

Bob Dole



NEWS

U. S. SENATOR FOR KANSAS

FROM:

SENATE REPUBLICAN LEADER

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INDEPENDENT COUNSEL LAW

TESTIMONY OF SENATE REPUBLICAN LEADER BOB DOLE ON REAUTHORIZATION OF THE INDEPENDENT COUNSEL STATUTE AT THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE

MR. CHAIRMAN, SENATOR ROTH, GOOD MORNING AND THANK YOU FOR GIVING ME THIS OPPORTUNITY TO SHARE MY VIEWS ABOUT THE INDEPENDENT COUNSEL STATUTE AND ABOUT ITS MOST RECENT OFFSPRING, IRAN-CONTRA SPECIAL PROSECUTOR LAWRENCE WALSH.

DEATH, TAXES, AND LAWRENCE WALSH

IT USED TO BE SAID THAT THE ONLY CERTAINTIES IN LIFE WERE DEATH AND TAXES. AFTER SIX-AND-HALF YEARS OF WALSH AND COMPANY, I THINK WE CAN NOW ADD IRAN-CONTRA TO THAT LIST.

SINCE DECEMBER OF 1986, MR. WALSH AND HIS ARMY OF LAWYERS HAVE DESTROYED REPUTATIONS, HARASSED FAMILIES, RUN UP A TAB OF NEARLY \$40 MILLION BILLED DIRECTLY TO THE TAXPAYERS, EVEN LEFT TOP SECRET DOCUMENTS BEHIND AT AN AIRPORT TAXI STAND. AND NOW, SIX YEARS LATER, CAN ANY OBJECTIVE OBSERVER LOOK AT WHAT WALSH HAS WROUGHT AND SAY "CONGRATULATIONS ON A JOB WELL DONE?"

LET'S FACE IT: WHEN LAWRENCE WALSH FINALLY TURNS OFF THE LIGHTS IN HIS SWANKY DOWNTOWN OFFICES, THERE WILL BE NOTHING SWANKY ABOUT HIS DEPARTURE.

WALSH'S RECORD IS SO LACKLUSTER THAT IT WOULD MAKE A JUNIOR ASSISTANT D.A. BLUSH WITH EMBARRASSMENT. THREE OF WALSH'S MAJOR CONVICTIONS WERE SUBSEQUENTLY OVERTURNED--JUST AS MANY LEGAL SCHOLARS HAD PREDICTED BEFORE THE WALSH WITCH-HUNT BEGAN. MR. WALSH WAS ABLE TO FORCE A FEW GUILTY PLEAS FROM DEFENDANTS, BUT ONLY BECAUSE THEY COULDN'T POSSIBLY AFFORD THE ATTORNEYS' FEES WHICH WOULD HAVE RESULTED FROM GOING TO TRIAL TO DEFEND THEMSELVES. THIS IS NOT GUILT BY ASSOCIATION, BUT "GUILT BY ASSOCIATES"--LEGAL ASSOCIATES, WHO CAN RACK UP HUNDREDS OF THOUSANDS OF DOLLARS IN LEGAL BILLS.

SHOULD HAVE CONFIDENCE IN THE ATTORNEY GENERAL

NOW, I CAN UNDERSTAND THE RATIONALE FOR AN INDEPENDENT COUNSEL STATUTE: PERHAPS IT'S TRUE WE CAN'T EXPECT THE ATTORNEY GENERAL, THE NATION'S TOP LAW ENFORCEMENT OFFICIAL, TO HAVE ENOUGH INDEPENDENCE TO INVESTIGATE CHARGES OF WRONGDOING BY OTHER OFFICIALS IN THE EXECUTIVE BRANCH. PERHAPS WE NEED AN "INDEPENDENT" COUNSEL TO STEP IN AND INVESTIGATE CRIMINAL BEHAVIOR AT THE VERY HIGHEST LEVELS OF OUR GOVERNMENT.

