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Submitted to the
SUBCOMMITTEE ON THE SEPARATION OF POWERS
UNITED STATES SENATE

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First, I would like to say that all Americans owe a debt to the Subcommittee and to its distinguished Chairman, Senator Sam J. Ervin, for furnishing a forum to discuss the vital issue of ensuring the independence and integrity of the United States Department of Justice.

I am not prepared to endorse or oppose either of the two specific measures that are before the Subcommittee. Senator Ervin has said that his proposal, S. 2803, is designed to provide a point of departure for informed discussion. Senator Cranston's bill, S. 2978, does not propose a final solution, but calls for a commission to study the question of whether a permanent special prosecutor should be created. This moderate approach is commendable. A matter of such importance should undergo thorough consideration before legislation is enacted.

I wholeheartedly support the need for some legislation to remove the Department of Justice from politics, but don't think we are now able to say with certainty what form this legislation should take. This Subcommittee has heard statements by an array of distinguished scholars. The Select Committee on Presidential

Campaign Activities probably will have suggestions to make concerning the Department of Justice. The problems that have led to this review are of fundamental importance to the integrity of our government. We must seek solutions that will endure for generations to come and that will ensure the effective administration of justice.

Any legislation adopted should not be viewed merely as an aftermath of Watergate. Rather, it should be seen as an effort to clarify the status of the Attorney General and to prevent recurrence of political status. This is the third time in fifty years that an Attorney General has been implicated in charges of corruption; in 1924 and in 1952 Attorneys General resigned or were dismissed because of scandals. The Watergate scandals and subsequent events have cast an even greater cloud over the Department than these earlier scandals.

We must take steps to insulate the Department of Justice from the political pressures that have brought about these recurrent crisis, with their accompanying loss of public confidence. We must end the practice of putting campaign managers or political cronies in charge of the Department of Justice. We must ensure that the Department which is most responsible for the just execution of our laws is not itself party to unlawful activities.

I have been honored to serve as Attorney General of North Carolina. While there are some significant differences between the office of Attorney General at the state and the national level, both still serve the same basic role...to act as attorney for the people. We do not act as attorney for a President or a Governor, but for

the sovereign power. In America, this sovereign power is the people.

As a state Attorney General, I have served with a Governor of my own political faith and with a Governor of the other party. In neither case have I viewed my job as part of the Governor's staff. My office gives impartial advice, based on our best judgment of the law, to state departments. We exercise our duties in prosecution and appellate cases with no regard to personalities, power or politics. Our state Bureau of Investigation investigates apparent crimes and wrongdoings without reference to the wishes of the Governor, be he Republican or Democrat. We have built an excellent staff, without concern for their political affiliations. Through programs such as our Consumer Protection Division, we have made the resources of the Department of Justice available to all of the people.

This is my concept of the Attorney General - to serve as the state's chief law officer, giving his allegiance to the law, not to political leaders or power groups. To protect this concept, I have chosen to continue to serve as Attorney General while running for the U. S. Senate, to ensure the continued independence of the office, its staff, and its commitment to the effective administration of justice.

The Office of Attorney General is five centuries old. In 1472, William Husse was appointed Attorney General of England, with the power to act in any court of record. He was the King's attorney, representing his interests in the courts and in the legislature. The office came to America as part of colonial governments. Although

the office was not established by the Constitution of the United States, Senate Bill I of the first United States Congress provided for the appointment of an Attorney General. As in England, the Attorney General represented the interests of the sovereign---but in our country, the sovereign was the people, not any individual.

It is essential that we recognize that the office of Attorney General is grounded in five centuries of history and of the common laws. A long line of cases have held that the state Attorney General represents the public interest, and represents the citizens, who are the sovereign power. This principle is equally clear at the federal level.

The evolution of this ancient office helps clarify its unique function in government. The President needs, and should have, advice and counsel on legal issues. But this is a small part of any Attorney General's role. The Attorney General heads a Department with a budget of \$1.8 billion a year, including funds appropriated to the Law Enforcement Assistance Administration. The Department had 47,000 employees in 1972. It has a great diversity of functions. Surely, there is no room for politics in the kinds of programs that have been assigned to the Department of Justice, such as narcotics enforcement, corrections, organized crime control, antitrust, and enforcement of environmental laws. In these roles, the Department of Justice must act for all of the people, without regard to personal or partisan interests.

The primary function of the Department of Justice is to enforce the laws, not only outside with within our government. There is no room for conflict of loyalties in this function.

Many persons can serve as advisers to the President and can work to serve his interests. There are appropriate positions for such persons in our government structure. But the office of Attorney General, which is charged with the investigation and prosecution of federal crimes, is not such a position. No man can serve two masters, and no Attorney General can serve both the law and interests of his President or party. History has shown us too many instances of conflict.

It also helps give perspective to our deliberations to view the development of the office of Attorney General of England. The two centuries since we left the English system have seen a significant change in the office there. The Attorney General is no longer a servant of the sovereigns. In recent times, he has ceased to be a member of the Cabinet. As Lord Shawcross, who served for six years as Attorney General states, "it remains the clearest rule that in the discharge of his legal and discretionary duties the Attorney General is completely divorced from party political considerations and from any kind of political control." We must see that the ancient and honorable office of Attorney General is made equally independent in America.

In America, it was the Congress which created the office of Attorney General of the United States. It was the Congress which created the Department of Justice. Now, it is proper that the Congress is re-examining the structure and the function of this critical element of our system. If our government is to be one of

laws and not of men, we must be sure that these laws are equitably enforced. And this is possible only if the Attorney General is responsible to the people, not to political or partisan interests.