



RANDALL D. NOEL, CHAIR
STANDING COMMITTEE ON THE FEDERAL JUDICIARY
AMERICAN BAR ASSOCIATION

concerning the

NOMINATION

of

THE HONORABLE AMY CONEY BARRETT

to be

**ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES**

before the

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

OCTOBER 15, 2020

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My name is Randall D. Noel of Memphis, Tennessee. It is my privilege to chair the American Bar Association’s Standing Committee on the Federal Judiciary, which recently completed its evaluation of the professional qualifications of the Honorable Amy Coney Barrett to be an Associate Justice of the Supreme Court of the United States. Our Fourth Circuit representative, Pamela J. Roberts, is from South Carolina and was the lead evaluator on the Standing Committee’s investigation of Judge Barrett.¹ We were assisted by our Standing Committee members from across the country, a team of stellar lawyers in possession of the highest professional stature and integrity who have varied professional experiences and backgrounds and are deeply committed to the work of this Committee. They all worked diligently to do what we always aspire to do – conduct a fair, thorough, and independent evaluation of the nominee and submit a rating within the time frame established by the Senate Judiciary Committee.

In accordance with our established procedures for a Supreme Court nominee,² I present this statement to you,³ which explains the Standing Committee’s basis for its rating and evaluation of the professional qualifications of Judge Barrett. The Standing Committee concluded that Judge Barrett merits our highest rating and is “Well Qualified” for appointment to the Supreme Court of the United States.

¹ John Skilton, the Seventh Circuit representative, who would normally have been the lead investigator, recused himself from conducting the evaluation of this nominee pursuant to established Standing Committee practice.

² American Bar Association, *Standing Committee on the Federal Judiciary: What it is and How it Works*, (“*Backgrounder*”) at pp 9-11. The *Backgrounder* is available at: https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/backgrounder-9-21-2020.pdf

³ This statement also is available to the public. It has been posted on our website: https://www.americanbar.org/groups/committees/federal_judiciary

THE STANDING COMMITTEE'S EVALUATION PROCESS

The Standing Committee has conducted its independent and comprehensive evaluations of the professional qualifications of nominees to the federal bench since 1953.⁴ The Committee consists of 19 distinguished lawyers who come from every federal circuit in the United States. Depending on the workload, these lawyers volunteer as much as several hundred hours per year to conduct nonpartisan peer reviews of the professional qualifications of all Article III nominees to the Supreme Court of the United States, United States circuit courts of appeals, United States district courts, as well as the Court of International Trade and the Article IV territorial district courts. Members of the Standing Committee are listed in Exhibit A appended to this statement.

The Standing Committee's investigation of a nominee to the Supreme Court of the United States is based upon the premise that the nominee must possess exceptional professional qualifications. The significance, range and complexity of the matters considered by the Supreme Court, as well as the finality and nationwide impact of the Supreme Court's decisions, are among the factors that require exceptional ability.

The Standing Committee's sole function is to evaluate a nominee's integrity, professional competence, and judicial temperament, and then to rate the nominee either "Well Qualified," "Qualified," or "Not Qualified." In so doing, the Standing Committee relies heavily on the confidential, candid, and considered assessments of federal and state judges, lawyers in private practice and government service, law school professors and deans, legal services and public interest lawyers, community leaders, and others who have knowledge of and are willing to share relevant information about the nominee's professional qualifications.

⁴ *Backgrounder* at p.1.

As set forth in the Standing Committee's *Backgrounder*:

To merit the Committee's rating of "Well Qualified," a Supreme Court nominee must be a preeminent member of the legal profession, have outstanding legal ability and exceptional breadth of experience, and meet the very highest standards of integrity, professional competence and judicial temperament. The rating of "Well Qualified" is reserved for those found to merit the Committee's strongest affirmative endorsement.⁵

Therefore, our investigation of a Supreme Court nominee is more extensive than for a nominee to a lower federal court. The process also is procedurally different in two principal ways.

