

# Saxbe Hits Proposal On Judges

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A proposal by former Attorney General Elliot L. Richardson to reduce the amount of politics involved in choosing federal judges has received support from Acting Attorney General Robert H. Bork and criticism from Attorney General-designate William B. Saxbe.

Bork expressed some reservations in a recent interview but said, "I thoroughly agree" with Richardson's goal of increasing the "diversity as well as the quality of the pool of prospective nominees" for judgeships.

Saxbe, however, will implement or ignore the proposal once he takes office, and his comments this week before the Senate Judiciary Committee indicated that he is not familiar with the details of the proposal but that he is unlikely to approve it.

The Ohio Senator told committee members during his confirmation hearing, "You and I are here through politics. If you remove politics from certain aspects of American life, you remove party responsibility . . . When you start de-politicizing things, you de-politicize yourself."

Saxbe is known to feel that party patronage for such jobs as judges is preferable to "personal patronage," which he feels would result if administrators fill the jobs without regard to party politics.

Federal judges, who have life tenure, are for the most part nominated by a U.S. senator or national committee member from their state. The nominations go to the Justice Department, where the deputy attorney general requests reviews by the FBI and the American Bar Association. If both organizations submit favorable reports, the nominations go to the White House, where they are announced by

the President and sent to the Senate for confirmation.

Richardson criticized the system in a speech at the New York University law school Nov. 17 and said the practice of "senatorial courtesy," whereby the Senate does not confirm a nominee if his home-state senator objects, is a "constitutional anomaly."

He did not call for the abolition of the practice, but he suggested that it be "invoked with restraint." Senators and party representatives should not be the sole source of judicial recommendations, he said. He also questioned, as Bork did later, the tendency of the Justice Department to give as much weight as it does to the ABA recommendations.

Bork said he is "not aware that the federal bench is politicized in a bad sense" now but agrees with Richardson that

"partisan political considerations should be taken out of the process" of selecting judges. Bork said, however, that an administration has a right to choose judges with a basic constitutional philosophy that is compatible with its own.

Richardson described the current system as one that "unduly" restricts the pool of potential nominees by insuring that most nominees are lawyers who "belong to the party in power" and "have engaged extensively in political activity."

He added, "It would be too much to expect . . . that senators and local party leaders would be willing to accept a wholly passive role regarding the selection of federal officials whose function so continuously and pervasively affects the lives of their constituents."

But he suggested, and Bork concurred, that the deputy attorney general's office should have a role in the selection process.

Two or three persons within the office should develop "informal contacts with bar associations, law schools, and community leaders for the purpose of collecting the names of outstanding judicial prospects," Richardson said.

The former Attorney General said he realizes critics might charge that this suggestion would lead to even closer conformity "to official administration doctrine than is currently the case."

But he argues that the "result will depend on the thrust of the initiative: If it is specifically aimed at an increase in the diversity as well as the quality of the pool of prospective nominees, there is no reason why the outcome should be the opposite."

Bork said, "It's quite true the pool should be widened, and the deputy's office should take a role in it."

Richardson said the deputy's staff should systematically evaluate a candidate's qualifications by checking his acquaintances, FBI data, and the questionnaire he fills out.

Finally, he said, senators and party leaders should set up advisory committees like those recently created by New York Sens. Jacob K. Javits and James L. Buckley to seek out and evaluate prospective nominees.