BUT I TOOK ATTORNEY GENERAL JANET RENO AT HER WORD WHEN SHE SAID POLITICS WOULD TAKE A BACK-SEAT AT THE JUSTICE DEPARTMENT. WE'RE NOT ENHANCING "CONFIDENCE IN GOVERNMENT" WHEN CONGRESS PRESUMES, AS IT PRESUMES THROUGH THE INDEPENDENT COUNSEL STATUTE, THAT THE ATTORNEY GENERAL LACKS THE INTEGRITY TO CONDUCT A FAIR AND THOROUGH INVESTIGATION OF ANOTHER EXECUTIVE BRANCH OFFICIAL. IF THE ATTORNEY GENERAL IS CONCERNED ABOUT A CONFLICT OF INTEREST, SHE CAN STEP ASIDE AND HAND OVER THE PROSECUTORIAL REINS TO A SUBORDINATE. THAT'S THE LEAST THE AMERICAN PEOPLE SHOULD EXPECT FROM THE NATION'S TOP LAW ENFORCER.

INDEPENDENCE: NO SUBSTITUTE FOR ACCOUNTABILITY

WITH ANY PROSECUTOR, INDEPENDENCE IS CERTAINLY IMPORTANT, BUT IT'S NO SUBSTITUTE FOR ACCOUNTABILITY. AS JAMES MADISON ONCE EXPLAINED: "IN FRAMING A GOVERNMENT WHICH IS TO BE ADMINISTERED BY MEN OVER MEN, THE GREAT DIFFICULTY LIES IN THIS: YOU MUST FIRST ENABLE THE GOVERNMENT TO CONTROL THE GOVERNED; AND IN THE NEXT PLACE, OBLIGE IT TO CONTROL ITSELF."

UNFORTUNATELY, "CONTROL" IS NOT ALWAYS PART OF AN INDEPENDENT COUNSEL'S VOCABULARY. FOR LAWRENCE WALSH, A MORE APPROPRIATE DESCRIPTION WOULD BE "OUT-OF-CONTROL."

I RAISE THIS POINT NOT JUST TO CRITICIZE MR. WALSH, BUT TO HIGHLIGHT ONE OF THE GLARING DEFICIENCIES IN THE CURRENT

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WHEN AN UNLIMITED BUDGET AND UNLIMITED TIME ARE COMBINED WITH AN INDEPENDENT COUNSEL'S CRAVING FOR THE LIMELIGHT, OR A DESIRE TO ENHANCE A PROFESSIONAL REPUTATION, WE HAVE CONCOCTED A RECIPE FOR INJUSTICE.

HUNTING FOR SCALPS

TAKE THE PROSECUTION OF FORMER SECRETARY OF DEFENSE CASPAR WEINBERGER. SECRETARY WEINBERGER WAS INDICTED NOT ONCE, BUT TWICE...AND THE HEART OF THE SECOND INDICTMENT, HANDED DOWN JUST FOUR SHORT DAYS BEFORE THE PRESIDENTIAL ELECTION, WAS SUBSEQUENTLY DISMISSED.

WAS POLITICS AT WORK HERE? PERHAPS. WAS THIS SLOPPY LAWYERING? NO DOUBT. BUT WHAT WERE THE REAL MOTIVATIONS BEHIND WALSH'S ACTIONS?

BOB BENNETT, FORMERLY SPECIAL COUNSEL TO THE SENATE ETHICS COMMITTEE AND THE ATTORNEY FOR CAP WEINBERGER, HAD THIS TO SAY ABOUT WALSH'S ATTEMPT TO CUT A DEAL WITH HIS CLIENT AFTER THE FIRST INDICTMENT WAS HANDED DOWN LAST JUNE:

