



NINTH JUDICIAL COMMITTEE

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October 6, 1992

President J. Michael McWilliams  
American Bar Association  
750 North Lake Shore Drive  
Chicago, Illinois 60611

RE: Our Critique of the Nomination of  
Andrew O'Rourke to the District  
Court in the Second Circuit

Dear President McWilliams:

This letter follows up our September 11, 1992 letter to you relative to the critique we submitted to the Senate Judiciary Committee--which we complained was not being appropriately addressed by the ABA.

We specifically requested that you obtain a duplicate of our critique from William Willis, Chairman of the Standing Committee on Federal Judiciary--in the event that the files of your predecessor, Talbot D'Alemberte, did not contain a copy.

We have now received Mr. Willis' response to a separate letter of the same date which we sent to him. That letter asked Mr. Willis three specific questions:

- (1) whether the members of the Standing Committee on Federal Judiciary had reviewed the critique we submitted to the Senate Judiciary Committee on the nomination of Andrew O'Rourke to a district court judgeship;
- (2) whether the Standing Committee planned to retract its endorsement of Mr. O'Rourke based thereon; and
- (3) whether the ABA was taking steps to address the deficiencies in its judicial screening procedures which our critique documented.



Mr. Willis' September 18, 1992 response--listing you as a recipient--states in pertinent part:

"As you know, we are not free to discuss publicly actions we are taking with respect to specific judicial candidates.

I again assure you that the material you sent to Mr. D'Alemberte with your letter of May 19, 1992 was received and has been carefully studied."

Such statement has necessitated our instant communication since Mr. Willis does not make clear whether our critique was reviewed by the members of the Standing Committee on Federal Judiciary or only by him. Without intending disrespect to Mr. Willis, we believe he is in a conflict of interest position. As the Standing Committee's former member for the Second Circuit, Mr. Willis was responsible for the ABA investigation of Mr. O'Rourke--following which "a substantial majority" of the Committee rated Mr. O'Rourke "qualified" for a district court judgeship in the Second Circuit.

Since it was the Committee--or at least "a substantial majority"--which was responsible for putting the ABA imprimatur on the O'Rourke nomination, it is the Committee members who must review the serious--if not unprecedented--evidence presented by our critique and evaluate the necessity of corrective action.

We, therefore, respectfully request that you confirm for us whether each member of the Standing Committee on Federal Judiciary was provided with a copy of the critique and was made aware of our correspondence with the ABA since May 19, 1992--when we first brought this matter to the attention of former President D'Alemberte.

Although we understand the ABA's position on "confidentiality"--which was discussed in our critique--we believe that in the five months since the ABA has had our critique, there has been more than ample time for confidential review and deliberation. Such review should have brought forth some public announcement by now of what is a demonstrably unfounded and inappropriate "qualified" rating of Mr. O'Rourke.

In the event you do not share our view that the ABA has an on-going obligation to the public to retract a rating when documentary evidence of a nominee's fraudulent conduct is presented to it, we wish a written statement to that effect.

Yours for a quality judiciary,



ELENA RUTH SASSOWER  
Coordinator, Ninth Judicial Committee

cc: William E. Willis, Chairman  
      Standing Committee on Federal Judiciary  
Irene R. Emsellem, Staff Liaison  
Talbot D'Alemberte, Board of Governors Liaison  
Chairman Joseph Biden, Senate Judiciary Committee