



NINTH JUDICIAL COMMITTEE

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

February 24, 1992

Conrad Harper, President
Association of the Bar
of the City of New York
New York, New York 10036

Dear President Harper:

This letter is to ask you to articulate the policy of the Association of the Bar relative to public access to certain information.

In early January 1992, I communicated with the City Bar requesting information as to:

- (a) its evaluation of Andrew O'Rourke, President Bush's nominee for a federal judgeship in the Second Circuit; and
- (b) its action relative to the Justice Department's directive that nominees to the federal bench not cooperate with the City Bar--as well as action taken by other organizations and the Senate Judiciary Committee in response thereto.

I had several conversations with Ann Ormsby, Director of Public Affairs, with Maureen Merella, Assistant to the Committee on the Judiciary, and one conversation with Robert Haig, Esq., Chairman of the Committee on the Judiciary. I was given only the most limited information by phone as to the Justice Department directive and absolutely no information as to the status of the Mr. O'Rourke screening--not even whether or not an interview had taken place.

Indeed, as shown by my January 10, 1992 letter to the Senate Judiciary Committee--faxed to the City Bar on that date--I stated:

"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."

Ex "XX-1"

However, the Ninth Judicial Committee intends to publicly call upon Mr. O'Rourke to have his credentials reviewed by the City Bar." (emphasis added)

I received no response from the City Bar.

Three and a half weeks later, on January 29, 1992, I again called the City Bar and spoke with Ms. Merella. I told her that I was writing the American Bar Association, the Federal Bar Council, and the Federal Bar Association to enlist their support for review of Mr. O'Rourke's qualifications by the City Bar. In that connection, I also asked for a copy of the procedures followed by the Committee on the Judiciary, as well as the questionnaire filled out by judicial candidates.

Two days later, I received a copy of the Committee's "Rules of Procedure", and a blank copy of the "Uniform Judicial Questionnaire".

By letter to the Committee on the Judiciary, dated and faxed February 7, 1992, I raised specific questions as to the Committee's rating of nominees who, pursuant to the Justice Department directive, do not cooperate with evaluation by the City Bar. I further stated:

"Unfortunately, we have not as yet received any materials from you relative to the Justice Department's infamous directive--which we understand is embodied in letter form. We are particularly interested in any articles and editorials that have appeared on the subject.

Please also furnish us with copies of any documents showing what specific action has been taken by the City Bar and other associations and groups during the two years since the Justice Department directive was issued--and any response thereto." (emphasis added)

I also reiterated our specific information request relative to the Andrew O'Rourke nomination:

"Please inform us as to the status of the City Bar's review of Mr. O'Rourke's qualifications--and whether a documentary and testimonial presentation by the Ninth Judicial Committee would be of benefit to the City Bar's evaluation of this nominee." (emphasis added)

On Thursday, February 13, 1992, I received a response from the Senate Judiciary Committee, presumably to my January 10, 1992 letter, and immediately called Ms. Merella to apprise her of that fact, as well as Mr. O'Rourke's puzzling answer to a specific inquiry in the "public portion" of his questionnaire, dated January 10, 1992.

In pertinent part, Mr. O'Rourke stated:

"...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)

Ms. Merella told me she was could not provide me with any information--and was unable to assure me that I would be receiving a response to my February 7, 1992 letter--which had been addressed to her attention. Ms. Merella informed me that I should speak directly with the Chairman of the Committee on the Judiciary, Mr. Haig.

I thereupon called Mr. Haig and apprised him of Mr. O'Rourke's questionnaire response. Mr. Haig would not give me any information--and, likewise, would not assure me that we would be receiving a response to our February 7, 1992 letter, receipt of which he confirmed to me.

Instead, Mr. Haig rudely and abruptly demanded to know who was on the Ninth Judicial Committee, who was on its Board of Directors, who were its Trustees, and what were its By-Laws.

Mr. Haig refused to answer my query as to whether the basic information our February 7, 1992 letter requested was "public"--and might be reasonably made available to either a private citizen or a member of the press.

When I requested that Mr. Haig set forth his position in writing, Mr. Haig brusquely informed me that he didn't "have time to write letters". As of this date, we have received nothing from either him or Ms. Merella.

