we believe such approach would not only be appropriate--but salutary.

⑤

Ms. Cynthia Hogan

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October 1, 1992

We await your expeditious response.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

Enclosures:

- (a) 9/11/92 fax to Jamie Schwing, Nominations Counsel
- (b) 9/15/92 fax to Cynthia Hogan, Staff Director

cc: Chairman Joseph Biden