STATEMENT OF
ROBERT P. WATKINS
STANDING COMMITTEE ON FEDERAL JUDICIARY
AMERICAN BAR ASSOCIATION

CONCERNING THE
NOMINATION OF

DAVID F. HAMILTON
TO BE JUDGE OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

BEFORE THE
COMMITTEE OF THE JUDICIARY
UNITED STATES SENATE

SEPTEMBER 21, 1994
Mr. Chairman and Members of the Committee:

My name is William E. Willis. I am a practicing lawyer in New York and the Chair of the American Bar Association’s Standing Committee on Federal Judiciary.

Our Committee investigated the qualifications of David Frank Hamilton for appointment to the United States District Court for the Southern District of Indiana and concluded that he was Not Qualified.

During the period that the Committee had this nomination under consideration, I was not a member of the Committee. Robert P. Watkins served as Chair of the Committee and is appearing here today to present the views of our Committee.
Mr. Chairman and Members of the Committee:

My name is Robert P. Watkins. I am a practicing lawyer in the District of Columbia. I appreciate the opportunity to appear here today to present the views of the American Bar Association’s Standing Committee on Federal Judiciary on the professional qualification of David F. Hamilton for appointment to the United States District Court for the Southern District of Indiana.

The Standing Committee takes very seriously its responsibility to conduct an independent examination of the professional qualifications of judicial candidates; and conducts a thorough, unbiased and fair examination of a candidate’s judicial temperament, professional competence and integrity. It applies the same standards and criteria impartially to all candidates. President Clinton has submitted to the Senate the names of 135 nominees for judicial appointment. Our Committee has found only three of those candidates to be Not Qualified. In those cases when a candidate is rated "Not Qualified" the Committee believes it has an obligation to present its findings to the Senate Judiciary Committee.

The Committee’s investigation began in August, 1993, and concluding in April, 1994. It included over 40 confidential interviews with trial and appellate judges, lawyers, and others
who know and have worked with the candidate, and who have direct
knowledge of his professional qualifications.

His writings were examined and analyzed. Two members of the
Committee met with Mr. Hamilton on two different occasions, at
which times the Committee’s concerns were fully discussed and the
candidate given an opportunity to provide additional information.

After careful investigation and consideration, a majority of
our Committee was of the view that Mr. Hamilton is "Not
Qualified" for the appointment. Because of his limited number of
years practicing at the bar, and his lack of trial experience, a
majority of the Committee believes that he has not met the high
standards we believe are necessary for a lifetime appointment
to the Federal District Court. A minority of the Committee
acknowledged the limited scope of the nominee’s experience to
date, but was prepared to place greater emphasis on what was
perceived to be the nominee’s future potential and therefore
found him to be qualified.

Our conclusion that Mr. Hamilton should be rated not
qualified is based on several factors. The Committee’s criteria,
as set forth in The Standing Committee on Federal Judiciary: What
it is and How it Works (Backgrounder), state: "Ordinarily a
prospective nominee to the federal bench should have been
admitted to the bar for at least 12 years." There should be, we believe, evidence that the nominee is professionally competent to manage and resolve the hundreds of diverse matters facing a Federal judge at all times, covering as they do the broad spectrum of the law. This evidence is the strongest and easiest to measure when the lawyer has practiced law for a number of years; 12 years is what we think to be an appropriate minimum. A lawyer with this amount of experience is far more likely to have been exposed to a wide variety of legal issues in a wide variety of subject matter areas of the kind that he or she would face as a judge on a federal trial court than is one lacking such experience. He or she will have had an opportunity by actual trial experience in a number of cases to become at least very knowledgeable, if not expert, in the functioning of the court room over which he or she would preside. The judicial system, the public, the trial bar and the candidate are not well served by placing on the bench one with only a minimum of experience.

David Hamilton, when his name was given to our Committee for investigation, had been a member of the bar for less than 9 years, having been admitted in Indiana in October 1984. In those years, he was an associate of an Indianapolis law firm for 4 and 1/3 years, served as Governor's counsel for 2 and 1/2 years and returned as a partner of his present law firm for 2 years.
The Committee's Backgrounder addresses the issue of a candidate's public service, it states: "The Committee considers that civic activity and public service are valuable experiences, but that such activity and service are not a substitute for significant experience in the practice of law, whether that experience be in the private or public sector." Excluding Mr. Hamilton's time as Governor's counsel, he has practiced law for approximately six years and four months. We do not want to belittle his experience or suggest that he has not performed admirably, but a majority of our Committee does not believe that at this point in time his limited experience has the scope and depth to qualify him for appointment as a federal judge.

The 12-year experience guideline is not a hard and fast rule, and is not an automatic disqualifier. The Committee's criteria provide that limited experience may be offset by the breadth and depth of a candidate's experience over the course of his or her career. Candidates with less than 12 years at the bar, but with substantial trial or courtroom experience and/or compensating accomplishments in the field of law, can and have been found qualified by our Committee. However, Mr. Hamilton's experience to date has a very substantial gap, namely the extent of his trial experience. Mr. Hamilton does not have substantial trial experience. He has never tried a jury case. He has never tried a criminal case. And in the area of civil law, he reports
that he has tried only three civil cases. His legal practice to date, even including his service as Governor's Counsel, do not constitute the kind of distinguished accomplishments in the law that would compensate for the nominee's lack of substantial trial experience.

It is the Committee's judgment that at the present time, Mr. Hamilton does not meet the minimum professional competence standard necessary to perform the responsibilities required by the high office of Federal judge.