



NINTH JUDICIAL COMMITTEE

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R.R.R.

April 16, 1992

Department of Justice
Room B324
Justice Management Division
Washington, D.C. 20530

Attention: FOIA Section

Pursuant to the Freedom of Information Act, request is made for the following:

1. General Information: Outlining the role of the U.S. Department of Justice in reviewing prospective nominees to the U.S. District Court.

(A) The manner in which review by the U.S. Department of Justice of a prospective nominee is initiated--including whether the Senator recommending such nomination makes any transmittal of specific information as to the qualifications of the prospective nominee and/or the basis for such recommendation by him.

(B) The procedures by which the U.S. Justice Department conducts its review of a prospective nominee--including the sequence thereof.

(C) Whether the Justice Department investigates the basis for a "Not Qualified" evaluation by the American Bar Association's Standing Committee on Federal Judiciary--particularly where the "Not Qualified" is the "minority" rating.

(D) Whether the Justice Department interfaces with other bar associations or organizations with which the prospective nominee has presented himself for evaluation.

(E) Whether the Justice Department makes an independent evaluation of the prospective nominee's legal qualifications for judicial office.

Ex "VV"

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- (F) The areas encompassed by the FBI's investigation
- (G) Blank copies of all questionnaires and forms which the U.S. Department of Justice sends out to prospective nominees to the U.S. District Court to complete--with instruction sheets.
- (i) Copies of forms sent out by the Justice Department on behalf of the American Bar Association ("Personal Data Questionnaire")
- (ii) Copies of forms sent out by the Justice Department on behalf of The White House (inter alia, the "Presidential Data Form" and the "Standard Form-SF-86")
- (iii) Copies of forms sent out by the Justice Department on behalf of the Senate Judiciary Committee
- (iv) Copies of any other forms which are required by the Justice Department as part of the processing.

2. Specific Information and Documents relative to Justice Department review of Andrew O'Rourke for a U.S. District Court judgeship, including:

(A) whether and when you received materials from the office of Senator Alfonse D'Amato relative to Mr. O'Rourke's prospective nomination;

(B) whether and when you received materials from Senator D'Amato's judicial screening panel relative to Mr. O'Rourke's prospective nomination;

(C) your contacts with the ABA on this prospective nomination--including any requests made by the Justice Department to the ABA relative to their evaluation. According to the ABA's pamphlet, Standing Committee on Federal Judiciary: What It Is and How It Works, (at p. 6):

"If the office of the Attorney General so requests, the circuit member prepares a formal or final report..." (emphasis added)

(D) whether, when, and in what manner the Justice Department conducted any investigation as to the basis of the "Not Qualified" minority rating of the ABA's Standing Committee on Federal Judiciary.

(E) dates on which the Justice Department sent out to Mr. O'Rourke the questionnaires and forms (itemized above) and the dates of their return receipt.

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(F) dates of U.S. Justice Department interviews with Mr. O'Rourke

In connection with items E and F hereinabove, we annex hereto a pertinent page from the "public portion" of Mr. O'Rourke's completed Senate Judiciary Committee questionnaire--and dated January 10, 1992. We draw your attention to Mr. O'Rourke's specific statement:

"I met with several members of the U.S. Attorney General's staff in May 1991, and have been filling out forms as required." (emphasis added)

(G) Whether and when the Justice Department contacted The Association of the Bar of the City of New York relative to the status of that organization's evaluation of Mr. O'Rourke--or otherwise sought information relative to that organization's rating of Mr. O'Rourke.

We draw your attention to Mr. O'Rourke's statement in the "public portion":

"I also appeared before the Committee on the Judiciary of the Association of the Bar of the City of New York, also in January 1991. To my knowledge, there has been no finding by said committee." (emphasis added)

3. A copy of the letter to The Association of the Bar of the City of New York from Murray G. Dickman, who handled judicial nominations in the Justice Department under Attorney General Richard Thornburgh, in which Mr. Dickman stated:

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

We believe Mr. Dickman's above-quoted letter was sent in May 1991.