We, likewise, do not "have time to write letters". However, the Ninth Judicial Committee believes that the importance of a quality judiciary requires our perseverance. We believe that the people who will be directly affected by Mr. O'Rourke's elevation to the bench are entitled to know whether and when Mr. O'Rourke was interviewed by the City Bar--and its evaluation, if any.

Indeed, we regard it appalling that the City Bar had us wasting our time, effort, and money in soliciting support for its review of Mr. O'Rourke--when, in fact, the City Bar had already reviewed this nominee.

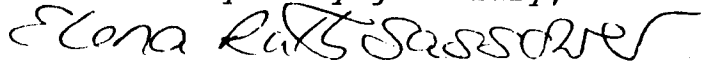
For your information, I enclose a copy of the letter sent me by the President of the Federal Bar Council, Bernard Nussbaum--which Mr. Haig acknowledged he also received. Although Mr. Nussbaum's letter expresses "great respect" for the evaluation process of the City Bar, we regard Mr. Haig's position as necessarily diminishing confidence in the City Bar's evaluation process. We protest Mr. Haig's inexplicable attempt to stymie our efforts to effectively and expeditiously contribute to review of Mr. O'Rourke's nomination by the Senate Judiciary Committee.

Indeed, due solely to the City Bar's refusal to provide us with basic information, we must needlessly divert our efforts so as to ascertain from the Senate Judiciary Committee whether the date which Mr. O'Rourke's questionnaire indicates he was interviewed by the City Bar accurately reflects Mr. O'Rourke's submission--or is a typographical error by the Senate Judiciary staff.

Frankly, we find it hard to conceive--as Mr. O'Rourke's answer would suggest--that the City Bar failed to inform Mr. O'Rourke of his rating and that Mr. O'Rourke was unable to ascertain his rating prior to completing his questionnaire a full year later.

We also find it hard to conceive--and regard it as profoundly disappointing--that the City Bar's Committee on the Judiciary should have expressed no interest in our offer of material information, including first-hand testimony as to the competence, integrity, and temperament of this nominee.

Yours for a quality judiciary,



ELENA RUTH SASSOWER

Coordinator, Ninth Judicial Committee

cc: Dean John D. Feerick, President-Elect,
Association of the Bar of the City of New York
Robert Haig, Chairman, Committee on the Judiciary

Enclosures listed on following page

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President Harper

Page Five

February 24, 1992

Enclosures:

- (a) 11/20/91 ltr to Senate Judiciary Committee
- (b) 1/10/92 ltr to Senate Judiciary Committee
- (c) relevant page of Andrew O'Rourke's "public" questionnaire
- (d) 2/7/92 ltr to City Bar Committee on the Judiciary
- (e) 1/29/92 ltr to ABA
- (f) 1/29/92 ltr to Federal Bar Council
- (g) 1/30/92 ltr to Federal Bar Association
- (h) 1/21/92 ltr of Senator Paul Simon
- (i) 2/5/92 NYT article: "Senators Criticize Bush on Nominating Rules"
- (j) 2/6/92 ltr of Bernard Nussbaum, President, Federal Bar Council

III. GENERAL (PUBLIC)

- 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.



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By Fax: 212-768-8630

February 7, 1992

Committee on the Judiciary
Association of the Bar
of the City of New York
42 West 44th Street
New York, New York 10036-6690

ATT: Maureen Merella
Administrative Assistant

Dear Ms. Merella:

Thank you for your prompt response to my request for a copy of the "Rules of Procedure" in use by the City Bar's Committee on the Judiciary, as well as the blank copy of the "Uniform Judiciary Questionnaire" completed by candidates for judicial office.

I note that Section 5(f) of the "Rules of Procedure" reads:

"The Committee shall rate candidates who refuse to cooperate with the Committee and to be interviewed by the Committee, after a reasonable opportunity to do so, as "Not Approved" and the Committee shall notify those candidates that the Committee has so rated them because of their refusal to cooperate with and to be interviewed by the Committee, and for any other reasons that may warrant that rating as well..."

Are we correct in assuming that nominees to the federal bench who, pursuant to the standing directive of the Justice Department, refuse to cooperate with the City Bar Committee are rated "Not Approved". Please verify that this is the case--and that such rating is communicated to the Senate Judiciary Committee.