IF MR. WALSH BELIEVED THAT THE FORMER SECRETARY OF DEFENSE COMMITTED SERIOUS CRIMES, PERJURED HIMSELF, ENTERED A CONSPIRACY, LIED TO CONGRESS, AND LIED TO THE INDEPENDENT COUNSEL, I ASK YOU HOW IN GOOD CONSCIENCE COULD ANY RESPONSIBLE PROSECUTOR OFFER A MISDEMEANOR PLEA? WHEN I TOLD MR. WALSH THAT MR. WEINBERGER WOULD NOT ADMIT WRONGDOING, HE SAID "WE CAN WORK OUT THE LANGUAGE," AND, TO ENCOURAGE A DISPOSITION, INDICATED HE HAD NO DESIRE TO SEE MR. WEINBERGER GO TO JAIL. OF COURSE, HE MADE IT CLEAR THAT IF NO SUCH DEAL WERE ACCEPTED MR. WEINBERGER WOULD BE INDICTED FOR SEVERAL FELONIES. WHY, IF HE BELIEVED ALL OF THOSE THINGS, WOULD HE OFFER TO WORK OUT THE LANGUAGE?"

WHY? WELL, I HAVE MY OWN THEORY. LAWRENCE WALSH WANTED TO BAG THE BIG SCALP...AND WHOSE SCALP WOULD LOOK MORE IMPRESSIVE IN THE TROPHY CASE THAN THAT OF THE FORMER SECRETARY OF DEFENSE? WALSH WANTED TO CONVICT CASPAR WEINBERGER NOT OUT OF A BURNING DESIRE TO SEE JUSTICE DONE, BUT RATHER TO REHABILITATE HIS OWN SULLIED REPUTATION. INSTEAD, WALSH'S REPUTATION SANK TO NEW DEPTHS IN THE PROCESS.

NOW, IT APPEARS THAT LAWRENCE WALSH MAY HAVE HIS SIGHTS ON AN EVEN BIGGER CATCH, FORMER PRESIDENT GEORGE BUSH. FRUSTRATED AFTER LOSING OLIVER NORTH, FRUSTRATED AFTER LOSING JOHN POINDEXTER, FRUSTRATED AFTER SEEING CASPAR WEINBERGER RECEIVE A PRESIDENTIAL PARDON, WALSH MADE A PUBLIC SPECTACLE OF HIMSELF ON NATIONAL TELEVISION, SUGGESTING THAT PRESIDENT BUSH WAS THE NEXT TARGET OF HIS NEVER-ENDING INVESTIGATION, AND MOST PROBABLY VIOLATING HIS OWN CODE OF PROFESSIONAL ETHICS IN THE PROCESS.

SO, MR. CHAIRMAN, INDEPENDENCE IS A DOUBLE-EDGED SWORD. FOR LAWRENCE WALSH, INDEPENDENCE IS A LICENSE FOR PROSECUTORIAL EXCESS. BUT FOR CAP WEINBERGER AND FOR SOME OF THE OTHER INDIVIDUALS DRAGGED THROUGH IRAN-CONTRA, INDEPENDENCE CAN MEAN A MOUNTAIN OF LEGAL FEES AND A PILE OF RUINED LIVES.

SOME SUGGESTIONS FOR REFORM

I FULLY EXPECT CONGRESS TO REAUTHORIZE THE INDEPENDENT COUNSEL STATUTE. SO IN THE SPIRIT OF CONSTRUCTIVE CRITICISM, I OFFER THREE SUGGESTIONS FOR REFORM:

* **COST CONTROLS.** DURING THE PAST SIX YEARS, WALSH'S OFFICE HAS SPENT NEARLY \$40 MILLION, A SUM EQUAL TO 10% OF THE TOTAL ANNUAL BUDGET OF THE JUSTICE DEPARTMENT'S ENTIRE CRIMINAL DIVISION. IN FISCAL YEAR 1991, WALSH SPENT \$4.7 MILLION IN HIS EFFORT TO GET TWO INDIVIDUALS--ALAN FIERS AND ELLIOT ABRAMS--TO PLEAD GUILTY TO TWO MISDEMEANOR COUNTS. DURING THE SAME PERIOD, THE U.S. ATTORNEY FOR DELAWARE CONCLUDED 140 CRIMINAL CASES, 306 CIVIL CASES, AND CONVICTED 146 DEFENDANTS OF CRIMINAL VIOLATIONS. AND AT WHAT COST? \$1.9 MILLION.

