



Department of Justice

ADDRESS

BY

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TO

THE AMERICAN LAW INSTITUTE*

EAST & STATE ROOMS
MAYFLOWER HOTEL
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*Attorney General Bell spoke mostly from notes in his address to the American Law Institute. However, this portion of his address was prepared text.

During the campaign, President Carter pledged to select Federal judges and United States Attorneys on merit and not on politics.

I repeated that pledge and stated my own support for it before the Senate Judiciary Committee in January during my confirmation hearings. In keeping that pledge we have created commissions for the recommendation of circuit judges, which traditionally have been a matter of presidential selection. We look forward to excellent results from these commissions.

The situation with respect to district judges and United States Attorneys has not been so salutary.

We have encouraged all Senators to establish judicial selection commissions in their own states for these appointments. Some Senators have done so. Most have not. It should be clear, however, that judicial commissions are not necessarily synonymous with merit selection. I have often said that even though my own judicial appointment was suggested by a system which has been characterized as "political" selection, I hope some merit was involved in the selection.

The critical problem with the political patronage system as it now operates is that many qualified candidates are discouraged from applying or are overlooked because they are not friends or close political supporters of the various Senators.

The Senators, as a result of practice that has evolved over the years, initiate judicial and U.S. Attorney nominations. Our experience with the judicial and U.S. Attorney nomination commissions that have been created to date is that many more qualified individuals are recommended for appointment than is the case when political patronage governs the choice.

The problem is acute in the U.S. Attorney selection process. The law places the nomination responsibility and power with the President. The power to advise and consent rests with the Senate. In practice, however, the Senate proposes and the President advises and consents.

This practice of political selection is exacerbated by the practice, now prevalent, of resorting to some alternate source -- such as to Congressmen or Governors -- for suggesting names when the Senators from a given state are not of the President's party.

A number of commendable exceptions to these general observations have occasionally emerged in the 113 days that I have been Attorney General. Some Senators of the President's party have stepped forward and asked that U.S. Attorneys who were appointed by a President of a different party be retained. After review, we have agreed that these U.S. Attorneys are exceptionally well-qualified individuals who should be retained.

Other Senators have voluntarily taken the initiative of creating their own nomination commissions. Still others have made excellent selections without commissions..

But in some states, we are facing problems in the selection of U.S. Attorneys. Some recommended nominees are simply not up to the requirements of the office.

I think the time has come to return, in the nomination and confirmation of U.S. Attorneys, to the express constitutional and statutory framework. I do not see how we can say that we are serious about the problem of crime unless we select the best available lawyers as U.S. Attorneys and require that their assistants be strictly selected on the merit system.

In my judgment this means that we must substantially improve the present practice.

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