

New Federal Initiatives Project

**What Role Should the ABA Play in
Federal Judicial Nominations?**

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What Role Should the ABA Play in Federal Judicial Nominations?

For years, as a matter of Federal executive policy, the ABA's Standing Committee on the Federal Judiciary provided its evaluation of the qualifications of Federal judicial nominees to the White House before the President submitted the names of his nominees to the Senate. In order to conduct its work, the Standing Committee was given access to the identity of proposed nominees before they were publicly nominated. No other entity was given such advance notice or permitted to rate judicial nominees at the same stage of the nomination and confirmation process. In 2001, the Bush administration reversed that policy, leaving the ABA to submit its evaluations to the Senate Judiciary Committee after nominations were made public.

In a February 23, 2009, story on Law.com, David Ingram noted that, while the Obama White House had been silent on the ABA's role, the ABA said that it had had conversations about its role with White House counsel, Gregory Craig. At that time, the Obama administration had not yet made a nomination for a position in the Federal judiciary. That changed on March 17, 2009, when the nomination of Judge David Hamilton to a seat on the Seventh Circuit Court of Appeals was announced. The same day, Tommy Wells, President of the ABA, announced that the Standing Committee would resume its previous role.

Some supporters of nominees of President Reagan and both Presidents Bush have complained about the results of ABA evaluations of a number of Federal judicial nominees. They have insisted that nominees of Republican presidents have been given lower rankings than their records indicate appropriate, relative to the evaluations of nominees of Democratic presidents. Others have asserted that, given its publicly-held positions on social and political matters that do not concern the proper administration of justice or the practice of law, the ABA should not be granted a special status in any evaluation process. The ABA asserts that it is a professional organization that reflects the interests of its membership, numbering in the hundreds of thousands, and that its Standing Committee operates wholly independently of the larger ABA – insulating its evaluations of prospective judicial nominees from any perceived agenda of the ABA.

Should the White House grant to the ABA a privileged position with respect to Federal judicial nominations? Should the White House eliminate or limit the ABA's role? Is it enough that individual Senators are free to accord whatever weight they determine appropriate to a given ABA rating?

Related Links:

Event Video: panel discussion on the judicial nomination and confirmation process featuring Senator Arlen Specter

http://www.fed-soc.org/publications/pubID.499/pub_detail.asp

ABA Watch, February 2008, Interview with ABA President Tommy Wells Jr.

http://www.fed-soc.org/doclib/20080207_ABAWatchFeb2008.pdf

Statement of H. Thomas Wells Jr., President, American Bar Association

Re: The American Bar Association Standing Committee on the Federal Judiciary

<http://www.abanet.org/abanet/media/statement/statement.cfm?releaseid=574>