First, Standing Committee members conducted investigations into the nominee's professional qualifications in every federal circuit in the United States, not only in the resident circuit of the nominee. In accordance with our procedures, each Standing Committee member provided his/her findings to the lead investigator for inclusion in her comprehensive and confidential final report. The comprehensive report was sent to each member of the Standing Committee for independent review and determination of the rating to be given to the nominee.

Second, the Standing Committee commissioned three Reading Groups of scholars and practitioners to review the nominee's legal writings to supplement the Standing Committee's own review of the nominee's writings. Professors from the University of Mississippi School of Law, chaired by Professor Christopher Green and professors from Belmont College of Law, chaired by Dean Alberto Gonzales, formed two separate and independent Academic Reading Groups. A total of 21 professors who are recognized experts in their fields of law participated in these reading groups. Collectively, these professors have decades of experience not only in teaching and scholarship, but also as attorneys in law firms, appellate litigation, public interest, nonprofit organizations, and state and federal government, including prosecutors' offices, United States Attorney's Offices and other federal agencies.

⁵ *Backgrounder* at p. 11.

Standing Committee Vice-Chair David Brown and Brent Hatch co-chaired the Practitioners' Reading Group, which was comprised of 13 well-respected lawyers with substantial trial and appellate practices. All readers were knowledgeable about Supreme Court practice. Most had briefed and argued cases in the Supreme Court or in the highest state appellate courts or are former law clerks to Justices of the Supreme Court. The members of the Reading Groups are listed in Exhibits B, C, and D appended to this statement.

A team of librarians from University of Mississippi and Belmont created a Dropbox site for the collection of Judge Barrett's law review articles, all opinions she authored as a judge on the United States Court of Appeals for the Seventh Circuit, the decisions in which she participated that were reversed, and other opinions in which she was involved (e.g. *en banc* decisions). The Standing Committee and the Reading Groups had full access to the Dropbox site. The Reading Groups separately reviewed over 90 opinions as well as numerous law review articles.

All three Reading Groups adhered to the same standards that govern the work of the Standing Committee and independently evaluated the nominee's analytical ability, clarity of writing, knowledge of the law, application of the facts to the law, reasoning, scholarship and ability to communicate effectively. Each member of each reading group provided analyses that were incorporated into their respective group reports and provided to each member of the Standing Committee.

In undertaking its extensive nationwide investigation of the professional qualifications of Judge Barrett, the Standing Committee wrote to and invited input relevant to our investigation from 944 persons, including all federal appellate judges and other judges, as well as many state judges, lawyers, and community and bar representatives who were likely to have personal

knowledge of her professional qualifications. These included former law clerks and lawyers with whom Judge Barrett worked in private practice, lawyers who opposed her, and lawyers who appeared before her during her judicial career. The Standing Committee solicited input from the lawyers, judges, and additional individuals Judge Barrett identified in her material submitted to this Committee. The Standing Committee also identified other persons with knowledge of Judge Barrett's professional qualifications through interviews with lawyers and judges, and a review of Judge Barrett's opinions and other writings. In addition, the Standing Committee also interviewed law school deans, faculty, and legal scholars throughout the country, including at her alma mater, Notre Dame Law School, many with personal knowledge of the nominee's professional qualifications and others who regularly studied her opinions in various substantive areas of the law.

The Standing Committee based its evaluation on its interviews with judges, lawyers, law professors and community representatives from across the United States; its own reading of a sampling of the nominee's opinions and other writings; the three Reading Groups' reports; and the in-depth personal interview of the nominee that lead investigator Pamela Roberts and I conducted on October 6, 2020. Each member of the Standing Committee reviewed the confidential final report and individually evaluated the nominee's professional qualifications by assessing her integrity, professional competence, and judicial temperament. The Standing Committee concluded that Judge Barrett is "Well Qualified" to be an Associate Justice of the Supreme Court of the United States.