WHEN AN INDEPENDENT COUNSEL SPENDS \$52,000 IN TAXPAYER MONEY ON A MOCK TRIAL, AN EXTRAVAGANCE THAT JUSTICE DEPARTMENT LAWYERS WOULD NEVER INDULGE THEMSELVES, IT'S OBVIOUS WE'RE DEALING WITH SOMEONE WHO IS SEEKING TO REDEFINE THE TERM "BIG-SPENDER." THIS RECKLESS USE OF TAXPAYER MONEY MUST NOT BE REPEATED.

I APPLAUD THE ADMINISTRATIVE REFORMS THAT HAVE BEEN INCLUDED IN THE REAUTHORIZATION BILL. I WHOLEHEARTEDLY AGREE, FOR EXAMPLE, THAT INDEPENDENT COUNSELS SHOULD BE HOUSED IN FEDERAL BUILDINGS, RATHER THAN IN MORE EXPENSIVE COMMERCIAL SPACE.

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I ALSO SUPPORT THE PROVISION REQUIRING INDEPENDENT COUNSELS TO COMPLY WITH JUSTICE DEPARTMENT SPENDING POLICIES.

BUT, MR. CHAIRMAN, I QUESTION WHETHER THESE REFORMS GO FAR ENOUGH. PERHAPS THE BEST WAY TO PREVENT FUTURE INDEPENDENT COUNSELS FROM ENGAGING IN EXCESSIVE SPENDING PRACTICES WOULD BE TO CAP TOTAL EXPENDITURES. WE COULD ALLOW AN INDEPENDENT COUNSEL TO EXCEED THIS CAP ONLY UNDER THE MOST EXTRAORDINARY OF CIRCUMSTANCES AND SUBJECT TO THE APPROVAL OF THE ATTORNEY GENERAL.

* **TIME LIMITATIONS.** WE MUST ALSO LIMIT THE DURATION OF AN INDEPENDENT COUNSEL'S APPOINTMENT. AN INDEPENDENT COUNSEL SHOULD NOT BE THE ENERGIZER BUNNY THAT KEEPS GOING...AND GOING...AND GOING.

THE TERM OF A GRAND JURY IS NORMALLY LIMITED TO 18 MONTHS. THE INDEPENDENT COUNSEL SHOULD BE SUBJECT TO A SIMILAR LIMIT. IF THE COUNSEL NEEDS MORE TIME, HE OR SHE COULD REQUEST AN EXTENSION FROM THE ATTORNEY GENERAL.

* **DEFINE "GOOD CAUSE" FOR TERMINATION.** THE CURRENT INDEPENDENT COUNSEL STATUTE ALLOWS THE ATTORNEY GENERAL TO TERMINATE AN INDEPENDENT COUNSEL INVESTIGATION FOR "GOOD CAUSE," BUT DOES NOT DEFINE WHAT "GOOD CAUSE" MEANS. THE STATUTE SHOULD FLESH OUT THE "GOOD CAUSE" STANDARD, ALLOWING THE ATTORNEY GENERAL TO TERMINATE AN INVESTIGATION FOR THE FOLLOWING REASONS: 1) THE FAILURE OF AN INDEPENDENT COUNSEL TO FOLLOW DEPARTMENT OF JUSTICE GUIDELINES; 2) VIOLATIONS OF CANONS OF ETHICS BY THE INDEPENDENT COUNSEL; AND 3) A DETERMINATION BY THE ATTORNEY GENERAL THAT AN INVESTIGATION CAN BE PROPERLY CONDUCTED BY THE JUSTICE DEPARTMENT.

HISTORY WILL REPEAT ITSELF IF WE DON'T LEARN A FEW LESSONS FROM THE PAST. AND ONE LESSON WE HAVE LEARNED THE HARD WAY IS THAT NO PROSECUTOR SHOULD BE GIVEN AN UNLIMITED BUDGET, UNLIMITED TIME, AND UNLIMITED DISCRETION--ALL IN THE NAME OF "INDEPENDENCE."

MR. CHAIRMAN, SENATOR, THANK YOU FOR YOUR COURTESY THIS MORNING.