4. Any and all information and materials relative to the ABA's revamping of evaluation procedures and standards described in the enclosed New York Times article of June 4, 1991. Such article states that two years earlier:

"the American Bar Association...agreed to change the standards by which it evaluates judicial nominees under pressure from the Administration." (emphasis added)

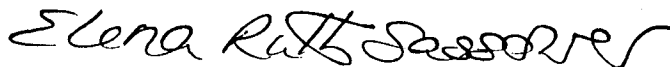
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5. Information and copies of any and all material concerning the Justice Department's instruction to prospective nominees not to cooperate with the judicial screening efforts of bar associations and groups other than the ABA.

* * *

Since the above information is requested in connection with our written submission to the Senate Judiciary Committee relative to Mr. O'Rourke's federal court nomination--and is required for our testimony before that body during the imminent confirmation hearings--your expeditious attention would be greatly appreciated.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

cc: Chairman Joseph Biden
Senate Judiciary Committee [By Fax]

Enclosures:

(a) Standing Committee on Federal Judiciary: What It Is and How It Works, p. 6

(b) Page from Part III: General (Public) of Senate Judiciary Committee's questionnaire, as completed by Mr. O'Rourke and dated January 10, 1992.

(c) "Bar Group Told to Stop Rating Judges", June 4, 1991, The New York Times, p. B3

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 situation is where the prospective nominee's career has extended geographically over more than one circuit (a typical example of this is a member of Congress). In that case, it is customary to ask the circuit member in each such circuit to conduct the relevant interviews in his or her own circuit. All information is exchanged among the participating members prior to the preparation and submission of an informal report, and all information from all such interviews is contained in the formal report ultimately circulated to all members for their vote. A second investigator also may be appointed where it appears at any time during the evaluation process that the prospective nominee may receive a "Not Qualified" rating. As a matter of fairness to the prospective nominee another member of the Committee may be asked to come into the investigation, interview or reinterview the prospective nominee and conduct whatever supplemental inquiries he or she feels appropriate. In some particularly difficult cases, more than one additional committee member may be asked to participate.

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The circuit member prepares a written informal report to the Chair containing a description of the prospective nominee's background, summaries of all interviews conducted, including the interview with the prospective nominee, an evaluation of the prospective nominee's qualifications and a recommended rating. After receiving the informal report and discussing it with the circuit member, the Chair discusses the informal report with the Attorney General's office. While protecting the confidentiality of those interviewed, the Chair passes on the substance of the report and gives a tentative evaluation - indicating that, if a formal report is requested, the prospective nominee will probably be found "Well Qualified," "Qualified" or "Not Qualified."

* If the office of the Attorney General so requests, the circuit member prepares a formal or final report. The circuit member then sends the written formal report to all members of the Committee together with the response to the Personal Data Questionnaire and copies of any other relevant materials. After studying the formal report and its enclosures, each member sends a vote to the Chair. If questions are raised, the Committee may discuss the prospective nominee by telephone conference call or at a meeting.

The Chair confidentially advises the office of the Attorney General of the Committee's rating. If the Committee has been unanimous in its rating, the Chair so states. Otherwise the Chair discloses both the rating given by a majority or substantial

III. GENERAL (PUBLIC)

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Q1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

A1. While I have not practiced law in the last nine (9) years, when a practicing attorney, I routinely accepted court appointed criminal defense and family court matters. If the matter was easily disposed of, I often did not charge for my services. Since most of my case files are no longer available, I am unable to list specific instances and amounts of time devoted thereto. While in the practice of law, I devoted substantial amounts of time to community services such as local civic and school PTA groups and church activities, such as parish groups.

Q2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

A2. To my knowledge, I do not, nor ever did, belong to an organization that discriminated on the basis of race, sex or religion. However, let me state that I do belong to the fraternal and charitable organization know as The Society of the Friendly Sons of St. Patrick. This is an all male organization.

