



NINTH JUDICIAL COMMITTEE

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FAX COVER SHEET

2/11/92

3:30 p.m.

DATE

TIME

TO: MR. TONY BROWN  
GANNETT NEWSPAPERS

FAX NUMBER: 914-694-5018

This fax consists of a total of 11 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  
Ninth Judicial Committee

MESSAGE:

Thank you for your kind listening ear. I hope you will agree that this is an important news story with national ramifications.

Regards.

*Elena*



NINTH JUDICIAL COMMITTEE

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November 20, 1991

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

Honorable Sir:

This letter confirms our November 13, 1991 telephone conversation with the Judiciary Committee staff wherein the Ninth Judicial Committee requested the opportunity to testify against the confirmation of Andrew O'Rourke for a federal judgeship.

By way of background, the Ninth Judicial Committee is a grass-roots organization of lawyers and laypeople dedicated to ensuring a quality judiciary. We were formed in 1989 as a direct response to the increasing politicization of the bench--particularly in the Ninth Judicial District of New York State: Westchester, Putnam, Dutchess, Orange, and Rockland Counties.

Since our formation, we have championed two important legal challenges in the state courts of New York, the cases of Castracan v. Colavita and Sady v. Murphy, and have spearheaded the case of Maxey v. Schaffer now pending in federal court. Those cases address the controlling influence of party leaders in the nomination of judges and the criteria employed in the making of such nominations: political connections and loyalties rather than legal excellence, judicial experience, or even judicial temperament.

We have requested that Senator D'Amato supply us with information as to the basis of his recommendation of Mr. O'Rourke for a federal judgeship--since such nomination appears to us to be wholly political. In that regard, the following two excerpts from the local Gannett newspapers are most illuminating:

[Gannett newspapers, 10/24/90, Ed Tagliaferri]

"O'Rourke...sought a Yonkers or county judgeship while on the Board of Legislators, from 1973 to 1983, but was blocked by Yonkers GOP officials, who thought he was not enough of a party man. After running unsuccessfully for governor in 1986 against Mario Cuomo, O'Rourke found speculation aplenty that the GOP would reward him with a federal judgeship."

[Gannett newspapers, 6/13/90, Commentary by Tony Brown]

"It is amazing how much stuff Andrew O'Rourke doesn't care about, hasn't cared about and probably will never care about.

In this regard, the state Commission on Government Integrity's report, released yesterday, is most instructive on the county executive's priorities, his goals, his extraordinary disinterests.

O'Rourke, for instance, hasn't cared that his payroll has long been a job bank for unemployed (and, in some cases, unemployable) Republicans. The commission's report recounts a time early in O'Rourke's tenure when then-County Clerk George Morrow approached him about appointment of several deputies. O'Rourke, the elected GOP county executive, responded by saying that 'jobs of that status have to be cleared through Tony.'

Tony is, of course, Anthony Colavita of Eastchester, the county Republican chairman, the man who could apparently tell the county executive what to do and whom to hire...

O'Rourke--never known for his energetic lobbying of the county Board of Legislators anyway--didn't seem to mind Colavita's orchestrating board meetings and shaping county budgets. Republican board member Ed Brady told the commission how 'at Colavita's insistence,' the party boss would go over agendas, item by item, with board members to make sure Republican interests were served in all board decisions.

O'Rourke didn't seem to care much that, as a result of revelations by the press and the commission, public faith in county government had been damaged."

Because of the danger which this political nomination represents, the Ninth Judicial Committee will be submitting an extensive dossier highlighting Mr. O'Rourke's conduct as Westchester County Executive. We believe such conduct should be squarely before the Judiciary Committee when it questions Mr. O'Rourke and evaluates the likelihood of his exercising responsible and "independent" decision-making should he sit on the bench.

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.

This letter is also being sent to the White House with a similar request for information as to the qualifications and background which were reviewed by the President when he endorsed Senator D'Amato's recommendation of Mr. O'Rourke's name.

We believe the input and involvement of grass-roots groups such as the Ninth Judicial Committee will serve an additional purpose in countering the growing cynicism that our elected officials are responsive to politics--not the public. We hope you'll agree.

Yours for a quality judiciary!



ELENA RUTH SASSOWER  
Coordinator, Ninth Judicial Committee

cc: President George Bush  
Members of the Senate Judiciary Committee  
Senator Alfonse D'Amato  
Senator Daniel Patrick Moynihan



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By Fax and Mail  
202-224-9516

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.

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.

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 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

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# Editorial Page

Garrett Suburban Newspapers/Saturday, June 8, 1991

## U.S. Justice Dept. squelches speech

Standing on its own as an isolated example, the decision of the U.S. Justice Department to deny lawyers in New York City an opportunity to express formal opinions on the qualifications of judicial nominees would still be significantly disturbing.

But with disclosure of the policy change coming within days of a Supreme Court ruling upholding the administration's right to abridge the free speech of doctors and some other health-care providers, the Justice

Department's edict must be packaged into a troubling suggestion that the Bush administration holds in particularly low regard the right of Americans to dissent.

Certainly, the Justice Department is not worried that the Association of the Bar of the City of New York will support the administration's nominees for the federal bench serving the metropolitan region. It was not a worry about concurrence, but only a fear of dissent that could possibly explain the policy shift.

For 120 years, the city bar association has reviewed the qualifications of federal judicial nominees. The American Bar Association, which probably is more centrist and certainly is more remote, does something similar in Washington.

Now, the justice department has instructed all candidates for the federal bench that they cannot

cooperate with the New York City bar by appearing at screening interviews or otherwise responding to inquiries.

In most cases, lawyer review of judicial candidates offers only little guidance, since lawyers in the main are reluctant to make public criticisms of their colleagues. But in some few cases, the city bar association may be able to raise

legitimate issues of concern that should rightfully be considered by the Senate in passing on a candidate for the federal judiciary.

How peculiar — but, sadly, how characteristic for this

administration — that Attorney General Dick Thornburgh, through an aide, lambastes the city bar's historic role as an "interference with the constitutional process" of filling vacancies on the federal bench.

In fact, as a companion to the review offered by the national bar, the city bar merely offers the Senate additional information and a different perspective on the qualifications of judicial nominees.

The only constitutional process at jeopardy here is the constitutional process of free speech.

Not only is the city bar being denied some opportunity to express informed opinions in a manner and forum that can be meaningful, the rights of the nominees themselves are being restricted by Thornburgh's edict.

Edict confirms administration's attitude on dissent.

## 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.

But, he said, "In the past, President Bush has rejected the idea of consultation."

### Access to Background Checks

Mr. Mitchell appointed five Senate committee chairman 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 long-standing 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**