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Letter

# United States Senate

WASHINGTON, DC 20510

March 16, 2001

President George W. Bush  
The White House  
Washington, DC 20500

Dear President Bush:

We are writing to you as Ranking Member of the Senate Judiciary Committee and Ranking Member of the Courts Subcommittee to express our serious concern that your Administration is considering terminating the policy of soliciting comment from the American Bar Association on prospective nominees for the federal courts. The policy of obtaining ABA review – half a century old and uniformly followed by Republican and Democratic Presidents alike – has served our nation well, and ending it would imperil the process of selecting and confirming federal judges.

Since 1952, the ABA has reviewed the professional qualifications of potential nominees to the federal bench before the person under consideration is formally nominated and submitted to the Senate. The ABA considers only the integrity, professional competence and temperament of persons identified as potential nominees – not their philosophy or ideology.

To ensure complete insulation from politics, members of the ABA committee that evaluates potential nominees refrain from participating in or contributing to political campaigns, or taking part in political activity of any kind. The ABA's views remain confidential until after a judicial candidate is formally nominated.

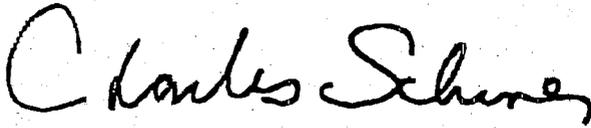
We firmly believe that ending the long established practice of ABA review would dilute the quality of the federal bench. The process of judicial selection needs *more* information about the competence and integrity of potential nominees, not less. If ABA evaluation did not provide unique, unbiased and essential information, presidents of both parties would not have so heavily relied on it for almost 50 years.

ABA evaluation has been the gold standard by which judicial candidates are judged, which is why presidents have rarely elected to proceed with a nomination after the ABA found the candidate unqualified in the confidential pre-nomination stage. Indeed, for every candidate the ABA finds unqualified, there are undoubtedly scores of others never submitted for ABA review because it is known they cannot meet that body's rightfully exacting scrutiny. Without having to clear the bar of ABA review, nominees will inevitably be of lower quality.

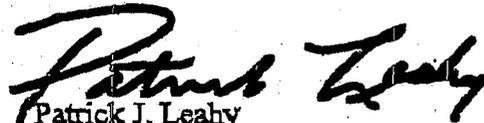
Eliminating ABA review will also further polarize a process that, by now, all Senators agree cries out for less partisanship. The void of information about a candidate's merits that will result from elimination of ABA review will inevitably be filled with politics. And if the Administration chooses not to consult the ABA, we and others of our committee will. Far from saving time, that will delay Senate consideration of nominees, and the Administration's ability to withdraw a nomination in a confidential manner because of a poor ABA rating (which will also publicly embarrass nominees), and drive Senators apart over ideology rather than bring them together.

In sum, we urge you to continue the nearly 50 year old tradition of independent, apolitical ABA evaluation of potential nominees for federal judgeships. Our system of justice can only benefit as a result.

Sincerely,



Charles E. Schumer  
UNITED STATES SENATOR



Patrick J. Leahy  
UNITED STATES SENATOR