STATEMENT OF

ROBERT P. WATKINS

STANDING COMMITTEE ON FEDERAL JUDICIARY
AMERICAN BAR ASSOCIATION

CONCERNING THE
NOMINATION OF

ALEXANDER WILLIAMS, JR.
TO BE JUDGE OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BEFORE THE
COMMITTEE OF THE JUDICIARY
UNITED STATES SENATE

JUNE 30, 1994
Mr. Chairman and Members of the Committee:

My name is Robert P. Watkins. I am a practicing lawyer in the District of Columbia, and I am Chair of the American Bar Association's Standing Committee on Federal Judiciary. With me today is J. Hardin Marion, the Committee's Fourth Circuit representative and principal investigator for this investigation, and William J. Brennan III, a former Committee member who acted as the second investigator in this case. We appear here to present the views of the Association on the nomination of Alexander Williams, Jr., to be a U.S. District Court judge for the District of Maryland. After careful investigation and consideration, including an evaluation of his written submissions, a substantial majority of our Committee is of the opinion that Mr. Williams is "Not Qualified" for the appointment. A minority found him to be "Qualified."

This was not a decision taken lightly by the Committee. No one likes to criticize a fellow member of the bar or to question openly an individual's qualification for judicial office. However, the ABA Committee takes very seriously its responsibility to conduct an independent examination of the professional qualifications of judicial candidates and in those instances when a candidate is rated "Not Qualified," the Committee believes it must present its findings to the Senate Judiciary Committee.
I. PROCEDURES FOLLOWED BY THE STANDING COMMITTEE

Before I get into the specifics of this case, I would like to review briefly the Committee's procedures so that you will have a clear understanding of the process the Committee followed in this investigation. A more detailed description of the Committee's procedures is contained in an ABA booklet entitled "Standing Committee on Federal Judiciary: What It Is and How It Works" (Exhibit A).

The ABA Committee investigates and considers only the professional competence, integrity and judicial temperament of the candidate. Ideological or political considerations are not taken into account. Our processes and procedures are carefully structured to produce a fair, thorough and objective evaluation of each candidate. A number of factors are investigated, including intellectual capacity, judgment, writing and analytical ability, industry, knowledge of the law, professional experience, character, integrity and general reputation in the legal community.

The investigation is ordinarily assigned to the member of the Committee residing in the judicial circuit in which the vacancy exists, although it may be conducted by another member or a former member. The starting point of an investigation is the receipt of the candidate's responses to the Personal Data
Questionnaire (PDQ). The PDQ is one of the candidate's opportunities to set forth his or her qualifications -- significant cases handled, major writings, and the like. The principal investigator personally conducts extensive confidential interviews with a broad spectrum of individuals who are in a position to evaluate the nominee's professional qualifications and also examines the legal writings of the candidate. The principal investigator interviews the candidate and discusses his or her qualifications for a judgeship, as well as the substance of adverse information raised during the investigation. The candidate is given a full opportunity to respond and to provide any additional information he or she may choose.

Sometimes a clear pattern emerges in the interviews, and the investigation can be briskly concluded. In other cases, conflicting evaluations as to professional competence may be received, or questions may arise as to integrity or temperament. The principal investigator usually submits an informal report on the progress of the investigation to the Chair, providing a preliminary assessment of the candidate's qualifications. In those cases where it appears that the preliminary assessment may be "Not Qualified," the Attorney General's office is alerted, and as a matter of fairness another investigator may be asked to come into the investigation and conduct whatever supplemental inquiries he or she feels appropriate.
At the conclusion of all inquiries, a formal investigative report, containing a description of the candidate's background, summaries of all interviews conducted (including the interview with the prospective nominee), an evaluation of the candidate's qualifications and a recommended rating, is circulated to the entire 15-member Committee together with the completed PDQ and copies of any other relevant materials. After studying the formal report, the Committee may discuss the candidate by telephone conference call or at a meeting, and each member sends a vote to the Chair rating the candidate "Well Qualified," "Qualified," or "Not Qualified." The Chair confidentially advises the Office of the Attorney General of the Committee's rating and, after a candidate is nominated, submits the rating to the Senate Judiciary Committee for inclusion in the public record.