Q3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

A3. I appeared before the Judicial Screening Committee of Senator Alfonse M. D'Amato in January of this year; I was found qualified by the committee. I also appeared before the Committee on the Judiciary of the Association of the Bar of the City of New York, also in January 1991. To my knowledge, there has been no finding by said committee. I met with several members of the U.S. Attorney General's staff in May 1991, and have been filling out forms as required. Also, I have been interviewed by both the Federal Bureau of Investigation (FBI) and the American Bar Association (ABA).

Q4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

A4. No.

Bar Group Told to Stop Rating Judges

By NEILA LEWIS

Special to The New York Times

WASHINGTON, June 3 — The Justice Department has told the City Bar Association in New York that it should get out of the business of evaluating who becomes a Federal judge in New York, something it has done since at least 1920.

Underlying the dispute is a long effort by President Bush and President Reagan before him to push the Federal courts in a more conservative direction, an effort occasionally hampered by outside groups passing on candidates' qualifications.

The department said it is telling prospective Federal judges to cooperate only with the American Bar Association, which two years ago agreed to change the standards by which it evaluates judicial nominees under pressure from the Administration.

Candidates for the Federal bench have been told to avoid submitting to evaluation by the New York group, officials have acknowledged. Fifteen Federal judgeships are vacant in New York now.

'Policy Seeking to Intimidate'

The American Bar Association was heavily criticized by conservatives a few years ago for its negative reviews of some candidates, and Attorney General Dick Thornburgh threatened to exclude the association from the process.

But association officials agreed to revamp their evaluation procedures and standards and have been allowed to retain a role in the process.

Conrad K. Harper, the president of the New York association, said that the Justice Department under Mr. Thornburgh has "adopted a policy seeking to intimidate candidates who wish to participate in evaluations by local bar associations." Mr. Harper said that candidates have been told their nominations would not be put forward if they agreed to an evaluation by the New York group.

He cited a letter from Murray G. Dickman, who oversees judicial nominations for Mr. Thornburgh, warning the New York group that the national association "has sole responsibility for evaluating Federal judicial candidates." Mr. Dickman told the New York association: "Your interference in the constitutional process of selecting and appointing Federal judges must end."

Slightly More Liberal

Mr. Dickman today acknowledged having told candidates to avoid cooperating with the New York association. He said that the department has an agreement with the national association and does not want to complicate matters by having local bar groups provide additional formal evaluations of the Administration's choices.

He said that many bar groups long to have a say on who gets to be a Federal judge and that it would be wrong to make an exception for the Association of the Bar of the City of New York. The

New York group, among the most active local bar groups in the nation, has long taken a formal interest in evaluating prospective judges.

In evaluating Federal judges, the New York association has generally been slightly more liberal than the national association.

Mr. Harper said that in a meeting last year with Justice Department officials, his group was asked to submit data comparing its judgments on nominees with the national association's over the last 15 years. He said the two associations offered similar judgments except on some recent nominees who declined to submit to evaluation by the New York group.

Staff members on the Senate Judiciary Committee and others have said that the national association has become more amenable to the Administration's choices since being threatened with being removed from the process. Sheldon Goldman, a political science professor at the University of Massachusetts who has studied judicial nomination patterns, offered a statistical analysis in the magazine *Judicature* showing the national association's evaluations have been higher for President Bush's choices than for any of his recent predecessors.

Ralph I. Lancaster, who heads the national association's evaluation committee, has denied being intimidated by the Administration.

The New York Times

June 4, 1991

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3. Article Addressed to: <i>Department of Justice Room B 324 Justice Management Division Washington DC 20530 (Att: FOIA Section)</i>	4a. Article Number <i>P 801 449 659</i>
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PS Form 3811, November 1990 *U.S. GPO: 1991-287-066 **DOMESTIC RETURN RECEIPT**

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PS Form 3800, June 1985

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 ELIZABETH, N. Y.