OUR EVALUATION OF JUDGE BARRETT’S PROFESSIONAL QUALIFICATIONS

The Standing Committee did not base its rating on, or seek to express any view regarding, Judge Barrett’s philosophy, political affiliation, or ideology.⁶ It also did not solicit information as to how Judge Barrett might vote on specific issues or cases that might come before the Supreme Court. Rather, the Standing Committee’s evaluation of Judge Barrett is based solely on its comprehensive, nonpartisan, non-ideological peer review of the nominee’s integrity, professional competence, and judicial temperament.⁷

1. Integrity

In evaluating integrity, the Standing Committee considers the nominee’s character and general reputation in the legal community, as well as the nominee’s industry and diligence.⁸ The Committee also considers the extent to which there have been any findings of ethical violations or the like by a nominee. There are no records of any such violations relating to Judge Barrett. She has earned and enjoys an excellent reputation for integrity and outstanding character.

Lawyers and judges uniformly praised the nominee’s integrity. Most remarkably, in interviews with individuals in the legal profession and community who know Judge Barrett, whether for a few years or decades, not one person uttered a negative word about her character. Accordingly, the Standing Committee was not required to consider any negative criticisms of Judge Barrett. We recount a few representative comments:

- “She is incredibly honest and forthright.”
- “She is exactly who you think she is.” “Nothing about her is fake.” “She is good, decent, selfless and sincere.” “A casual observer might think that she sounds ‘too

⁶ *Backgrounder* at p. 9.

⁷ *Id.*

⁸ *Backgrounder* at p. 3.

good’ to be real, but she is very genuine.”

- “Exemplar of living an integrated life in which her intellect, integrity, and compassion weave the different threads of her life together seamlessly.”
- “[S]he is an A+”...that she is respected by all of her colleagues noting that when she was nominated to the Seventh Circuit, every member of the [Notre Dame] faculty wrote a letter in support.”

On the basis of these and many other laudatory additional comments received during our comprehensive evaluation process, the Standing Committee concluded that Judge Barrett possesses the integrity required to receive our “Well Qualified” rating.

2. Professional Competence

Professional competence encompasses such qualities as intellectual capacity, judgment, writing and analytical abilities, knowledge of the law, and breadth of professional experience.⁹

A Supreme Court nominee must possess exceptional professional qualifications, including an “especially high degree of legal scholarship, academic talent, analytical and writing abilities, and overall excellence. [The nominee must be able] to write clearly and persuasively, harmonize a body of law, and to give meaningful guidance to the trial and circuit courts and the bar for future cases...”¹⁰ Judge Barrett’s professional competence exceeds these high criteria.

In their evaluation of Judge Barrett’s professional competence to be an Associate Justice of the Supreme Court, the members of the Standing Committee examined not only the thorough reports of the Practitioners’ and Academic Reading Groups, but also the views of lawyers, academics, and Judge Barrett’s judicial peers. All of the experienced, dedicated, and knowledgeable sitting judges, legal scholars, and lawyers who have worked with or against

⁹ *Id.* at 3.

¹⁰ *Id.* at 10.

Judge Barrett had high praise for her intellect and ability to communicate clearly and effectively.

We received many positive comments about intellect.

Descriptions of her intellect were captured with these and other comments:

- “From an early age Judge Barrett’s scholarship was evident; an award-winning student, top of her class in college, and law school, in addition to being an executive editor of the Law Review.”
- In the entirety of her teaching career she is the single best student he has ever taught. She is “whip smart, highly productive, punctual, and well-prepared.”
- “A brilliant writer and thinker,” [she] is also “quite pragmatic.” [she] has a “friendly, collegial demeanor and is respectful of everyone.”
- “It was interesting to see someone with obvious intelligence communicate in such an easy manner and with ‘aplomb’.”
- Judge Barrett is “an intellectual giant with people skills and engaging warmth,”
- “An amazing student -without question, the smartest student whom I have ever taught.”
- Another put it simply: “The myth is real. She is a staggering academic mind.”

