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Who Rates Prospective Federal Judges for the American Bar Association?

Michael J. Yelnosky*

ABSTRACT

The American Bar Association plays a formal, unique, and consequential role in the selection of federal judges. More specifically, the ABA Standing Committee on the Federal Judiciary, a group of fifteen lawyers appointed by the president of the ABA, rates all potential nominees for federal judicial appointments. The work of the Standing Committee has been a subject of some study and public debate, but the professional orientation of the members of the committee has been largely ignored.

My research shows that lawyers who represent business interests in state and federal courts are vastly overrepresented on the committee, and that most of those lawyers practice in this country's largest law firms. This imbalance is inconsistent with any legitimate justification for the ABA's special role in judicial selection and is contradicted by the ABA's public statements about the composition of the committee. Unless the ABA commits to reform its process so that a more representative swath of the profession evaluates prospective federal judges, it should not retain its privileged status.

I. THE ROLE OF THE AMERICAN BAR ASSOCIATION STANDING
COMMITTEE ON THE FEDERAL JUDICIARY

To the uninitiated, the role that the American Bar Association (“ABA”) plays in the selection of federal judges may come as a surprise. Of course, no constitutional or statutory provision contemplates ABA involvement in the selection process. After, all, the ABA is simply a voluntary professional organization,¹ and only approximately one-third of the licensed lawyers in the United States are members.²

Indeed, for decades after it was founded in 1878, the ABA had no special role in the selection of federal judges. That changed in 1952, when the Eisenhower administration solicited the views of the ABA on judicial nominees, reportedly in an attempt to reduce the likelihood that senators could successfully push for the nomination of unqualified political cronies.³ Since then, with few exceptions, the ABA has issued a ranking for each potential

*Professor, Roger Williams University School of Law. Thanks to Meghan Kruger for her superb research assistance. Thanks also to all who gave me helpful comments on my drafts. An op-ed presenting some of the findings of this study previously appeared in the *Washington Post*. See Michael J. Yelnosky, *The Bar Association Panel Should Diversify Its Representation*, WASH. POST (Aug. 15, 2013), http://www.washingtonpost.com/opinions/the-bar-association-panel-should-diversify-its-representation/2013/08/15/b79c5a18-045f-11e3-88d6-d579fab4637_story.html.

1. *About the American Bar Association*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/utility/about_the_aba.html (last visited Sept. 17, 2013).

2. The association has approximately 400,000 members. *Id.* The ABA reported that in 2012 there were 1,268,011 licensed lawyers in the United States. ABA Market Research Department, *Lawyer Demographics*, AMERICAN BAR ASSOCIATION (2012), available at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf [hereinafter *Lawyer Demographics*].

3. See Laura E. Little, *The ABA's Role In Prescreening Federal Judicial Candidates: Are We Ready To Give Up On The Lawyers?*, 10 WM. & MARY BILL RTS. J. 37, 39–40 (2001); Blake Tartt, *The Participation of the Organized Bar in Judicial Selection: What is Proper, and What is Improper*, 43 S. TEX. L. REV. 125, 138 (2001). Other accounts of the history note that in 1946 the Senate Judiciary Committee, which was controlled by Republicans, invited the ABA to vet judicial candidates to stem the tide of “leftist” Democratic appointees. See Susan Navarro Smelcer et al., *Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees*, 65 POL. RES. Q. 827, 827 n.2 (2012).

nominee for a federal judicial vacancy.⁴ The ratings are the work product of the ABA's Standing Committee on the Federal Judiciary. The committee has fifteen members appointed by the ABA president—two from the Ninth Circuit, one from each of the other federal judicial circuits, and a committee chair.⁵ The members of the committee serve staggered three-year terms.⁶ A short description of the committee's evaluation process will help put my findings in context.

Prior to a nomination to one of the lower federal courts,⁷ the White House or the Department of Justice sends the Standing Committee chair the name of a prospective nominee.⁸ The chair assigns the evaluation to the committee member from the judicial circuit where the vacancy exists.⁹ The member examines the questionnaire submitted by the prospective nominee, reviews the writings of the prospective nominee, and investigates any disciplinary actions or proceedings involving the prospective nominee.¹⁰ Most of the member's time is spent on confidential interviews with judges, lawyers, and others to obtain their