An important concern of the Committee in carrying out its function is confidentiality. The Committee seeks information on a confidential basis and assures its sources that their identities will not be revealed outside of the Committee, unless they consent to disclosure. It is the committee's experience that only by assuring and maintaining such confidentiality can sources be persuaded to provide full and candid information. However, we are also alert to the potential for abuse of confidentiality. The substance of adverse information is shared
with the candidate, who is given full opportunity to explain the matter and to provide any additional information bearing on it.

II. THE INVESTIGATION OF MR. WILLIAMS

The request for an evaluation of Mr. Williams was received from the Office of the Attorney General on July 8, 1993. As you are aware, the Administration nominated Mr. Williams on August 6, 1993, before the ABA had concluded its inquiry.

Mr. Marion began his investigation shortly after receiving Mr. Williams' July 9, 1993, response to the Personal Data Questionnaire (Exhibit B). Mr. Marion talked first, in confidence, to twenty-four federal judges and magistrate judges, and two Maryland appellate judges. With a few exceptions, those judges had very little direct knowledge about Mr. Williams' professional qualifications.

In mid-August, Mr. Marion received from Mr. Williams, unsolicited, what Mr. Williams characterized as a revised version of his Personal Data Questionnaire (PDQ) (Exhibit C). Mr. Williams reported that the revision had expanded several earlier answers, tightened up his list of ten significant cases with some additional information, and included all of his writings. In fact, the "revision" of the PDQ was not the PDQ at all; instead, it was a copy of his completed Senate Questionnaire.
Even though Mr. Williams took that opportunity to revise his PDQ, in reading both completed questionnaires, Mr. Marion was concerned by a number of responses that continued to be inaccurate, incomplete, or questionable. Illustrations of those concerns are set forth below. As a result, Mr. Marion wrote Mr. Williams on August 26, 1993, requesting additional information (Exhibit D). Mr. Williams responded by letter dated September 1, 1993, with enclosures (Exhibit E).

Mr. Marion continued with his investigation, conducting confidential interviews with sixteen Prince George's County judges and thirty attorneys, most of whom practiced in Prince George's County and had direct knowledge of Mr. Williams' professional qualifications. He made a point to contact every attorney and judge identified by Mr. Williams in his list of ten significant cases on the PDQ. The judges and attorneys interviewed by Mr. Marion included persons in whose court Mr. Williams had appeared, academics, former students of Mr. Williams, attorneys who had opposed him in court, and attorneys who had served with him either in the Public Defender's office or in the State's Attorney's Office.

After concluding the seventy-two interviews referred to above, Mr. Marion met with Mr. Williams on September 9, 1993, in Mr. Williams' office in the Prince George's County Courthouse
in Upper Marlboro, Maryland. The meeting lasted two and a half hours, during the course of which Mr. Marion raised with Mr. Williams the principal concerns that had been developed during the course of his investigation.

After concluding his investigation, Mr. Marion prepared and submitted to me, as Chair of the Committee, an informal report that thoroughly presented the results of his investigation, summaries of all of his confidential interviews, a summary of his interview with Mr. Williams, and a recommendation. Because the recommendation proposed was that Mr. Williams be found "Not Qualified," consistent with the Committee's procedures, I appointed William J. Brennan III, a former member of our Committee, as a second investigator to conduct a supplemental investigation. Mr. Brennan conducted confidential interviews with five persons, three of whom Mr. Marion had previously interviewed, and he, too, interviewed Mr. Williams in his office on November 9, 1993. Mr. Brennan acknowledged that he was presenting the best case he could for Mr. Williams, and that he was presenting it to the Committee as an advocate for Mr. Williams. He suggested that the Committee "take a chance" and find Mr. Williams "Qualified."

On November 22, 1993, both Mr. Marion's formal report and Mr. Brennan's supplemental report were transmitted to all of the
members of our Committee. After all of the Committee members had had an opportunity to study both reports, and all the attachments, the members of the Committee participated in a December 3, 1993, conference call in which both investigators responded to questions and participated in the Committee's deliberations. After that lengthy conference call discussion, I asked the Committee members to reflect upon what they had read and heard, to consider the information carefully, and to convey to me within the next several days thereafter their vote on the qualifications of Mr. Williams. A substantial majority of the Committee voted to find Mr. Williams "Not Qualified"; a minority voted to find him "Qualified."

III. THE RATING

For our Committee to rate a nominee as "Qualified," we must find that the nominee meets "very high standards with respect to integrity, professional competence and judicial temperament," and we must find that the nominee "will be able to perform satisfactorily all of the responsibilities required by the high office of a federal judge." We do not question Mr. Williams' temperament. Nothing we heard in our investigation suggested that Mr. Williams has anything other than the proper judicial temperament.