Given the breadth, diversity, and strength of the positive feedback we received from judges and lawyers of all political persuasions and from so many parts of the profession, the Standing Committee would have been hard-pressed to come to any conclusion other than that Judge Barrett’s has demonstrated professional competence that is exceptional. Based on the results of our extensive investigation and the resulting input we received from varied and knowledgeable sources, we have determined that Judge Barrett possesses sufficiently outstanding professional competence to be rated “Well Qualified.”

3. Judicial Temperament

In evaluating judicial temperament, the Standing Committee considers a nominee's "compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law."¹¹ Lawyers and judges alike praised Judge Barrett's judicial temperament.

The following comments provide insight into Judge Barrett's demeanor as a jurist:

- "She was always willing to be helpful and engage with others on a topic even when she had a different philosophy and when she writes in dissent, she is very collegial."
- "[She] is an efficient judge." "She is always prepared..." "At oral argument she asks insightful questions. Sometimes, she asks closed-ended questions to get a concession or prove a point; other times, she asks open-ended questions so that she can be educated by the advocates."
- "Judge Barrett never raises her voice and there is no hint of sarcasm in her questioning. She is also a good listener".
- "The nominee is kind, caring, and compassionate." She is "extremely well-liked by faculty and students universally."
- She is a "very sound person."
- "She has a calm, scholarly temperament."
- [She] "has demonstrated stellar judicial temperament in all settings: She is often described as a 'good listener' who makes time for people, whether they are law students, law clerks, colleagues or friends."
- "She projects professionalism and competence with parties and with counsel."

¹¹ *Id.* at 3.

CONCLUSION

In conclusion, Judge Barrett meets the highest standards of integrity, professional competence, and judicial temperament. It is the opinion of the ABA Standing Committee on the Federal Judiciary that Judge Barrett is “Well Qualified” to serve as an Associate Justice of the Supreme Court of the United States.

Mr. Chairman, I note the ABA Standing Committee shares the goal of your Committee – to assure a qualified and independent judiciary for the American people. Thank you for the opportunity to present this statement.

EXHIBIT A

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EXHIBIT B

ABA Standing Committee on the Federal Judiciary

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Alberto Gonzales Dean and Doyle Rogers Distinguished Professor of Law

Members

Tim Chinaris Associate Dean for Information Services & Professor of Law

Kristi Arth Assistant Professor of Law & Director of Field Placements

Deborah Farringer Associate Professor of Law & Director of Health Law Studies

David Hudson Assistant Professor of Law

Amy Moore Professor of Law & Director of Advocacy

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Harold See Professor of Law

Charles Trost Professor of Law

Assisted by

Nathan Collins Interim Associate Director of the Law Library

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EXHIBIT C

ABA Standing Committee on the Federal Judiciary Academic Reading Group University of Mississippi School of Law

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Christopher Green Professor of Law and H.L.A. Hart Scholar in Law and
Philosophy

Members

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David W. Case Professor of Law and Mississippi Defense Lawyers Association
Distinguished Lecturer

Donna Raye Davis Associate Professor of Law

Molly Ferguson Professor of the Practice of Law

Richard I. Gershon Professor of Law

Kris Gilliland Professor of Law and Director of Law Library

Matthew R. Hall Associate Professor and Jesse D. Puckett, Jr. Lecturer

Lisa Shaw Roy Professor of Law and Jesse D. Puckett, Jr. Lecturer

Ronald J. Rychlak Distinguished Professor of Law and Jamie L. Whitten Chair of
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Hans P. Sinha Clinical Professor of Law and Director of the Clinical Externship
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EXHIBIT D

ABA Standing Committee on the Federal Judiciary Practitioners' Reading Group

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Co-Chair

Brent O. Hatch Hatch Law Group, PC, Salt Lake City, Utah

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