



NINTH JUDICIAL COMMITTEE

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

FAX COVER SHEET

1/26/93

2:45 p.m.

DATE

TIME

TO: THE NATIONAL LAW JOURNAL
ATT: Chris Carmody

FAX NUMBER: 202-662-8818 (tele: 202-662-8930)

This fax consists of a total of ~~8~~ 10 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 Chris:

By President Clinton's own admission, the Zoe Baird nomination is a product of a deficient screening process. Thus, the question that needs be answered is WHO in Clinton's Transition Team was responsible for screening Ms. Baird--and, particularly, what was the role of the "Judicial Cluster" headed by Bernard Nussbaum.

As discussed, Bernard Nussbaum--now White House counsel--will be filling the job formerly held by G. Boyden Gray. As such, he will be passing upon hundreds of recommendations for lifetime judicial appointments.

To the extent that Mr. Nussbaum was involved in endorsing Zoe Baird for the all important office of Attorney General, we have a prime example of his lack of judgment as to what constitutes appropriate professional qualifications.

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As mentioned to you, immediately upon reading a newspaper item that Bernard Nussbaum was himself being considered for White House counsel or for a high post in the Justice Department, I contacted the Clinton Transition team (on January 13th) to apprise them of our experience with Mr. Nussbaum when he was President of the Federal Bar Council. In our view, such experience highlighted a serious lack of judgment and leadership on Mr. Nussbaum's part that reflected upon his unsuitability for a position involved in judicial selection.

The fact that Mr. Nussbaum "shut his eyes" to the serious situation documented by our critique--a situation affecting not only the public at large, but the membership of the organization which he headed--is a powerful statement of his lack of commitment to the integrity of the judicial screening process, the focal issue of our critique.

The relevant correspondence is faxed herewith. Please note that in his February 6, 1992 letter, Mr. Nussbaum placed great reliance in the screening of the City Bar. Nevertheless, Mr. Nussbaum's June 1, 1992 letter brushed aside--without comment or concern--the evidence outlined in our May 26, 1992 letter to him regarding the City Bar's "screening out" of information adverse to Mr. O'Rourke in connection with its approval of his qualifications.

The incalculable consequences of Mr. Nussbaum's inaction can be glimpsed by the article "George's Choice"--a copy of which I faxed you yesterday.

Mr. Nussbaum should be called to account for failing to speak up when it was incumbent upon him to do so because of the transcendent public interest that was involved and because the Federal Bar Council, of which he was President, expressly makes the Second Circuit its focal concern.

I believe that Mr. Nussbaum's "silence" is explicable only in "political terms"--i. e., as a reflection of his desire "not to step on toes" and embarrass those in high places who would otherwise have to explain the travesty of the screening of Andrew O'Rourke--the utter grossness of which our critique documented.

Under the circumstances, what kind of honest advice can Mr. Nussbaum as White House counsel be expected to give President Clinton? Certainly it is an extraordinary irony for Mr. Nussbaum to oversee judicial nominations and the screening process.

Page Three

For you, as a reporter, there is an important opportunity here to get a striking angle on President Clinton's new counsel and, especially, to get from him a statement as to the specific steps he will take to correct the dangerous situation which our critique brought to his attention eight months ago--and about which he then did nothing.

Of course, there is broad range of absolutely breath-taking angles to this story about our critique--some of which I discussed with Marcia back in September--and some of which have developed since then. By way of example, I am happy to report that after eight months of correspondence with the ABA on the subject of our critique and its obligation to retract its rating of Mr. O'Rourke, I can FINALLY report some very exciting progress. Please let me know if you want the documents and details.