Mr. Williams' resume is impressive. It indicates that he
has been appointed to a number of Boards and Commissions; he has been a tenured professor of law at Howard University Law School; and he has been the elected State's Attorney for Prince George's County for the past eight years. However, we have closely examined his relevant legal experience and concluded that it is not adequate for him to be appointed as a United States District Judge.

Our conclusion that Mr. Williams should be rated as "Not Qualified" is based primarily on concerns about his professional competence. This includes concerns over his lack of substantial trial experience, the quality of his legal writings, his lack of candor in his responses to the PDQ, and by his misstating and overstating his experience in his responses to our Committee. Each of these we summarize below.

Mr. Williams' response to question 13, his description of "ten very significant litigated matters which I personally handled while a practicing attorney," is an extremely weak list of significant cases, many of which were mischaracterized. In State of Maryland v. Paul Winston Minnick (1976), the person listed as the prosecutor was not the trial prosecutor and has no recollection of the case; Mr. Williams' summary of State of Maryland v. Ernest Jato Mutyzmbizi (1977) suggests that he defended a client charged with first degree murder, but the
prosecutor's explanation shows otherwise. In fact, there had been an earlier trial -- not handled by Mr. Williams -- which disposed of the issue of first degree murder. Mr. Williams tried a second degree, not a first degree, murder case, as he reported. Mr. Williams' summary described Charles Franklin v. Franklin (1977) as a "heated divorce case" he handled. He stated that there were "numerous trials, arguments, and motions." Counsel for the opposing party in that case has little recollection of the case. The case Robert E. Moore v. the Town of Fairmount Heights, Maryland (1979) did not involve a trial and there was very little to the case. The trial court denied a hearing, and that denial was appealed. Mr. Williams' brief on appeal was only four pages in length, with a six-page appendix (Exhibit F).

The case of Jesse Clark, et al. v. the Warden of the Maryland State Penitentiary and Others is apparently Mr. Williams' only federal trial court experience. Mr. Williams reports that he "represented Jesse Clark and 17 other inmates in a class action suit" in the United States District Court for the District of Maryland. He said that there was a "two-day trial" before Judge Stanley Blair. The docket sheet (Exhibit G) shows that Mr. Clark was the only petitioner, and had filed suit without an attorney in April 1975. Mr. Williams and John F. Mercer entered their appearance as counsel for petitioner on November 18, 1975, they sought and were granted leave to
file an amended complaint, an amended complaint was filed on January 6, 1976, and motions to dismiss those defendants who remained in the case were heard and granted by Judge Blair on January 21, 1977. The docket entries show that the case was not a class action. There was no trial. The clerk reported that the hearing on January 21, 1977, lasted four and a half hours, not two days.

In Re Matter of Annie and Johnny Blunt and In the Matter of Daniel Dickerson are petty matters with insufficient detail to investigate. Bowles v. F.G. Woolworth Company, et al. (1975), described as a false arrest case, was a civil jury trial in 1975 and appears to have been Mr. Williams' most significant civil case. Mr. Williams notes that his $18,000 award in 1975 was one of the largest verdicts in a false arrest case obtained in Prince George's County up to that time. His description of the case omits the fact that the verdict for his client was set aside on a motion for new trial and that the second trial resulted in a defendants' verdict.

In summary, the Committee believes Mr. Williams' trial experience is inadequate. By far, most of his trial experience has been his appearances in minor Maryland District Court nonjury matters, primarily as an assigned public defender, during the four years from 1974-78. He has had no recent trial experience.
He was in court to try a matter of any significance on only one day during his seven years as State's Attorney prior to our investigation. That occurred in 1988. Mr. Williams acknowledged what others had told Mr. Marion -- that as State's Attorney, he was an administrator and not a practicing attorney. He has no significant federal trial experience. He was unable to identify any jury trial in which he had participated in more than fifteen years, and his attempt to identify ten "significant litigated matters," in response to the PDQ question 13, produced a list of matters most of which cannot fairly be described as "significant." This caused the Committee to conclude that he did not have substantial courtroom and trial experience on any level to meet the professional competence standard necessary to perform the responsibilities required by the high office of federal judge.