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Please also supply us with an example of the "explanatory comment", which Section 5(e) seems to indicate would accompany the rating of a federal court nominee who, pursuant to the Justice Department directive, has not submitted himself for evaluation by the City Bar.

Unfortunately, we have not as yet received any materials from you relative to the Justice Department's infamous directive--which we understand is embodied in letter form. We are particularly interested in any articles and editorials that have appeared on the subject.

Please also furnish us with copies of any documents showing what specific action has been taken by the City Bar and other associations and groups during the two years since the Justice Department directive was issued--and any response thereto.

In that connection, we enclose a copy of Senator Paul Simon's response to our January 10, 1992 letter to the Senate Judiciary Committee, as well as copies of our recent letters to the ABA, the Federal Bar Council, and the Federal Bar Association.

We further draw your attention to The New York Times article entitled "Senators Criticize Bush on Nominating Rules", which appeared on February 5, 1992. Such "new rules sharply limiting Congressional access" to the FBI reports on nominees demonstrate a clear impingement by the executive branch on the "advice and consent" function of the Senate. Indeed, together with the Justice Department's directive to federal court nominees not to cooperate with screening by the City Bar, the "new rules" make manifest the President's determination to strip the Senate Judiciary Committee of its ability to meaningfully evaluate judicial nominees. The unambiguous intent is to transform the Senate Judiciary Committee into a "rubber stamp" for the President's appointments.

We trust that just as the City Bar refused to accept the Justice Department's directive blocking its historic participation in judicial screening, the City Bar, likewise, will now publicly support Chairman Biden's refusal to consider "any judicial nominees appointed under the new rules".

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(S)

Committee on the Judiciary

Page Three

February 7, 1992

As you know, the Ninth Judicial Committee is particularly concerned about the qualifications of Andrew O'Rourke for a federal judgeship. We have already verified that Mr. O'Rourke's confirmation by the Senate Judiciary Committee is among those "on hold" due to the President's "new rules" depriving the Senators of FBI information.

Please inform us as to the status of the City Bar's review of Mr. O'Rourke's qualifications--and whether a documentary and testimonial presentation by the Ninth Judicial Committee would be of benefit to the City Bar's evaluation of this nominee.

Yours for a quality judiciary,

ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

Enclosures:

- (a) 1/21/92 ltr of Senator Paul Simon
- (b) 1/29/92 ltr to ABA
- (c) 1/29/92 ltr to Federal Bar Council
- (d) 1/30/92 ltr to Federal Bar Association
- (e) 2/5/92 New York Times article:
"Senators Criticize Bush on Nominating Rules"

cc: Conrad K. Harper, President
 Association of the Bar of the City of New York
 John D. Feerick, President-Elect
 Association of the Bar of the City of New York
 Joseph Biden, Chairman
 U.S. Senate Judiciary Committee



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January 29, 1992

Ronald A. Olson, Chairman
ABA Standing Committee on Federal Judiciary
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071-1560

Dear Mr. Olson:

Enclosed please find copies of our correspondence with the Senate Judiciary Committee, The White House, and Senator D'Amato's office relative to the nomination of Andrew O'Rourke to a federal judgeship.

To date, we have still heard nothing concerning Mr. O'Rourke's qualifications for such important lifetime appointment.

Please confirm for us that the ABA does not provide the Senate Judiciary Committee with a written exposition as to the overall qualifications of nominees to the federal bench, but only a rating.

As set forth in our January 10, 1992 letter to the Senate Judiciary Committee, we have been apprised that the ABA's Standing Committee on Federal Judiciary gave Mr. O'Rourke a majority rating of "qualified" and a minority rating of "not qualified". We wish to know how many constitute the majority" and how many the "minority"--and whether such information is either made known to the Senate Judiciary Committee or can be requested by them.

Clearly, a rating of "not qualified" is cause for great concern. Does any specific explication accompany such rating. If not, might such explication be requested by either the Senate Judiciary Committee--or the public?

We also wish to know whether the ABA transmitted more than the Committee's aforesaid majority/minority rating to President Bush--and whether The White House requested from you--or is entitled to--any additional information relative to your evaluation of Mr. O'Rourke's qualifications.

