

THE ROLE OF THE AMERICAN BAR ASSOCIATION IN THE JUDICIAL SELECTION PROCESS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

EXAMINING THE ROLE OF THE AMERICAN BAR ASSOCIATION IN THE
SELECTION OF FEDERAL JUDGES

MAY 21, 1996

Serial No. J-104-82

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

25-623 CC

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-052854-2

EX-D-2"

from Illinois don't like your judgment, we can differ with that judgment. I can remember on at least one occasion when this committee, I think, virtually unanimously differed with the decision made by the Bar Association.

I think they have also—and I note the presence of a distinguished former Attorney General here, Dick Thornburgh. I do not recall the ratings during the Thornburgh reign, if I may call it that, but I do remember the contrast. I had my staff do a contrast at the appellate court level between the William French Smith attorney generalship and the Ed Meese attorney generalship, and you saw a real difference in the numbers of nominees from the administration that were very divided in terms of who came before us. I think that said something to us.

Then, finally, I hope that this hearing will not in any way soften the stands that the American Bar Association takes. We need your voice. For example, up there [pointing to the chart], "Mandatory Minimum Sentences"—this is an easy thing for those of us in politics to demagogue on. We need sane voices. We need not only Chief Justice Rehnquist making a speech somewhere saying mandatory minimum sentences are a disservice to the country. We need groups like the American Bar Association standing up, voicing their opinions on unpopular sides of things, and we should have had it more often.

Some of my colleagues on the committee have heard me talk about this before. I happened to grow up in the State of Oregon. My parents were active in what was then called race relations, we now call civil rights. In February of 1942 when 120,000 Japanese Americans were taken from their homes, not one of whom had committed a crime, and told you have 1 to 3 days to sell all your property, the position taken by the then Democratic administration was a very popular decision, supported strongly by American public opinion. I wish the American Bar Association had stood up on that occasion for the rights of American citizens.

I want you to stand up more, not less, and sometimes I am going to differ with your opinions. Sometimes, others in here are going to differ with your opinions, but we need the American Bar Association to continue to be a responsible voice in this country and to play an important role in this process.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Thurmond has to leave for Admiral Boorda's memorial service, so we are going to allow him to make a few comments at this time, and then we will turn to the witnesses.

**STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR
FROM THE STATE OF SOUTH CAROLINA**

Senator THURMOND. Mr. Chairman, I regret I can't be here for this full hearing, but I must attend the memorial service for Admiral Boorda, a close friend of mine. I am very pleased that we have such able people here on this panel today, headed by the Honorable Richard Thornburgh, who made such a fine record as Attorney General of the United States.

Now, Mr. Chairman, in short, I believe the ABA should not be accorded the deference they have been given in the past in rating

judicial nominees. The President and the Congress have adequate resources to properly and thoroughly investigate the background of individuals nominated to the Federal judiciary. Neither the Constitution nor Federal statute provide a formal role for the ABA's Standing Committee to evaluate choices made by the President to serve in the Federal judiciary. Of course, these nominees are carefully reviewed by the Senate and we give due consideration to the views of others prior to a vote on confirmation. *

As some have stated, no other private association is given the influence over nominees, nominees who may ultimately impact their business, as currently given to the ABA. The American Bankers Association does not enjoy special status to evaluate nominees to the Federal Reserve Board. Additionally, the Senate does not grant the American Association of Retired Persons special status to evaluate a nominee to serve as administrator of the Social Security Administration. Similarly, the American Medical Association does not have the comparative strength of the ABA in evaluating a nominee to serve as Surgeon General. These are a few examples, Mr. Chairman, to illustrate the influential role adopted by the ABA in the nominating process.

For years on this committee, we have discussed the ABA's unprecedented influence in the judicial selection process. Most often, those discussions have focused on problems with this arrangement and not on any compelling need for a continuation of their formal role in the judicial selection process.

Mr. Chairman, it is my belief that we should receive testimony and give consideration to the views of the ABA, but we should treat them equally with other groups and private associations in the nominating process. The ABA should not continue to be accorded its preeminent role and special status in the judicial selection process which goes beyond that accorded any other private group or organization.

Likewise, I believe the Senate should adopt a sense of the Senate resolution, or by some other means express our opinion to the President that the ABA should no longer be granted its special relationship in the judicial selection process. For the record, Mr. Chairman, I am told that my friend, Judah Best, will soon chair the ABA Standing Committee. I know Mr. Best to be an able and dedicated lawyer, and if the ABA does continue in its current role, he is a good man to lead the Standing Committee.

Mr. Chairman, thank you very much, and please excuse me at this time.

The CHAIRMAN. Well, thank you, Senator Thurmond. We certainly excuse you. We all sorrow over Admiral Boorda and we appreciate your being able to represent us there.

We will begin our hearing today with three very important witnesses. I am pleased to welcome before the committee three of the most distinguished lawyers and judges in the Nation. I think we are lucky to have their advice on this important issue.

First is Dick Thornburgh, former Attorney General of the United States, and now a partner in the law firm of Kirkpatrick and Lockhart. I want to welcome you back to the committee, Dick. It is always good to have you here. I am always happy to see you.