4. American Bar Association, *Standing Committee on the Federal Judiciary: What it is and How it Works* 1 (2009), available at http://www.americanbar.org/content/dam/aba/migrated/scfedjud/federal_judiciary09.authcheckdam.pdf [hereinafter *Standing Committee*]. President George W. Bush did not consult the ABA until after he made a formal nomination to fill a vacancy, but President Obama is following the prior practice of seeking ABA feedback on potential nominees. See e.g., Maya Sen, *How Judicial Qualification Ratings Matter (and Why They Maybe Shouldn't)* 4–6 (June 30, 2013) (working paper), available at http://scholar.harvard.edu/files/msen/files/sen_ratings.pdf. Politicians of both parties have, at various times, both praised and criticized the ABA's involvement. See e.g., James Sieja, *Bias, the Bar, and the Big Picture: Evaluating Circuit Court Nominees' ABA Ratings from 1953 to 2011* 12 (Aug. 30, 2012) (working paper) (on file with University of Wisconsin, Madison, Department of Political Science).

5. *Standing Committee*, *supra* note 4.

6. *Id.* Approximately one-third of the committee turns over each year. No member may serve more than two terms. *Id.*

7. As mentioned above, President George W. Bush did not inform the Standing Committee until the President had named a nominee. The committee's procedures are different in the case of vacancies on the Supreme Court. See *Standing Committee*, *supra* note 4, at 9–10. Supreme Court appointments are not a particular focus of this paper.

8. *Id.* at 4.

9. *Id.*

10. *Id.*

assessments of the prospective nominee's integrity, professional competence, and judicial temperament. The member will conduct a personal interview of the prospective nominee after most or all of the interviews with lawyers, judges, and community members.¹¹ The member then prepares an informal report for review by the chair.¹²

The report contains the member's evaluation of the prospective nominee's "integrity, professional competence and judicial temperament," the criteria upon which the committee's ultimate ratings are based.¹³ A prospective nominee may be rated "Well Qualified, Qualified, [or] Not Qualified."¹⁴

To merit a rating of "Well Qualified," the prospective nominee must be at the top of the legal profession in his or her legal community; have outstanding legal ability, breadth of experience, and the highest reputation for integrity; and demonstrate the capacity for sound judicial temperament. The rating of 'Qualified' means that the prospective nominee satisfies the Committee's very high standards with respect to integrity, professional competence and judicial temperament, and that the Committee believes that the prospective nominee is qualified to perform satisfactorily all of the duties and responsibilities required of a federal judge. When a prospective nominee is found 'Not Qualified,' the Committee has determined that the prospective nominee does not meet the Committee's standards with respect to one or more of its evaluation criteria—integrity, professional

11. *Id.*

12. *Id.* at 4–5.

13. *Id.* at 3. The Committee's written guidelines describe these obviously subjective criteria as follows:

When the Committee evaluates "integrity," it considers the prospective nominee's character and general reputation in the legal community, as well as the prospective nominee's industry and diligence. "Professional competence" encompasses such qualities as intellectual capacity, judgment, writing and analytical abilities, knowledge of the law, and breadth of professional experience. In evaluating "judicial temperament," the Committee considers the prospective nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law.

Id.

14. *Id.* at 6.

competence or judicial temperament.¹⁵

After reviewing the informal report with its author, the chair notifies the White House of the likely ultimate rating.¹⁶ If the White House opts to proceed with the prospective nominee, the chair directs the member to prepare a formal report for review by the full committee.¹⁷ Each member, with the exception of the chair (unless there is a tie vote), then votes on a rating, and the ultimate rating is communicated to the White House.¹⁸ The Committee releases the rating to the Senate Judiciary Committee, the Department of Justice, and the public only if the president submits a nomination.¹⁹

The Committee's ratings are quite consequential. A recent study by Maya Sen concludes that high ABA ratings are one of the most predictive factors in determining confirmation success, with low-rated individuals significantly more likely to have their nominations ultimately withdrawn or rejected.²⁰ Her study looked at the experience of almost two thousand judges formally nominated to the federal district courts between 1960 and 2012. Those who received a "Not Qualified" rating from the Committee were over one-third less likely to succeed than those who received a "Qualified" or "Well Qualified" rating.²¹ However, Sen's findings likely understate the negative impact of a low ABA rating because there is no data available on how often presidents decided not to formally nominate prospective candidates who received a low rating from the committee.²²

15. *Id.*

16. However, if the member intends to rate the prospective nominee "Not Qualified," after informing the White House the chair will appoint a second evaluator and both formal reports are sent to committee members before they vote on a rating. *Id.* at 6–7.

17. *Id.* at 6.

18. *Id.* If the committee is not unanimous, the chair reports that the prospective nominee received the rating from a majority (eight to nine members) or substantial majority (ten to thirteen members) of the Committee and notes that a minority gave the prospective nominee another rating or ratings. *Id.*

19. *Id.* at 3.

20. Sen, *supra* note 4, at 14–15.

21. *Id.* at 15–16. Moreover, those who received a "Qualified" rating were 5.5% less likely to succeed than those who received a "Well Qualified" rating. *Id.* at 14–15.

22. *Id.* at 5.

Given the significant influence of the committee on the composition of the federal judiciary, I wanted to find out more about its members. In particular, based on a cursory review of the professional backgrounds of the members of the committee for 2012-2013, I wanted to see if lawyers who represented business interests were overrepresented on the committee. If so, the justification for giving the ABA a special role in federal judicial selection might be seriously undermined.

II. THE MEMBERS OF THE ABA STANDING COMMITTEE ON THE FEDERAL JUDICIARY

To answer this question, I identified the eighty-eight individuals who served as circuit representatives or chairs of the committee between 1999 and 2013.²³ I then researched the members' backgrounds and determined where each was working while on the committee and the nature of his or her law practice (the overwhelming majority of members were practicing lawyers while on the committee). The resulting dataset includes the name of the member's law firm (or other institution), the nature of the member's practice (for example, "represents businesses in litigation," or "represents individuals in divorce and other family law cases"), and the number of lawyers at the member's law firm. I calculated the number of members in certain practice categories and settings and compared the results to available information about the profession as a whole.²⁴ This information permitted me to draw some conclusions about whether the members were representative of the practicing bar.

I found that seventy-five of the committee members (85.2%) served on the committee while exclusively or predominantly representing corporations or other business entities. Moreover, fifty-four of the committee members (61.3%) were representing business interests while members of the largest law firms in the

23. New committee members are named at the ABA annual meetings in August, so the composition of a committee remains unchanged for one year beginning and ending in August. Thus, the study covers fifteen separate committees, beginning with the committee that considered candidates between August 1999 and August 2000 and ending with the committee that will consider candidates between August 2013 and August 2014.

24. The data describing the legal profession as a whole was gathered from the 2012 ABA report of lawyer demographics. See *Lawyer Demographics*, *supra* note 2.

country—law firms of over 100 lawyers.²⁵ By contrast, the ABA reports that 16% of all private practice lawyers in the U.S. work in firms of that size.²⁶ Another four committee members represented businesses in law firms of between fifty and one hundred lawyers. Thus, fifty-eight of the committee members (65.9%) were representing business interests while members of law firms of over fifty lawyers. By contrast, only 20% of all private practice lawyers in the U.S. work in firms of that size.²⁷

Only thirteen of the eighty-eight lawyers on the committee (14.7%) did not regularly represent businesses in their law practices. Of those thirteen, seven mostly represented individuals (such as in divorce or professional malpractice cases), one was a neutral arbitrator and mediator, and only five (5.6% of the total members of the committee) had practices in which they regularly represented individuals as plaintiffs in litigation against businesses.²⁸ Furthermore, not one represented defendants in non-white-collar criminal cases. The findings described in the last two paragraphs are summarized in Table 1 below.

25. The 100-lawyer marker I selected was somewhat arbitrary, but it was influenced by the content of the latest ABA study of the legal profession, which lists firms of “101+ lawyers” as the largest firms in the country. *See Lawyer Demographics, supra* note 2. Moreover, many worked for the very largest law firms in the country—firms such as Bryan Cave; Proskauer Rose; Dechert; Covington & Burling; Greenberg Traurig; K&L Gates; Baker Hostetler; Holland & Knight; Hunton & Williams; WilmerHale; Debevoise; Bingham McCutcheon; Vinson & Elkins; and McGuire Woods, to name a few.

26. *Id.*

27. *Id.* The plurality of lawyers in private practice are solo practitioners (49%). *Id.* Fourteen percent work in firms of two to five lawyers, 6% work in firms of six to ten lawyers, 6% work in firms of eleven to twenty, and another 6% work in firms of twenty-one to fifty lawyers. *Id.* Thus, the overwhelming majority (80%), practice in smaller firms than the majority of private practice lawyers on the standing committee.

28. We took care here to code liberally in favor of finding a plaintiffs’ practice in order to not overstate the corporate or business slant of the members of the Standing Committee.

TABLE 1

Standing Committee Members 1993-2013	88	100%
<i>Lawyers Representing Businesses</i>	75	85.23%
Lawyers Representing Businesses 100+ Lawyers	54	61.36%
Lawyers Representing Businesses 50+ Lawyers	58	65.91%
<i>Lawyers Not Representing Businesses</i>	13	14.77%
Lawyers Representing Individuals as Plaintiffs Against Businesses	5	5.68%

This same dramatic tilt in favor of lawyers representing businesses in litigation is found by looking instead at the composition of the fifteen individual committees that were formed over the studied time period. Each committee had a majority of members that represented businesses. In every year it was a supermajority. For example, in 2006–2007, ten of the fifteen members represented businesses (66.67%). On every other committee, the percentage was much higher, ranging from 73.33% (eleven members) to 93.33% (fourteen members). Table 2 displays the results for each committee studied.

TABLE 2

	% of members representing business
1999-2000 Committee	93.33%
2000-2001 Committee	93.33%
2001-2002 Committee	93.33%
2002-2003 Committee	86.67%
2003-2004 Committee	86.67%
2004-2005 Committee	86.67%
2005-2006 Committee	73.33%
2006-2007 Committee	66.67%
2007-2008 Committee	80.00%
2008-2009 Committee	86.67%
2009-2010 Committee	93.33%
2010-2011 Committee	80.00%
2011-2012 Committee	80.00%
2012-2013 Committee	80.00%
2013-2014 Committee	93.33%

2014]

PROSPECTIVE FEDERAL JUDGES

99

Finally, recall that the primary responsibility for evaluating a prospective judicial nominee is assigned to the member from the judicial circuit where the vacancy exists. Thus, the type of practice of the committee members in each circuit is another relevant measure of the type of lawyers the ABA has selected to influence the judicial selection process. Not surprisingly, given that the overwhelming majority of committee members represented businesses in their practices, potential nominees for vacancies in virtually every circuit were likely to be primarily evaluated by a lawyer who represented businesses. Specifically, in seven of the thirteen circuits, each committee member during the last fifteen years was a lawyer who represented businesses. Moreover, in only two circuits, the First (50%) and the Ninth (58%), was the percentage of members who represented business interests less than 80% during the study period. The results are set forth in Table 3.

TABLE 3

	Committee Members Representing Businesses: 1999-2013
First Circuit	50%
Second Circuit	83%
Third Circuit	86%
Fourth Circuit	100%
Fifth Circuit	100%
Sixth Circuit	100%
Seventh Circuit	100%
Eighth Circuit	83%
Ninth Circuit	58%
Tenth Circuit	100%
Eleventh Circuit	100%
D.C. Circuit	80%
Federal Circuit	100%

Thus, lawyers who represent businesses and those who do so as members of the largest law firms in the United States have, by virtually any measure, outsized influence over the ABA ratings of prospective judicial nominees. While others have noted more generally that the ABA membership and leadership is not

representative of the profession as a whole,²⁹ the results of this study confirm and quantify that mismatch in the influential area of federal judicial selection. I turn now to a brief discussion of the ramifications of these findings.

III. WHY SHOULD BIG FIRM LAWYERS WHO REPRESENT BUSINESS INTERESTS HAVE OUTSIZED INFLUENCE IN RATING PROSPECTIVE FEDERAL JUDICIAL NOMINEES?

Of course, lawyers who represent business interests and those who do so as members of large law firms are not a monolithic group. For example, there is no doubt that political, ideological, and geographical diversity exists among the members of the Standing Committee. Some big firm lawyers do *pro bono* work, and some do not. Some are active in community organizations, and some are not. However, the dramatic overrepresentation on the Standing Committee of lawyers who make their livings representing some of the world's largest corporations in large law firms raises serious questions about the way in which the ABA has chosen to exercise its unique power of evaluating prospective judicial nominees.

First, that overrepresentation is inconsistent with the strongest (although not necessarily convincing) argument in favor of formal ABA participation in the process of selecting federal judges. The argument has three parts: (1) an "independent" evaluation of judicial candidates is valuable, (2) lawyers have the knowledge and skill necessary to effectively evaluate judicial candidates, and (3) the structure and resources of the ABA provide lawyer members of the committee the support and access necessary to identify and interview thoroughly those with relevant knowledge of judicial candidates.³⁰ It has always been an implicit, and often an explicit, assumption that the committee members would "have varied professional experiences and backgrounds."³¹

29. See Little, *supra* note 3, at 59, 64–65; Laurence H. Silberman, *The American Bar Association and Judicial Nominations*, 59 GEO. WASH. L. REV. 1092, 1094 (1991).

30. Little, *supra* note 3, at 45–46, 63; Smelcer et al., *supra* note 3, at 827–28 (explaining that in the formative years of the committee it was viewed as having a special expertise necessary to evaluate judicial candidates).

31. *Standing Committee*, *supra* note 4, at 1.

The official ABA document describing how the Standing Committee works includes that very statement.³² However, it is not true of the membership and leadership of the ABA generally, which has been well known for some time,³³ and I have now shown that it is not true of the Standing Committee on the Federal Judiciary.

It is much harder—perhaps impossible—to justify the role of the Standing Committee when its members are drawn from such a small subset of the legal profession. Lawyers who represent large corporations in litigation surely have a different perspective from those who, for example, represent individual plaintiffs in products liability actions or criminal defendants in drug prosecutions. This majority perspective is likely to overwhelm or mute any diversity among the committee members and influence the assessment of judicial candidates on criteria that are as subjective as “integrity,” “judicial temperament,” and “professional competence.”³⁴ Notwithstanding its public statements, the ABA has turned over the right to essentially veto federal judicial candidates to lawyers who make their living representing Fortune 1000 companies.

These lawyers share another characteristic that raises serious concerns about the way the ABA is exercising its unique power: they work at law firms controlled overwhelmingly by white men. Only 16% of the equity partners and 4% of the managing partners at the two hundred largest law firms in the country are women. Twenty percent of the members of the management committees at

32. *Id.*; see Roberta Cooper Ramo & N. Lee Cooper, *The American Bar Association's Integral Role in the Federal Judicial Selection Process: Excerpted Testimony Of Roberta Cooper Ramo and N. Lee Cooper Before The Judiciary Committee of the United States Senate, May 21, 1996*, 12 J. C.R. & ECON. DEV. 93, 99 (1996) (explaining that “[t]he current Committee essentially reflects the diversity of the profession . . . The Committee members are drawn from firms of varying sizes, including solo practitioners.”).

33. See Little, *supra* note 3, at 64–65.

34. See Sen, *supra* note 4, at 36; Smelcer et al., *supra* note 3, at 828, 837. This is of course completely anecdotal, but I have a good friend most people would easily describe as a liberal Democrat. He has spent his legal career defending corporations in employment discrimination cases. “In twenty-five years,” he recently told me, “I have never seen a discrimination case with merit.” I am quite confident that his professional role has something to do with this conclusion and would color his assessment of the fitness for judicial office of a plaintiffs’ employment lawyer.

those firms are women. In 11% there are no women on the management committee, and 35% of those firms have just one woman on their management committee.³⁵ Similarly, within major law firms, minority representation declines the further up the organization one looks. For example, in 2009, minorities accounted for 24% of summer associates, 19.7% of associates, and 6% of partners.³⁶

Without casting aspersions, if Standing Committee members rate more highly lawyers with career paths similar to their own, women and minorities, who are less likely to have followed those paths, are likely to receive lower ratings. There is evidence of a Standing Committee bias against female and minority nominees. In a recent study, Maya Sen concluded that even when controlling for qualifications, the ABA Standing Committee is more likely to rate female and minority candidates lower than their white and male peers. Specifically, black candidates for district court vacancies are 41% less likely to receive a high rating from the ABA than professionally identical whites nominated by the same president, and women are 18% less likely to receive a high rating than men that are identically situated.³⁷

Finally, these downsides of unrepresentative committees are not offset by their ability to identify the best prospective nominees. Studies have found at most a limited relationship between ABA ratings and future judicial performance as measured by reversals and citations, and the most recent study finds no relationship between a “Not Qualified” rating and judicial reversal.³⁸ More generally, another recent study concludes that many of the widely accepted indicators of future judicial performance do not actually correlate with good performance, and

35. Roberta D. Liebenberg, *Has Women Lawyers' Progress Stalled?*, CHAMBERS WOMEN & DIVERSITY (May 29, 2013), <http://womeninlaw.chambersandpartners.com/?p=2338>.

36. Elizabeth H. Gorman & Fiona M. Kay, *Racial and Ethnic Minority Representation in Large U.S. Law Firms*, 52 *STUD. IN L. POL. & SOC'Y* 211, 212 (2010). See generally Rachel M. Zahorsky, *Women in Charge*, 99 *A.B.A. J.*, June 2013, at 34, 35.

37. Sen, *supra* note 4, at 21-22.

38. See Stephen Choi et al., *How Well Do Measures of Judicial Ability Predict Judicial Performance?: A Case Study Using Securities Class Actions*, 33 *INT'L REV. L. & ECON.* 37, 37 (2013); Sen, *supra* note 4, at 36.

some actually correlate with poor performance.³⁹ Overall, the composition and work of the Standing Committee seems to warrant increased attention. Either the system should be reformed or the ABA should be stripped of its special role. A conversation should begin about which might be the best course of action.

A modest start would be reconsideration of a reform proposal first made in 1996 by a commission on federal judicial appointments formed by the White Burkett Miller Center of Public Affairs at the University of Virginia (the “Commission”). The Commission was composed of present and former federal judges, former White House counsels to Republican and Democratic presidents, former Justice Department officials, two former U.S. senators, a practicing lawyer, and a law professor.⁴⁰ The Miller Commission urged the ABA to expand the size of the Standing Committee to include more than one representative from each circuit.⁴¹ The Commission’s proposal was intended to address the problem of delay in filling judicial vacancies; but it is also potentially responsive to my concerns about the lack of professional diversity on the Standing Committee and the overwhelming influence of the Standing Committee member from a prospective nominee’s circuit who conducts the investigation and drafts the preliminary and final reports on that prospective nominee.⁴² If the ABA increased the size of the Standing Committee *and* made it a priority to see that lawyers who represent individuals as plaintiffs were as likely to become members as those who represent corporations as defendants, for

39. Choi et al., *supra* note 38.

40. The members were Nicholas deBelleville Katzenbach, Attorney General in the Johnson administration; Harold R. Tyler, Jr., a former federal judge and Deputy Attorney General in the Ford administration; former Senators Howard Baker and Birch Bayh; attorney Lovida H. Coleman, Jr., former White House counsels Lloyd N. Cutler and Fred F. Fielding; former federal Judges Leon Higginbotham and Frederick B. Lacey; United States District Judge Kimba M. Wood; and Professor Daniel J. Meador from the University of Virginia School of Law. Miller Center Commission No. 7, *Report of the Commission on the Selection of Federal Judges (1996)* available at http://web1.millercenter.org/commissions/comm_1996.pdf.

41. *Id.* at 7.

42. See Little, *supra* note 3, at 65.

example, the ABA's special role would be easier to justify. It might behoove the ABA to look outside its membership ranks for committee members by looking to organizations of lawyers that are underrepresented in the ABA, such as the American Association for Justice (an organization of plaintiff trial lawyers) and the National Bar Association (the nation's oldest and largest association of predominantly African-American judges and lawyers), just as two examples.

As a more immediate and even more modest solution, the ABA should be much more transparent about who serves on the Standing Committee, providing, in an easily accessible format, not just the names of the members but biographical information about their professional lives. Currently, the ABA website displays a "roster" of the members of the current Standing Committee consisting simply of each member's name, and city and state of residence—for example, "First Circuit, Paul E. Summit, Boston, MA."⁴³ The only way for an interested observer to find more information about a member is to conduct independent research. This lack of transparency is shocking given the committee's power and the ease with which more valuable information can be made available via the Internet. Indeed, if the ABA leadership is comfortable with the status quo, it should be more than willing to provide enough information about the committee members to assure the public that they are representative of the profession as a whole. Without more information, such as the information, which this study has provided, the conversation about whether the ABA is responsibly exercising its unique power cannot even meaningfully begin.

CONCLUSION

The ABA Standing Committee on the Federal Judiciary has largely escaped the watchful eye of those who observe and study

43. See *Federal Judiciary Committee Members*, AMERICAN BAR ASSOCIATION (last visited Nov. 17, 2013), http://www.americanbar.org/groups/committees/federal_judiciary/about_us/members.html. The entry for Mr. Summit does not mention, for example, that he is a partner at Sullivan & Worcester, a law firm of approximately 175 lawyers with, according to the firm's web site, "one goal: to help businesses thrive in an ever-changing marketplace." SULLIVAN & WORCESTER, <http://www.sandw.com/firm.html> (last visited Nov. 17, 2013).

2014]

PROSPECTIVE FEDERAL JUDGES

105

the process of federal judicial selection. However, recent studies, including this one, show that a light needs to shine more brightly on the Standing Committee. For some time, lawyers who represent businesses in litigation have dominated the committee, and those lawyers cannot help but bring the professional perspective shaped by their careers to the process of rating prospective judicial nominees. Without a dramatic change in the composition of the Committee's membership, its unique influence on the federal judicial selection process is not justifiable.