



NINTH JUDICIAL COMMITTEE

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By Fax and Mail  
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January 10, 1992

Senator Joseph Biden  
Chairman, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: Nomination of Andrew O'Rourke

Honorable Sir:

During and after the Senate Judiciary Committee's hearings on Justice Clarence Thomas, you and other Senators announced what was obvious to all--the need to improve the process by which the Senate confirms judicial nominees.

We do not know what steps have been taken by the Senate Judiciary Committee in the many weeks since, but we believe it valuable to share with you our experience with the Judiciary Committee staff relative to their handling of a current nominee, Andrew O'Rourke.

On Wednesday, November 13, 1991, immediately following the public announcement that President Bush had approved Senator D'Amato's recommendation of Mr. O'Rourke for a federal judgeship, I called the Senate Judiciary Committee to ascertain the procedure by which a citizens' group such as the Ninth Judicial Committee might input upon the process of confirmation. I set forth our Committee's concerns that Mr. O'Rourke did not possess the requisite qualifications of integrity, competence, and temperament--and specifically inquired as to:

- (a) whether there would be an opportunity for the public to give testimony;
- (b) whether the public was entitled to any of the "paperwork" on the nominee;
- (c) whether the Judiciary Committee would review a submission of other information and documentation--possibly not contained in their file on the nominee.

Ex "C"

I was told by a Committee staff member that there were no written procedures that would inform the public as to these matters, nor were there any guidelines delineating the sequence for the Committee's review of a nominee. I was asked, however, to formalize our request in writing.

Such letter, dated November 20, 1991, was addressed to you, as Chairman of the Senate Judiciary Committee, and also sent to every other member of the Judiciary Committee. In pertinent part, our letter stated:

"So that we can most effectively contribute to your review, please advise us as to the procedures which the Judiciary Committee will be following in processing this nomination, the timetable for same, and the names of the individuals who will be directly in charge. We would appreciate copies of any materials relative to Mr. O'Rourke's qualifications that might be made available to us." (emphasis added)

In the seven weeks since that letter was faxed and mailed to the Judiciary Committee, we have had no response whatever from the Committee staff. Indeed, only Senator Paul Simon acknowledged our letter's receipt.

On Monday, January 6, 1992, I called the Judiciary Committee to ascertain the status of my November 20, 1991 letter-request. I was told that the person I needed to speak with was Ms. Lisa Rothenberg, the nominations clerk--but that she was unavailable. I left a very detailed message for Ms. Rothenberg, including that she access a copy of my November 20, 1991 letter before calling me back. All told, I left three messages before Ms. Rothenberg returned my call the following day--at which time she stated that she did not have a copy of my November 20, 1991 letter.

In our conversation, I apprised Ms. Rothenberg that not only had the Senate Judiciary Committee failed to respond to our letter-request, but that Senator D'Amato and President Bush had, likewise, failed to respond. As a result, the Ninth Judicial Committee did not possess what we viewed as rather fundamental information, inter alia,:

- (a) the identity of Senator D'Amato's judicial screening panel members;
- (b) the materials reviewed by that panel and by Senator D'Amato before recommending Mr. O'Rourke's name; and
- (c) the materials reviewed by the President before giving Mr. O'Rourke his nomination.

I asked Ms. Rothenberg whether the Senate Judiciary Committee had any of the aforesaid information. To my astonishment, she told me that the Senate Judiciary Committee does not receive such information or materials--nor does it make any effort to obtain same.

I then inquired as to what materials would be before the Judiciary Committee before passing on Mr. O'Rourke's qualifications. Ms. Rothenberg responded by saying that a questionnaire filled out by Mr. O'Rourke would be reviewed. When I objected that such questionnaire would necessarily be self-serving, Ms. Rothenberg assured me that the questionnaire is "extensive".

Although Ms. Rothenberg informed me that Mr. O'Rourke's questionnaire had not as yet been received--she told me that Mr. O'Rourke had already been rated by the American Bar Association: a majority ranking him "qualified", a minority adjudging him "not qualified".

