STATEMENT OF

CHARLES E. ENGLISH

STANDING COMMITTEE ON FEDERAL JUDICIARY
AMERICAN BAR ASSOCIATION

CONCERNING THE

NOMINATION OF

DAVID A. KATZ
TO BE JUDGE OF THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

BEFORE THE

COMMITTEE OF THE JUDICIARY
UNITED STATES SENATE

SEPTEMBER 28, 1994
STATEMENT OF WILLIAM E. WILLIS

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 Allen Katz for appointment to the United States District Court for the Northern District of Ohio. A substantial majority of the members concluded that he was Not Qualified. A minority would have found him Qualified. President Clinton has submitted to the Senate 140 nominees for appointment to the Federal Courts. Only 3 of those nominees have been found Not Qualified by our Committee. In those cases when a candidate is rated "Not Qualified" the Committee believes it is obligated to submit its findings to the Senate Judiciary Committee.

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. It has been carrying out its responsibility for over 40 years.
I was not a member of the Committee when it reviewed the qualifications of Mr. Katz. Charles E. English, of Bowling Green, Kentucky and the Sixth Circuit Member of our Committee, led the investigation into the qualifications of Mr. Katz and is appearing here today to present the views of our Committee.
STATEMENT OF CHARLES E. ENGLISH

Mr. Chairman and Members of the Committee:

My name is Charles E. English. I am a practicing lawyer in the State of Kentucky. I conducted, as the Sixth Circuit member of our Committee, the initial investigation of the qualifications of Mr. David A. Katz for appointment to the United States District Court, Northern District of Ohio.

The Committee has concluded that Mr. Katz is Not Qualified for appointment to the Federal District Court. This conclusion was reached after a careful review of the written submissions of Mr. Katz, personal interviews of the candidate by one active member and one former member of the Committee on two separate occasions, and confidential interviews of over 40 Federal and state court judges, both trial and appellate, and practicing lawyers and legal educators in the Northern District of Ohio.

It is important to understand that the Committee does not simply apply a calendar measure in evaluating the professional qualifications of judicial candidates. What is important is the nature of one's experience. The Committee believes, and this belief is widely shared by sitting trial judges and lawyers, that substantial courtroom and trial experience is important for prospective nominees to the District Courts. The trial court judge must be knowledgeable concerning and adept at applying the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, as well as the Federal Rules of Evidence. This ability springs from experience gained over time in the courtroom.
Mr. Katz, a distinguished member of the Bar of Ohio for over 37 years, has had almost no trial experience in those years. He readily acknowledges that he is not a trial lawyer, and more specifically that he has not tried a civil or criminal case in state or Federal court in the last 20 years. This is understandable since early in his career Mr. Katz elected to become a corporate lawyer.

One of the questions that we ask candidates on the Personal Data Questionnaire is to describe ten of the most significant litigated matters or matters representative of the potential nominee's experience, which the nominee personally handled. Mr. Katz listed only three matters.

Of the three matters, only one involved a proceeding in federal court. That matter occurred 14 years ago and involved only a hearing requiring a corporation to produce a list of stockholders. It was not a jury or even a bench trial; the matter was disposed of by motion.

The second matter occurred over 30 years ago. It was a state court proceeding that was disposed of on a statute of limitations issue and did not involve a jury trial. The third case was in Municipal Court in 1960, involved a convenience store employee charged with violating Ohio's Sunday closing law and did not involve a jury trial.
We ask candidates to produce copies of at least five briefs or other legal writings that will give the Committee an opportunity to judge the candidate's ability to carry out the analytical writing requirements for a Federal Judge. Mr. Katz had no brief or writings that would reflect his ability to handle the type of legal analysis required of a Federal judge or his familiarity with the substantive legal issues facing the courts today. He did submit copies of corporate documents. Mr. Katz is a first-rate corporate lawyer, experienced in preparing contracts, securities offerings and the like. But he has shown no evidence of his ability to perform the kind of legal analysis or do the kind of legal writing that would be required of a Federal judge.

There is no question that Mr. Katz has integrity, possesses judicial temperament, and has earned a solid reputation as a fine man and one who has contributed generously to civic and public service activities. His pro bono efforts deserve the highest praise. But to place him on the Federal trial bench is to put him into an environment with which he has no familiarity or experience. A federal judge today faces a massive criminal docket. Mr. Katz has no background whatsoever in criminal litigation. The Federal judge must preside over jury trials. Mr. Katz has no jury trial experience. His total trial experience is minimal and occurred over 20 years ago. His participation in a few arbitrations does not substitute for this lack of courtroom experience. Even the few arbitrations were mainly of the settlement type and not the
evidentiary kind.

Mr. Katz, to his credit, recognizes his lack of experience and background in the courtroom and concedes that he would be in a learning posture for "a couple of years". He will have to master the Civil and Criminal Rules, learn the Federal Rules of Evidence and acquire a solid grasp of their proper interpretation and application. The trial judge must react immediately as the trial progresses and must do so correctly, no easy task given the complex cases facing the Federal courts today. We submit that it is not fair to the public to place on the Federal bench one who lacks the background and will require a lengthy learning curve.

While substantial courtroom and trial experience (as a lawyer or a trial judge) is important to nominees for the trial courts, it is, of course, not absolutely essential and can be compensated by the presence of other experience that is similar to court trial work or by significant evidence of distinguished accomplishments in the field of law. The majority of the Committee did not find that the compensating evidence outweighed the absence of courtroom and trial experience.