



NINTH JUDICIAL COMMITTEE

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By Hand

May 26, 1992

John D. Feerick, President
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036-6690

Dear President Feerick:

We congratulate you on your induction as President of the City Bar and wish you well as you assume its leadership. We trust you will accord priority to matters which effect not only the legal community, but impact directly upon the general public.

As you know, the Ninth Judicial Committee submitted to the Senate Judiciary Committee, as its Law Day contribution, a critique of the qualifications of Andrew O'Rourke, establishing his unfitness for the federal judgeship to which he was nominated by President Bush.

As part thereof, we chronicled the failure of the screening process (at pp. 29-38)--including screening by the City Bar (pp. 35-38). We established the manner in which the City Bar shut out public input and asserted "confidentiality" to ward off wholly legitimate inquiry as to whether it had evaluated Mr. O'Rourke or was planning to do so.

We also documented the City Bar's refusal to provide verification for information about its screening of Mr. O'Rourke which Mr. O'Rourke had himself made public when he answered the "public" portion of the Senate Judiciary Committee's questionnaire. Thus, although Mr. O'Rourke responded to III-Q3 (Ex. "A", p. 12) that he had been interviewed by the City Bar's Committee on the Judiciary in January 1991 and that--as of a full year later--he was "unaware" of any rating by that Committee, the City Bar refused to confirm such unusual time lag.

Our critique documented the appalling manner which we, as concerned members of the public, were treated by the City Bar, as well as the absolute unconcern shown by the Chairman of its Committee on the Judiciary for the documentary and testimonial evidence of Mr. O'Rourke's unfitness which we sought to present.

Indeed, as shown by Exhibit "XX-1" to our critique, we directly apprised your predecessor, President Conrad Harper, of the arrogant manner in which the City Bar was conducting itself--and treating those who wished to present it with information bearing on Mr. O'Rourke's qualifications. The concluding paragraph to our February 24, 1992 letter is particularly pertinent:

"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." (Ex. "XX-1")

Neither President Conrad Harper nor anyone on behalf of the City Bar's Committee on the Judiciary communicated with us then or thereafter to ascertain the nature of the disqualifying information we had proffered on several different occasions.

Nonetheless, on May 14, 1992, the public was informed by the local Gannett newspaper that the City Bar had "approved" Mr. O'Rourke's nomination. The article included a direct quote from the Chairman of the City Bar's Committee on the Judiciary, who stated for the benefit of the press:

"It's a detailed investigation, including talking with many people who have come into contact with the candidates in their professional careers."

We regard the foregoing statement as exemplifying the dangerous illusion created by organizations of the bar, such as the American Bar Association and the City Bar, that the "ratings" those groups submit to the Senate Judiciary Committee reflect meaningful investigation and review--when, in reality, they constitute a fraud on the American public.

As hereinabove discussed, the "investigation" made by the City Bar did not include any attempt to "talk" with us in order to learn the details as to the disqualifying information we proffered or to obtain from us the dispositive documentation establishing Mr. O'Rourke's unfitness.

May 26, 1992

Inasmuch as the City Bar purports that it conducted a "detailed investigation", but neither provides the public nor the Senate Judiciary Committee with any evidence in support thereof, we urge you to review our critique of Mr. O'Rourke, which we submitted to the Senate Judiciary Committee. Unlike the City Bar, we fully documented the thoroughness of our investigation as to Mr. O'Rourke's absolute lack of qualifications, as well as our position that:

"no reasonable, objective evaluation of Mr. O'Rourke's competence, character and temperament could come to any conclusion but that he is thoroughly unfit for judicial office." (5/1/92 critique, at p. 2)

Based upon the evidence presented by our critique, we call upon the City Bar to reconsider and retract the favorable rating it gave Mr. O'Rourke on May 7, 1992--a full sixteen months after Mr. O'Rourke claims it interviewed him, and six months after his nomination by President Bush.

It plainly appears that the City Bar, the American Bar Association, and the Justice Department are not screening out "unfit candidates", but rather information bearing upon their unfitness. Consequently, we are soliciting support from leaders of the bar for a moratorium on confirmations of judicial nominations pending before the Senate. In recognition of the extraordinary danger to the public represented by the elevation of unfit nominees to life-tenure on the federal bench, we expect the City Bar will add its support.

Yours for a quality judiciary,



ELENA RUTH SASSOWER
Coordinator, Ninth Judicial Committee

Enclosures:

- (a) 5/14/92 Gannett, "NYC Bar Backs O'Rourke for Seat on Federal Bench", by Ed Tagliaferri
- (b) 5/18/92 ltr to Senate Majority Leader Mitchell
- (c) 5/19/92 ltr to ABA President D'Alemberte
- (d) 5/26/92 ltr to Federal Bar Council President Nussbaum

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

NYC bar backs O'Rourke for seat on federal bench

By Ed Tagliaferri

Staff Writer

There's no news from Washington, D.C., but Westchester County Executive Andrew O'Rourke's chances for a federal judgeship got a boost this week out of New York City.

The Association of the Bar of the City of New York approved him for a seat on the U.S. District Court in New York's Southern District.

O'Rourke is still waiting for a call from the U.S. Senate's Judiciary Committee. Only after he is reviewed by the Senate committee can he be sent to the full Senate for confirmation.

If O'Rourke does not get his Senate hearing before the summer recess in July, it is unlikely he will be appointed to the federal bench this year. His name would then have to be resubmitted in January by the presi-

dent, and that would be likely only if George Bush was re-elected.

Robert Haig, chairman of the city bar association's Committee on the Judiciary, said O'Rourke was eligible for a rating of "approved" or "disapproved."

While he said he could not discuss the specifics of a review of a particular candidate, Haig said the committee will generally ask candidates to fill out questionnaires and provide information on their careers and qualifications.

"It's a detailed investigation, including talking with many people who have come into contact with the candidates in their professional careers," he said.

"This is probably the most prestigious bar association in the United States of America," O'Rourke said. "This is truly an honor."