According to Ms. Rothenberg, the Committee cannot provide me with a written copy of Mr. O'Rourke's ABA rating--notwithstanding that no expository opinion accompanies the aforementioned ABA evaluation.

Other than the F.B.I. report which Ms. Rothenberg told me is not an evaluation of the nominee's judicial credentials, I was left with a most unsatisfactory view as to the basis upon which the Judiciary Committee will make its evaluation of Mr. O'Rourke's fitness for judicial office and the extent to which it seeks information beyond that directly furnished by the judicial nominee.

The lesson of the Justice Thomas confirmation is that more scrutiny of our judicial candidates is needed--not less. Yet, a Justice Department directive still stands that instructs federal judicial nominees not to submit to screening by the Association of the Bar of the City of New York. As you know, until the City Bar opposed President's Bush's nomination of Judge Bork to the Supreme Court, that organization had participated in evaluating nominees for the federal judiciary for 120 years.

Ms. Rothenberg was unable to tell me whether--with the lessons of the Thomas hearings still fresh--the Judiciary Committee had seized the golden opportunity of William Barr's recent confirmation as Attorney General to secure a commitment from him to rescind such outrageous directive of the Justice Department, limiting your ability to receive proper evaluations from lawyers best qualified to make them.

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We would, in fact, like to know what action the Senate Judiciary Committee has taken on this matter throughout the past two years.

We understand that the Association of the Bar of the City of New York has continued to invite all nominees for the federal bench to appear before it. We do not know if Mr. O'Rourke has yet been invited by the City Bar--or whether he will accept or decline. However, the Ninth Judicial Committee intends to publicly call upon Mr. O'Rourke to have his credentials reviewed by the City Bar. We believe that such evaluation would be additionally valuable in light of his undistinguished ABA rating--particularly the minority opinion that Mr. O'Rourke is "not qualified" for the judicial position to which he has been named.

Ms. Rothenberg was unable to unequivocally answer that the Senate Judiciary Committee continues to review evaluations submitted by the Association of the Bar. We see no reason why the Judiciary Committee should not be clearly on record on this important question.

The public has a right to expect that the Senate Judiciary Committee not function as a "rubber stamp" for the deal-making of politicians. At this juncture, however, we see no sign that this nominee's credentials will be meaningfully evaluated--and no apparent desire by your staff for citizen input.

We await an expeditious response to the numerous questions raised in this letter. In the interim--and until we are afforded an opportunity to present oral testimony and documentary proof on Mr. O'Rourke's unfitness for one of the most valued prizes in our judicial system--a lifetime appointment to a federal judgeship--we direct your attention to the eye-opening report of the New York State Commission on Government Integrity entitled, The Blurred Line: Party Politics and Government in Westchester County, issued in June 1990. Notwithstanding its devastating findings of corrosive political influence in Westchester government under Mr. O'Rourke's self-interested leadership, Senator D'Amato deemed it appropriate to recommend Mr. O'Rourke for a federal judgeship less than five months later.

Yours for a quality judiciary,

*Elena Ruth Sasser*

ELENA RUTH SASSOWER

Coordinator, Ninth Judicial Committee

Enclosures:

- (a) The Blurred Line: Party Politics and Government in Westchester County: Report and Recommendations, New York State Commission on Government Integrity
- (b) 11/20/91 ltr to the Senate Judiciary Committee
- (c) 1/7/92 ltr to President George Bush
- (d) 1/7/92 ltr to Senator Alfonse D'Amato

cc: Members of the Senate Judiciary Committee

American Bar Association:

Standing Committee on the Federal Judiciary

Association of the Bar of the City of New York:

Committee on the Judiciary

Federal Bar Association

Federal Bar Counsel

New York State Bar Association

New York State Trial Lawyers Association

Westchester Bar Association

White Plains Bar Association

Putnam County Bar Association

Dutchess County Bar Association

Orange County Bar Association

Rockland County Bar Association