Another factor that led the Committee to conclude that Mr. Williams lacked the professional competence required to be a federal district judge was the quality of his writing. A federal judge is called upon frequently to express himself in writing, and his written work must be clear and persuasive. The Committee found those qualities lacking in the writings that Mr. Williams submitted with his PDQ. The prose is pedestrian, inappropriate and obscure terminology is used at the expense of clarity, and the analysis is shallow. See, for example, "The New Patrol for
the Accused: State Constitutions as a Buffer Against Retrenchment" (Exhibit H), particularly the Introduction on the first two pages, and the Conclusion in "Constitutional Reflections on California's Request for Identification Law" (Exhibit I).

The Committee is aware of only one court paper prepared by Mr. Williams since 1986, the appellees brief in Smallwood v. State (Exhibit J). It is not well done. For example, one can read the Statement of Facts prepared by Mr. Williams, but the facts of the case do not become clear until one reads the unreported opinion of the Court of Special Appeals of Maryland (Exhibit K). In short, the quality of Mr. Williams' writing falls short of what is expected of a federal judge.

To understand Mr. Williams' lack of candor with the Committee, it is necessary to review Mr. Williams' completed questionnaires (Exhibits B and C). Mr. Williams' answers to questions concerning his court experience -- questions 11 and 12 of the PDQ -- are misleading. They suggest that his court experience was essentially the same during the twelve years from 1974-1986 before his election as State's Attorney. His answers to questions 12a and 12c say that his court appearances "remained constant" through those twelve years of practice. That simply is not true. As Mr. Marion's investigation disclosed, and as Mr.
Williams acknowledged when Mr. Marion interviewed him, most of his court experience came during 1974-78, when his Public Defender assignments gave him his greatest courtroom exposure. Although he maintained a part-time private practice after 1978, he was in court only occasionally. He told Mr. Marion, that he had tried no more than five jury trials after 1978. When pressed, however, he could not recall any. Question 11 of the PDQ asks for detail about his court appearances in the last five years. The answer should have been none, or almost none. Instead, he answered that question as if to suggest that he continued to appear regularly in court in the last five years, when, in fact, that was not the case.

In answer to question 11d, Mr. Williams asserts that he had tried 650 cases to verdict or judgment in courts of record, and that in all of those cases, he was the sole counsel. When Mr. Marion wrote to request an explanation on August 26, 1993, he asked how Mr. Williams determined the figure of 650. Mr. Williams' response did not directly answer the question. When Mr. Marion interviewed him, Mr. Williams said that he really did not know how many cases he had tried, that maybe it was only 300. And Mr. Williams was not the sole counsel in all of those cases. One judge recalls having "second-chaired" a criminal case with him in the 1970s, and John F. Mercer was co-counsel with Mr. Williams in Clark v. Mandel [case #7 in the PDQ]. Mr. Marion
obtained a copy of the docket entries in that case (Exhibit G), and it reflects obvious inaccuracies in Mr. Williams' reporting.

These inaccuracies formed the basis for the Committee's conclusion that Mr. Williams lacked candor in responding to questions about his experience. The documents identified above indicated to the Committee that Mr. Williams attempted to "puff" himself into someone with more trial experience than he actually had. Rather than providing accurate information, Mr. Williams answered questions in a way that masked his lack of substantial trial experience.

Finally, the confidential interviews conducted during the course of the investigation revealed serious concerns about Mr. Williams' lack of experience and his lack of the necessary qualifications to serve as a federal judge. In fairness to Mr. Williams, there were those who supported his nomination. However, the majority of persons who had knowledge of his experience expressed concern over his professional qualifications, professional competence, and his ability to perform the functions of a federal judge.

One final comment. I am deeply troubled by reports that suggest that the Committee's evaluation was flawed and biased. As Chair of the Committee, it is my responsibility to ensure the
thoroughness and fairness of every investigation. Mr. Williams' investigation was handled no differently than the more than 120 investigations the Committee has undertaken in the past eleven months. The Committee undertook an independent and conscientious review of Mr. Williams' professional qualifications and concluded that he is "Not Qualified" for the position of United States District Judge. One can disagree with the Committee's findings or express dissatisfaction with a particular evaluation, but it is unfair to charge bias because of unhappiness with a particular rating. The record will show that of the 100 persons nominated to date by this Administration, the ABA Committee found 36 of the 37 minority candidates either "Well Qualified" or "Qualified." The Committee has rated two individuals not qualified: one is a minority, Mr. Williams; the other is a non-minority.