



NINTH JUDICIAL COMMITTEE

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FAX COVER SHEET

10/23/92

4:20 p.m.

DATE

TIME

TO: Jeff Blattner, Chief Counsel // SENATOR KENNEDY

FAX NUMBER: 202-224-5128 (tele: 202-224-7878)

This fax consists of a total of 5 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.

FROM: Elena Ruth Sassower, Coordinator

MESSAGE:

Dear Mr. Blattner:

We look forward to speaking with you directly about our critique.

*Elena Ruth
Sassower*

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By Fax and Mail
202-224-5128

October 23, 1992

Senator Edward Kennedy
c/o Senate Judiciary
520 Dirksen Building
Washington, D.C. 20510

ATT: Jeff Blattner, Chief Counsel

Dear Mr. Blattner:

A month ago--on September 17, 1992--I met with your staff assistant, Rob Lange, and discussed with him our critique, documenting the failure of the judicial screening process. To enable Mr. Lange to evaluate for himself the seriousness of our findings--and the necessity for immediate investigation--I left with him a copy of the critique and other pertinent materials.

In a telephone conversation with Mr. Lange on October 21st, he told me he had written up notes from our meeting and passed them and the critique on to you. Much to our surprise, however, Mr. Lange stated that you had expressed no interest.

In view of Senator Kennedy's past statements regarding issues documented by our critique, we can only conclude that you have not reviewed our case study of the district court nomination of Andrew O'Rourke.

In particular, we draw your attention to Senator Kennedy's statement at the Senate Judiciary Committee's June 2, 1989 hearing on "The Role of the American Bar Association in the Judicial Evaluation Process":

"...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..." (p. 45) (emphasis added)

Review of our critique establishes--beyond doubt--that Senator Kennedy's confidence in the thoroughness of the ABA's investigation is misplaced.

Indeed, since the Senate Judiciary Committee's questionnaire is largely identical to that used by the ABA, our critique of Mr. O'Rourke's responses to the Senate Judiciary Committee's questionnaire serves a dual function--as a critique also of the responses Mr. O'Rourke can be presumed to have given to identical ABA questions.

In that connection, we direct your attention to our Letter to the Editor, published in the July 17th issue of The New York Times--and included among the materials left with Mr. Lange. That letter, which The New York Times entitled "Untrustworthy Ratings", stated:

"...our critique, based on six months of investigation, found no basis for the Bar Association's majority rating of 'qualified' for the nominee we studied. The evidence strongly suggests that the rating of that nominee was not the result of any meaningful investigation at all."

It may be noted that at the June 2, 1989 hearing, other Senators made comments similar to those of Senator Kennedy concerning the Senate Judiciary Committee's reliance on the ABA investigation, as expressed by its rating. In the words of Senator Hatch:

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

This view was also acknowledged by Chairman Biden:

"...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." (p. 2) (emphasis added)

We would further point out that at the June 2, 1989 hearing Senator Kennedy presented an opinion--likewise articulated by other members of the Senate Judiciary Committee--as to the need for the ABA to elaborate its bare-bones rating of judicial nominees:

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"...the [ABA] Committee should give some explanation when it rates a nominee 'Qualified' or 'Not Qualified', so that our Committee understands the specific basis for these borderline or negative ratings." (at p. 46)

Our critique buttresses this view unequivocally--and concretely demonstrates that a great range of information might reasonably be supplied to the Senate Judiciary Committee by the ABA. It plainly shows that the "confidentiality" insisted upon by the ABA is not--as the ABA claims it to be--"a cornerstone" for effective evaluation.

The ABA's failure to adequately protect the public is only one aspect of a larger story, documented by our critique. As set forth therein:

"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." (critique, at p. 2) (emphasis added)

Please let us know when we can speak with you directly about our findings.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

Enclosure:

Letter to the Editor, "Untrustworthy Ratings",
7/17/92, The New York Times