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INTELLIGENCE

## United States Senate

WASHINGTON, DC 20510

November 11, 1987

The Honorable Harold R. Tyler, Jr.  
Chairman  
ABA Standing Committee on Federal Judiciary  
1800 M Street, N.W.  
Washington, D. C. 20036

Dear Judge Tyler:

While the nominating process for Judge Ginsburg is now moot, I am writing concerning a statement attributed to you and a statement attributed to an anonymous member of the ABA screening committee.

The enclosed article in the Washington Post by Mary Thornton quotes Judiciary Committee sources as saying that you hoped the ABA Committee would finish its investigation of Judge Ginsburg by December 1 but were not sure that it could be completed that quickly.

I would hope that all of us, the ABA and the Judiciary Committee, would move promptly on Judge Kennedy's nomination. I totally agree that we have to do a thorough job, but I believe it should be done as expeditiously as possible. If we do not finish the work on Judge Kennedy promptly but instead let it await action as late as March or April as some have suggested, it may well turn out that there will be no confirmation in 1988 because of presidential politics. That could mean that there would not be a confirmation until the spring of 1989 which would leave the Court without a full complement for two years. That would possibly present a big backlog of cases which would have to be reargued.

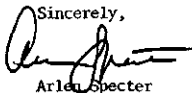
I am also very much concerned about the reference to one anonymous member of the ABA screening committee who is referred to in the enclosed Post article as saying that there are concerns that Ginsburg shares many of the conservative ideological beliefs that doomed the Bork nomination and that it looks like we may be going from a Bork to a Borklet. (Hard as it is to do, I hope that you will make every effort to find out if that was actually said; and, if so, who said it. If it turns out that a member of the ABA screening committee actually said that, I believe some action should be taken.

I would appreciate knowing what action, if any, you have taken or do take on checking out the accuracy of that quote from that anonymous source.)

These matters are obviously difficult to handle, and I want you to know that I applaud your continuing pro bono work and the contributions of the ABA screening committee and the American Bar Association generally in this important area.

My best.

Sincerely,



Arlen Specter

P.S. I am sending a copy of this letter to my fellow Philadelphian Jerry Shestack, because he called objecting to my jointly signing the letter to you from the Judiciary Committee Republicans.

AS:jb

cc: Jerome J. Shestack, Esquire

# ABA Evaluation of Ginsburg Is Not Expected Before Dec. 1

By Mary Thornton  
Washington Post Staff Writer

The American Bar Association's judicial qualifications committee, expected to play a key role in determining the confirmation chances of Supreme Court nominee Douglas H. Ginsburg, is not expected to complete its rating of him until at least Dec. 1, the Senate Judiciary Committee was told yesterday.

Judiciary Committee sources said Harold R. Tyler of New York, who heads the ABA screening committee, informed Judiciary Chairman Joseph R. Biden Jr. (D-Del.) that he hopes the committee will finish its investigation of Ginsburg by Dec. 1 but is not sure it could be completed that quickly.

The ABA screening committee had played a little-noticed role in the confirmation of Supreme Court justices until last month, when it split on the question of Judge Robert H. Bork, whose nomination to the court was rejected by the Senate last week. Although 10 of the 15 members gave Bork the highest rating of "well qualified," four members described Bork as "not qualified" and one member voted that he was "not opposed" to the nomination.

The same committee had voted unanimously to give "well qualified" ratings to conservative judges, including Antonin Scalia, confirmed to the Supreme Court last fall, and William H. Rehnquist, who was confirmed as chief justice.

The committee may play an even larger role this time because crucial questions will be raised in the Senate about Ginsburg's youth and qualifications. As a 41-year-old former law school professor and government official, he has virtually no experience practicing law and was confirmed to the U.S. appeals court here less than a year ago after the ABA committee gave him its lowest favorable rating of "qualified."

"Given that there's so little on the public record so far, it is especially important that the ABA give close scrutiny to this nominee," said Nan Aron of the Alliance for Justice. "The ABA has been under criticism for not having sufficient backbone and not maintaining high enough standards in reviewing the qualifications of judicial candidates."

Justice Department spokesman Terry H. Eastland said, "Certainly the ABA has its responsibilities in this respect, but I think it should be noted that relative youth should not count against someone. Some of our greatest justices have been in Ginsburg's age range."

Under the ABA committee system, nominees to the district and appeals courts may be rated "exceptionally well qualified," "well qualified," "qualified," and "not qualified."

There are three ratings for Supreme Court nominees. According to the ABA rules, "Well qualified is reserved for those who meet the highest standards of professional competence, judicial temperament and integrity. The persons in this category must be among the best available for appointment to the Supreme Court."

The second category, "not opposed," is for persons who are "minimally qualified," and the third category is "not qualified."

One member of the ABA screening committee, who asked to remain anonymous, said there is some concern over how to deal with the fact that Ginsburg was given a relatively low rating less than a year ago.

The low rating was based at least partially on his inexperience. For eight years Ginsburg taught antitrust law at Harvard Law School until moving to the Justice Department in 1983. He became head of the Antitrust Division in 1985 and was appointed to the court last November. Committee members have refused to say what else may have contributed to the low rating.

"How do you take a person who was found to be just 'qualified' for the court of appeals less than a year ago and find him 'well qualified' for the Supreme Court?" the member of the ABA committee asked. He added that there are concerns that Ginsburg shares many of the conservative ideological beliefs that doomed the Bork nomination: "It looks to me like we may be going from a Bork to a Borklet."

Several members of the committee said they would begin immediately to review Ginsburg's legal opinions and other writings, to interview colleagues and former co-workers and to solicit information from judges, lawyers and bar leaders in each of the judicial circuits.

Irene Emsellem, a spokeswoman for the ABA, added, "They will consult with various interest groups, and they will review whatever is submitted to them."