U.S. Justice Dept. squelches speech

Standing on its own as an isolated example, the decision of the U.S. Justice Department to deny lawyers in New York City an opportunity to express formal opinions on the qualifications of judicial nominees would still be significantly disturbing.

But with disclosure of the policy change coming within days of a Supreme Court ruling upholding the administration's right to abridge the free speech of doctors and some other health-care providers, the Justice Department's edict must be packaged into a troubling suggestion that the Bush administration holds in particularly low regard the right of Americans to dissent.

> Edict confirms administration's attitude on dissent.

Certainly, the Justice Department is not worried that the Association of the Bar of the City of New York will support the administration's nominees for the federal bench serving the metropolitan region. It was not a worry about concurrence, but only a fear of dissent that could possibly explain the policy shift.

For 120 years, the city bar association has reviewed the qualifications of federal judicial nominees. The American Bar Association, which probably is more centrist and certainly is more remote, does something similar in Washington.

Now, the justice department has instructed all candidates for the federal bench that they cannot cooperate with the New York City bar by appearing at screening interviews or otherwise responding to inquiries.

In most cases, lawyer review of judicial candidates offers only little guidance, since lawyers in the main are reluctant to make public criticisms of their colleagues. But in some few cases, the city bar association may be able to raise legitimate issues of concern that should rightfully be considered by the Senate in passing on a candidate for the federal judiciary.

How peculiar — but, sadly, how characteristic for this administration — that Attorney General Dick Thornburgh, through an aide, lambastes the city bar's historic role as an "interference with the constitutional process" of filling vacancies on the federal bench.

In fact, as a companion to the review offered by the national bar, the city bar merely offers the Senate additional information and a different perspective on the qualifications of judicial nominees.

The only constitutional process at jeopardy here is the constitutional process of free speech.

Not only is the city bar being denied some opportunity to express informed opinions in a manner and forum that can be meaningful, the rights of the nominees themselves are being restricted by Thornburgh's edict.

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