

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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June 18, 1996

Chairman Orrin G. Hatch
U.S. Senate Judiciary Committee
Room 224, Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Chairman Hatch:

This letter responds to yours dated June 12, 1996, advising us--without explanation--that our "request to testify before the confirmation hearing of Judge Lawrence Kahn has been denied".

We respectfully request to know the basis for your peremptory denial of our request and, as hereinafter set forth, seek reconsideration thereof.

We first notified the Senate Judiciary Committee of our desire to testify "in strenuous opposition" on April 19th in a telephone conversation with your nominations clerk, B.J. Runyon--which we followed up by letter dated April 26, 1996.

In the six weeks between then and your June 12th letter, no member of the Senate Judiciary Committee staff contacted us regarding our request to testify. Nor were we informed of any problem to our testifying when, pursuant to Mr. Runyon's instructions, we have telephoned the Senate Judiciary Committee, week after week, to ascertain whether a confirmation hearing has been scheduled for Justice Kahn.

We do not know what the criterion is for presenting testimony at judicial confirmation hearings. Your letter, which states that "The Judiciary Committee has no written guidelines in evaluating judicial nominees", does not enlighten us on that subject.

However, we are greatly troubled that before issuing your "out-of-the-blue" denial of our request to testify, you did not first inquire as to the basis for our opposition to Justice Kahn's confirmation, which was not specified in our April 26th letter--the only letter of ours to which you refer. Additionally, we are troubled that you do not refer to our May 27, 1996 letter. That letter did elaborate on our opposition to Justice Kahn. Indeed, unlike our April 26th letter, which was addressed to Mr. Runyon's attention, our May 27th letter was addressed to you, personally.

Ex "H"

June 18, 1996

Our May 27th letter was sent to you--and to every other member of the Senate Judiciary Committee--in conjunction with your inquiry into the ABA's Role in Judicial Nominations, which the subject of a May 21st hearing. It described how the ABA's Standing Committee on Federal Judiciary had ignored, without follow-up, our submission of evidentiary materials to it concerning Justice Kahn's unfitness for judicial office.

In pertinent part it stated:

"So that there is no mistaking how serious this most recent matter is, we enclose a copy of our October 31, 1995 letter to the Second Circuit representative of the ABA's Standing Committee on Federal Judiciary. That letter, accompanied by supporting documentation, established how New York State Supreme Court justice Lawrence E. Kahn, whose qualifications the Standing Committee was then reviewing for a district court judgeship in the Northern District of New York, had used his judicial office to advance himself politically. Specifically, we showed that Justice Kahn had perverted elementary legal standards and falsified the factual record to 'dump' a public interest Election Law case which challenged the manipulation of judicial nominations in New York State by the two major political parties." (at page 3, emphasis in the original)

We cannot believe that in denying us the opportunity to testify against Justice Kahn at his confirmation hearing, you were aware of what was set forth in our October 31 1995 letter to the ABA regarding Justice Kahn's deliberate "on the bench" misconduct in the aforesaid public interest Election Law case--or, for that matter, that you were familiar with our summary of that misconduct in our May 27th letter.

Indeed, we would further point out that notwithstanding our October 31, 1995 letter to the ABA was annotated with record references and accompanied by an inventory, itemizing the file in the public interest Election Law case, which Justice Kahn had dumped, no one from the Senate Judiciary Committee staff has contacted us to obtain the record so as to verify our recitation of Justice Kahn's disqualifying conduct.

Under such circumstances, your denial of our request to testify is precipitous, to say the least, and we respectfully ask that it be reconsidered.

June 18, 1996

We would also note that although your June 12th letter responds to questions raised in our April 26th letter, it disregards questions presented in our May 27th letter. Chief among them is our request that the Senate Judiciary Committee reconsider its policy of not releasing ABA ratings until the confirmation hearings and, specifically, that it make Justice Kahn's ABA rating publicly available at this time. Your letter--responding to our April 26th letter--simply explains that "the ABA's letter of notification is marked confidential and is treated as such until a hearing."

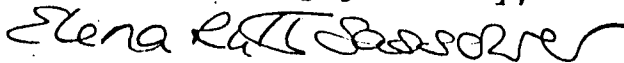
Yet, the ABA does not oppose disclosure of the ABA rating by the Senate Judiciary Committee once the President announces the judicial nomination. It leaves the decision to make ABA ratings public to the Senate Judiciary Committee.

Consequently, we reiterate our May 27th request that the Senate Judiciary Committee release the ABA ratings of judicial nominees--and, specifically, the ABA rating of Justice Lawrence Kahn. Failing such disclosure, we respectfully request that the Senate Judiciary Committee articulate its reasons for maintaining these ratings confidential and identify how long such policy has been in effect.

Finally, although your letter recommends that we contact the White House about its ABA policy, our May 27th letter (at p. 4) made plain that we had already done that. We have, moreover, since reiterated to the Administration our request that it make ABA ratings available from the time judicial nominations are announced and that it disclose Justice Kahn's ABA rating. We have also asked that should it deny our request, that it explain its reasons. A copy of our June 7th letter to Assistant Attorney General Eleanor Acheson is enclosed, for your information.

To expedite your response hereto, we enclose a copy of our May 27th letter to you, with its accompanying October 30, 1995 letter to the ABA regarding Justice Kahn.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures: (a) our 5/27/96 ltr to you
(b) our 10/31/95 ltr to ABA
(c) our 6/7/96 ltr to Acheson

cc: U.S. Justice Dept: Assistant Attorney General Acheson
Irene Emsellem, ABA liaison to Standing Committee
on Federal Judiciary

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