January 29, 1992

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We understand your position that "confidentiality...is a cornerstone of the Committee's effective operation". However, to the extent the public is entitled to information concerning the Committee's screening of Mr. O'Rourke, we hereby request any and all such information.

We also wish to know your position with respect to the Justice Department's exclusion of the Association of the Bar of the City of New York from its customary participation in the screening process--and whether any action has been taken by the ABA.

In view of the ABA's equivocal rating of Mr. O'Rourke, we hope you would endorse a further evaluation of his qualifications by the City Bar.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

Enclosures:

- (1) 11/20/91 ltr to Senate Judiciary Committee
- (2) 1/10/92 ltr to Senate Judiciary Committee
- (3) 1/7/92 ltr to The White House
- (4) 1/7/92 ltr to Senator D'Amato

cc: Robert Haig, Chairman, Committee on the Judiciary
Association of the Bar of the City of New York
William E. Willis, Esq., Second Circuit
ABA Standing Committee on Federal Judiciary



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January 29, 1992

Bernard W. Nussbaum, President
Federal Bar Council
145 East 49th Street, Suite 4-B
New York, New York 10017

Dear Mr. Nussbaum:

Enclosed please find copies of our correspondence with the Senate Judiciary Committee, The White House, and Senator D'Amato's office relative to the nomination of Andrew O'Rourke for a federal judgeship.

To date, we have still heard nothing concerning Mr. O'Rourke's qualifications for such powerful lifetime appointment.

As an organization of "judges and lawyers who make up the special bar association organized expressly to serve the United State Courts in the Second Circuit", the Federal Bar Council should be especially concerned about this nomination. Mr. O'Rourke will be sitting in the Second Circuit--should he be confirmed by the Senate.

We believe the ABA's minority rating of "not qualified" is a reflection of the fact that Mr. O'Rourke does not possess the requisite qualifications of integrity, competence and temperament.

In view of such undistinguished rating, we would like to know what screening process you have available and whether you plan to evaluate this nominee with your own rating.

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January 29, 1992

We also wish to know whether you have expressed your support for the position of the Association of the Bar of the City of New York with respect to the Justice Department's exclusion of the City Bar from its customary participation in the screening process.

Please let us know whether you would endorse such evaluation of Mr. O'Rourke's qualifications by the City Bar--and what steps you are prepared to take to that end.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

Enclosures:

- (1) 11/20/91 ltr to Senate Judiciary Committee
- (2) 1/10/92 ltr to Senate Judiciary Committee
- (3) 1/7/92 ltr to The White House
- (4) 1/7/92 ltr to Senator D'Amato

cc: Robert Haig, Chairman, Committee on the Judiciary
Association of the Bar of the City of New York



NINTH JUDICIAL COMMITTEE

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January 30, 1992

Alfred F. Belenore, President
The Federal Bar Association
1815 H Street NW
Washington, D.C. 20006

Dear Mr. Belenore:

Enclosed please find copies of our correspondence with the Senate Judiciary Committee, The White House, and Senator D'Amato's office relative to the nomination of Andrew O'Rourke for a federal judgeship.

To date, we have still heard nothing concerning Mr. O'Rourke's qualifications for such powerful lifetime appointment.

We believe the ABA's minority rating of "not qualified" is a reflection of the fact that Mr. O'Rourke does not possess the requisite qualifications of integrity, competence and temperament.

In view of such undistinguished rating, we would like to know what screening process you have available and whether you plan to evaluate this nominee with your own rating.

We also wish to know whether you have expressed your support for the position of the Association of the Bar of the City of New York with respect to the Justice Department's exclusion of the City Bar from its customary participation in the screening process.

Please let us know whether you would endorse such evaluation of Mr. O'Rourke's qualifications by the City Bar--and what steps you are prepared to take to that end.

Yours for a quality judiciary,

A handwritten signature in cursive script that reads "Elena Ruth Sassower".

