



# THE DEPARTMENT OF JUSTICE IS BORN – A RESPONSE

*Charles Lane*

STEPHEN R. MCALLISTER’S interesting review of the Justice Department’s early days goes astray in one significant respect. “The Grant administration was so chaotic,” he writes, “that it is unclear who was the *first* Attorney General after the Department’s creation” – on July 1, 1870 – “Ebenezer Hoar or Amos Akerman.” McAllister attributes the mystery to his having “found no documentary evidence that proves with certainty whether Hoar or Akerman was the first AG to serve the department.”<sup>1</sup>

Actually, the documentary evidence exists and the answer it supports is clear: If anyone was Attorney General on July 1, 1870, it was Ebenezer Hoar.

McAllister places Hoar’s resignation as Attorney General, and President Grant’s selection of Akerman, in the correct time frame: June 15-17, 1870. Specifically, Hoar tendered his resignation on June 15, 1870, and Grant nominated Akerman on June 16.<sup>2</sup>

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<sup>1</sup> Stephen R. McAllister, *The Department of Justice Is Born*, 23 *Green Bag 2d* 211, 213, 215 (2020).

<sup>2</sup> John Y. Simon and John F. Marszalek, 20 *The Papers of Ulysses S. Grant* 170, 174 (1967).

His error, however, is to posit that Akerman was not confirmed until November, 1870. In fact, the Senate confirmed him unanimously on June 23, 1870. Akerman took the oath of office before Justice Andrew Wylie of the Supreme Court of the District of Columbia (today's U.S. District Court for the District of Columbia) on July 8, 1870.<sup>3</sup>

Meanwhile, Hoar had remained Attorney General – for the entire time between submitting his letter of resignation on June 15 and Akerman's swearing-in on July 8.

This is because Hoar resigned effective “upon the appointment and qualification of my successor.”<sup>4</sup> Once Akerman took the oath – “qualified,” in the parlance of the day – Hoar was out. As the semi-official *National Republican* reported at the time, Hoar witnessed Akerman's swearing in, then discussed with Akerman the advisability of retaining the Department's clerks.<sup>5</sup> One may surmise that this was also the occasion on which Hoar took Akerman to the White House for his first cabinet meeting, as McAllister reports.

Of course, Hoar's one-week tenure atop DOJ made little practical difference, policy-wise, since the Department was brand new and it was understood that Akerman would soon be charting its course. Akerman's first major policy initiative occurred shortly after his swearing in, when he sent a circular to all U.S. attorneys, Marshals, and commissioners, admonishing them to “take prompt measures for the arrest and effectual prosecution” of those accused of violating the newly adopted Enforcement Act, which targeted Ku Klux Klan conspiracies in the South.<sup>6</sup>

Nor is it quite the case that “Akerman's service ended” on December 13, 1871, as McAllister writes. That was indeed the date he submitted his resignation, but, with Grant's agreement, it did not take effect until January

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<sup>3</sup> *National Republican* (Washington, DC), June 24, 1870; *ibid.*, July 9, 1870.

<sup>4</sup> Grant, 170.

<sup>5</sup> *National Republican* (Washington, DC), July 9, 1870. Why Akerman let so much time go by between confirmation and swearing-in is, indeed, a mystery, though it may have something to do with the fact that he was resident in Georgia – where he served as U.S. attorney – not Washington, and thus faced the time-consuming tasks associated with traveling north and finding lodging in the capital city.

<sup>6</sup> *Evening Star* (Washington DC), July 27, 1870.

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10, 1872.<sup>7</sup> The reason for the delay: Akerman wanted to supervise the last of the Ku Klux Klan trials then underway in South Carolina and to finish up his annual report, which contained valedictory advice on how to deal with the Klan (via a modified habeas corpus repeal targeted not at geographical jurisdictions but individual suspects).<sup>8</sup> The tenure of his successor, George H. Williams, therefore did not begin until after the New Year.

And that's the story of Amos Tappan Akerman, Attorney General of the United States, July 8, 1870 to January 10, 1872.



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<sup>7</sup> U.S. Congress, Senate Exec. Journal, 42nd Cong., 2nd sess., Dec. 14, 1871, 150.

<sup>8</sup> U.S. Congress. House Exec. Documents, 42nd Cong., 2nd sess., no. 55, "Annual Report of the Attorney General of the United States." For excerpts of the report, see New York Times, Jan. 16, 1872.