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No Consent on Advice

The abrupt termination by the Nixon Administration of the American Bar Association's role in screening potential candidates for the Supreme Court will deprive the White House of a valuable source of advice. The decision has all the earmarks of an act of pique over the negative evaluation given by the association to two candidates the President had seemed intent on nominating until his surprise designation via television of Lewis F. Powell Jr. and William H. Rehnquist.

The dramatic break with the A.B.A. looks like a somewhat disingenuous effort to saddle the association with the blame for premature disclosure of the candidates originally under consideration. The fact that six names had been given wide publicity several days before the association's Committee of the Judiciary was asked to consider two of that number suggests that the "leak" was the result of the Justice Department's own extensive inquiries in law schools and elsewhere. Indeed, the names were so widely circulated as to suggest the deliberate launching of trial balloons rather than careless breaches of security.

Whatever the Administration's intent may have been, the subsequent public reaction and, more especially, the A.B.A.'s professional scrutiny of two names on the early list appear to have cleared the way for the actual nomination of two men superior to any of those initially considered. In that sense both the country and the President himself benefited in the fulfillment of what Mr. Nixon rightly described as "by far the most important appointments" any President is called upon to make.

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The designation of Mr. Powell, a Virginian and a former president of the American Bar Association, does more than make good Mr. Nixon's political pledge to appoint a Southerner and to shape the Court to his conservative views. The Powell nomination also meets the requirements for a seat on the high bench of legal and intellectual distinction.

Mr. Rehnquist, an Assistant Attorney General, comes with the intellectual and professional reputation of a successful student, lawyer and legal official. However, he also personifies the highly questionable Nixon-Mitchell view of law and order, which assigns excessive power, particularly of surveillance, to the Federal Government.

The legal standing of both men made it unlikely that either would have failed to get the A.B.A.'s approval had their names been submitted for advance evaluation. The screening process at all levels of the Federal judiciary is not perfect nor are the opinions of the committee infallible. Presidents have on occasion ignored its advice, preferring to rely—quite legitimately—on their own or their advisers' judgment. Indeed, the A.B.A. did not become involved in Supreme Court nominations until President Eisenhower asked for the association's guidance. It seemed eminently sensible in selecting members for the highest court to draw on the same expert counsel that was already being solicited for appointments to the lower bench.

The sort of conflict that has now led Attorney General Mitchell to eliminate the prenomination scrutiny by the A.B.A. is the unfortunate consequence of precisely that political aura with which this Administration beclouds too much of the executive process. The President's constitutional right to nominate candidates of his own choice is not in question. It is a right, however, that is enhanced rather than diminished by the best available advice.