ELENA RUTH SASSOWER

Coordinator, Ninth Judicial Committee

Enclosures

cc: Robert Haig, Chairman, Committee on the Judiciary
Association of the Bar of the City of New York
The Federal Bar Association: Empire State Chapter

1/30/201

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

RONALD A. KLAIN, CHIEF COUNSEL
JEFFREY J. PECK, STAFF DIRECTOR
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
AND STAFF DIRECTOR

January 21, 1992

Elena Ruth Sassower
Ninth Judicial Committee
Box 70, Gedney Station
White Plains, NY 10605-0070

Dear Ms. Sassower:

Thank you for sharing with me a copy of your letter to Senator Joseph Biden, chairman of the Senate Judiciary Committee, regarding the nomination of Andrew O'Rourke.

At his recent confirmation hearing, I asked Attorney General William Barr to reconsider the Justice Department's opposition to local bar associations meeting with judicial nominees. This has been a concern not only to the Association of the Bar of New York City but also our local bar in Chicago and specialty bars such as the Court of International Trade Bar Association.

I strongly believe that it should be up to the nominee to make the decision about meeting with local bar associations, not a prohibition set by the Department. The Attorney General indicated his willingness to meet with local bar associations and I am hopeful that the Justice Department policy may change.

Again, I appreciate your writing. Please feel free to share with me your views on this and other nominees as they come before the Judiciary Committee.

My best wishes.

Cordially,



Paul Simon
U.S. Senator

PS/jt

Senators Criticize Bush on Nominating Rules

By DAVID JOHNSTON

Special to The New York Times

WASHINGTON, Feb. 4 — The Senate's top Democrat blamed President Bush today for delays and contentiousness in the confirmation process in a floor speech that underscored the lingering rancor over the Senate's handling of Clarence Thomas's nomination to the Supreme Court.

Announcing the results of a Democratic study of how the Senate evaluates Presidential nominees, Senator George J. Mitchell of Maine, the Senate majority leader, said the White House was primarily at fault for problems that had mired the Senate and the Bush

Administration in fierce confirmation battles. One recommendation to head off confrontations, Mr. Mitchell said, would be "meaningful consultation" between the White House and the Senate.

Access to Background Checks

Mr. Mitchell appointed five Senate committee chairmen to explore changes in the confirmation process in the aftermath of the Thomas hearings. Accusations by a former Thomas aide

that he harassed her when he headed the Equal Opportunity Employment Commission led the Senate Judiciary Committee to hold a second round of confirmation hearings before the Senate ultimately approved the nomination.

In a speech after the nationally televised hearings, Mr. Bush described the committee's encounters with Judge Thomas and his accuser as "more like a burlesque show than a civics class."

and he imposed new rules sharply limiting Congressional access to background material on nominees prepared by the Federal Bureau of Investigation. Fewer lawmakers were allowed to

read the background reports and they could review only summaries of the reports in the presence of a bureau agent.

The President also ended the longstanding agreement in which some Senate staff members were allowed to read the reports.

Confirmation Hearings Delayed

Since then, Senator Joseph R. Biden Jr., a Delaware Democrat who is chairman of the judiciary panel, has told the Administration that his committee would not consider any judicial nominees appointed under the new rules, a move that has held up confirmation hearings on more than two dozen judicial nominees.

Mr. Mitchell said today that the Administration should restore the previous agreements regarding access to

background material. Negotiations to relax the President's new rules are under way between the Judiciary Committee and the Administration, but so far they have not resolved the impasse.

Bush Administration officials have also complained about delays in the confirmation process.

But Mr. Mitchell largely dismissed those contentions, saying it takes the Administration five times longer to fill a vacancy than it does for the Senate to consider a nominee.

"The delays in Executive branch action on nominees are dramatic and often inexcusable," he said.

Washington Talk: How Government Works

Federal Bar Council

BERNARD W. NUSSBAUM
President

February 6, 1992

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

Dear Ms. Sassower:

Thank you for your letter of January 29, 1992. The Federal Bar Council as a matter of course does not have a screening process and does not evaluate nominees to the federal court. We leave that to the City Bar Association for whose processes we have great respect. (I was a Vice President of the City Bar Association and a member of the Judiciary Committee for a period to time.)

We certainly do support the position of the City Bar Association with respect to the Justice Department's attempt to exclude it from its customary participation in the screening process. We would endorse an evaluation of Mr. O'Rourke's qualifications by the City Bar.

Very truly yours,



BWN:jr

cc.: Robert Haig, Esq.
Chairman, Committee on the Judiciary
Association of the Bar of the City of New York