Meantime, I sent my warmest regards to Marcia and enclose the following:

- (1) Our first letter to President Nussbaum, 1/29/92
--the enclosures indicated at p. 2 therein can be found in the compendium of exhibits to the critique: Ex. "B", Ex. "C", Ex. "U-1", and Ex. "SS-1"
- (2) President Nussbaum's response, 2/6/92
- (3) Our second letter to President Nussbaum, 5/26/92
--the most essential enclosure for your purposes is our 6/26/92 ltr to City Bar President Feerick, which reflects the deliberate "screening out" of adverse information by the City Bar's Committee on Judiciary. As discussed, that letter is annexed to our 6/2/92 letter to Senate Majority Leader Mitchell, which is among the correspondence I left with Marcia.
- (4) President Nussbaum's response, 6/1/92
- (5) Our 6/9/92 fax to President Nussbaum (sent prior to our receipt of President Nussbaum's 6/1/92 ltr)

Elena



NINTH JUDICIAL COMMITTEE

Box 70, Godney Station
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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.

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

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



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May 26, 1992

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

Dear President Nussbaum:

Perhaps you will recall our January 29, 1992 letter wherein we expressed our concerns about President Bush's nomination of Andrew O'Rourke to a Second Circuit judgeship. We inquired as to whether the Federal Bar Council had screening procedures of its own and would be evaluating Mr. O'Rourke's qualifications. We also asked whether the Federal Bar Council would endorse evaluation of Mr. O'Rourke by the City Bar.

In pertinent part, your expeditious February 6, 1992 response stated:

"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 of time.)"

Because of the confidence you placed in the City Bar, you will doubtless be distressed by the manner in which it reviewed Mr. O'Rourke's credentials--and rejected adverse testimonial and documentary information offered it by the Ninth Judicial Committee. Indeed, because we were so completely repulsed by the City Bar, we were obliged to undertake our own critique of Mr. O'Rourke's qualifications--which we set forth as our Law Day contribution to the Senate Judiciary Committee.

May 26, 1992

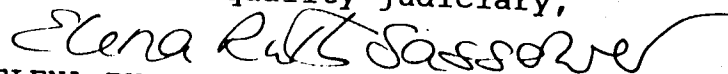
Enclosed herewith is a copy of that critique, as well as our letter to the City Bar's new President John Feerick. You will note that our letter to President Feerick updates our critique with information as to the City Bar's favorable rating of Mr. O'Rourke nomination--and calls for the City Bar to retract it.

We have, likewise, called upon the ABA to retract its favorable rating of Mr. O'Rourke.

Your examination of our critique will leave no doubt but that appropriate screening is not taking place by the City Bar, the ABA, and the Justice Department and that a dangerous situation currently exists. We call upon you to read our enclosed letter to Senate Majority Leader George Mitchell and--based upon the evidence set forth by our critique--join us in urging a moratorium on confirmations of judicial nominations pending before the Senate.

Your expression of public support for our efforts would be greatly appreciated.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

Enclosures:

- (a) critique and compendium of exhibits
- (b) 5/18/92 ltr to Senate Majority Leader Mitchell
- (c) 5/26/92 ltr to President Feerick
- (d) 5/19/92 ltr to President D'Alemberte

cc: Senate Majority Leader, George Mitchell
Chairman Joseph Biden, Senate Judiciary Committee
City Bar President Feerick
ABA President D'Alemberte
People for the American Way
Alliance for Justice

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Federal Bar Council

BERNARD W. NUSSBAUM
President

June 1, 1992

Ms. Elena Ruth Sassower
Coordinator
Ninth Judicial Committee
Box 70, Gedney Station
White Plains, N.Y. 10605-0070

Dear Ms. Sassower:

As you requested, we are returning the critique and compendium of exhibits with respect to Andrew P. O'Rourke. As I previously wrote, the Federal Bar Council will not be acting in this matter.

Very truly yours,



BWN:db
Enclosure



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By Fax: 212-371-1658

June 9, 1992

Bernard W. Nussbaum, President
Federal Bar Council

Dear President Nussbaum:

We note in yesterday's Law Journal that a meeting of the Federal Bar Council will be held today at 5:30 p.m.

We hope that you will present to the members of the Federal Bar Council the materials we hand-transmitted to your office on May 28, 1992. The serious failure of the screening process as it relates to federal judicial nominees--which those materials document--deserves a priority position on your agenda.

Yours for a quality judiciary,

ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee