

Judge TYLER. The president of the ABA, I suppose, could step in. But the president of the ABA has not done so, particularly since I've reported to him that we think we have worked this out.

Now, since that episode occurred, since you wrote that letter, since I responded, we have done the things that I said in response to Senator Hatch.

We have done no more; we have done no less. Now, I know that you do not particularly care for us, apparently. But there is nothing I can say about that or do about that, other than what we have already said.

Mr. ELAM. Senator, I would like to add one other thing.

The chairman of this committee, Judge Tyler, gave that matter careful attention. It was a subject of discussion within the committee.

He was extremely concerned, and he totally agreed with the thrust that it is absolutely important that we do have confidentiality, and that there not be any statements made.

So I do not want it left that he's not concerned. He has been intensely concerned and consistent with the other things he has said today.

Senator GRASSLEY. Let me inquire along a little bit different line about the future, and forget about the past.

Let me put it this way. When is the ABA going to start complying with the Federal Advisory Committee Act which requires open public meetings of all advisory committees?

Judge TYLER. Senator, again, that subject was covered earlier in my response. We are not under the coverage of that act. We are private lawyers.

I cannot imagine anybody missing the point here. I do not want to withhold anything.

Senator GRASSLEY. Let me ask you this. With regard to the advice that you give to the Department of Justice—

Judge TYLER. The advice we give to the Department of Justice is very simple and succinct. We do not show them our reports.

And we are people who cannot agree with your apparent view that there is some right on the part of the public to know exactly what I and other committee members do or say in our work in our private offices on judicial investigations. I just do not think that makes sense at all.

And it does not make sense with respect to our appearing here before the Senate.

We are what we are, and you are free to treat us as you see fit. That is the point of my letter this fall to Senator Metzenbaum.

We do not expect we have the right to do what the Senate Judiciary Committee does. You are a legally constituted body; we are not.

You are free to accept or reject our views. Any time on any nomination for any court in the federal system.

Senator GRASSLEY. That is all, Mr. Chairman.

The CHAIRMAN. Judge, what do you think the reaction would be if we concluded, as I guess is implied by some of my colleagues, that we no longer were going to seek the advice of the American Bar Association?

What would be the reaction of the bar? Other than your being momentarily relieved. Seriously. It is a serious question. Because I

assume I am going to be confronted with that as chairman at some point.

Because it is obvious to me you are a private organization. We asked you 35 years ago for the purpose. Everybody forgets the purpose.

The purpose of all this was to keep political cronies from ending up being placed on the bench. So we went to people who—our predecessors went to people who were, and are, highly respected, and said, we want you to give us your best professional opinion about the competence of these people, not their political content, but their professional competence.

And that is why it came into being. It seems kind of funny, we have sort of turned this on its head now. Now we are accusing you of being political—at least that is the inference I draw from some of the questions that are being asked—and when the very purpose was for you to help keep it from being political, which I think you are still doing.

But what would be the response, if in fact, at the American Bar Association's annual meeting, as chairman of this committee, I announced that we are no longer going to seek the advice of any standing committee of the American Bar Association with regard to judges, in the name of Senators Grassley, et al.?

Mr. ANDREWS. Mr. Chairman, let me answer from a practical standpoint, as one of the worker ants out there, and not as chairman of the committee.

I come from the State of Washington, and I do a number of States. A person is nominated. And let us suppose it is a lower court. I go to the judges that that man or woman appears before. That judge has to have confidence in David Andrews that what he or she tells me will be confidential; that what I say will not become public.

The CHAIRMAN. Why?

Mr. ANDREWS. Because that man or woman may well, the next day, be back before that judge. And the system of justice simply won't work that way.

It is doubly true when I am asking that judge to comment on another judge. Will that judge be candid with me and tell me what I need to know if I have to come before you and tell you what Judge So and So told me?

And that is the basis of my opinion.

The CHAIRMAN. The reason I ask the question, I think it is important that, I think we have sort of lost the essence of what this is all about, and what in fact, if it is going to be done, and I admit it is debatable whether or not it should be done; I happen to think it should.

But it seems to me the central issue is whether or not we seek your opinion at all, period.

Once you cross the threshold that we seek your opinion, and we think it has some value, then it is bizarre, it is preposterous, for us to suggest that in fact you become accountable to every public accommodations act or anything else that is out there that in fact requires you to have everything in public.

It is a little bit like an FBI investigation. It is a little like saying that the FBI, that everything will be said and the FBI file will be released.

Some of what you hear is hearsay. Some of what you hear is gossip. Some of what you hear is substantive. And you make a judgment and direct it toward us.

I do not want to belabor it. But really, at some point, I think it warrants, and with good reason—I am not being in any way disrespectful to the point of view of my colleagues. I think we in the committee should debate this, whether or not to have the bar association at all.

Mr. ELAM. Senator Biden—

The CHAIRMAN. I yield to my colleague.

Senator GRASSLEY. The remarks that Mr. Andrews just made about what a lawyer does in regard to reviewing a judicial nominee who he might have to appear before sometime in the future, you know, I've heard this before. It was 30 years ago as a freshman member of the Iowa legislature that I listened to Judge Harvey Uhlhopp, of the Iowa supreme court and a leader of the reformation of the Iowa judiciary. Incidentally, I think we have a pretty decent judicial system in Iowa.

But Judge Uhlhopp used that very same argument then. He was comparing the need to change the Iowa system so that it would be more like the federal system, because he said we had to be careful. We could not have judges running for office, with lawyers campaigning for and against each other, because after the election, they might have to appear in the courtroom of the winning candidate someday.

And, for over 30 years, the ABA has reviewed nominees for the federal judicial system—a system that many States like Iowa have emulated. Yet, there is still the "future appearance before the judge" problem, as I see it.

Senator HEFLIN. Mr. Chairman, might I—

The CHAIRMAN. No, I yield to the Senator who has been seeking recognition from Massachusetts, and then we will go to you.

Senator KENNEDY. I know we want to move on.

Senator HEFLIN. Well, I would like to be heard.

The CHAIRMAN. I know you would like to be heard, but he sought recognition first.

Senator HEFLIN. Well, I know, but you said after him you were going to someone else.

The CHAIRMAN. Because he had not had an opportunity to speak yet.

Senator HEFLIN. Well, I am merely trying to comment on this one issue.

The CHAIRMAN. We will do our post-mortem after Senator Specter has completed.

Senator KENNEDY. Mr. Chairman, I appreciate it.

I just want to sound perhaps a discordant note, and commend Judge Tyler and the panel that is here today for the work that they have done on these various nominations.

I think it is a commitment and a dedication to public service that Judge Tyler has been associated with over the course of his life, and which the bar association has also performed.