



DONALD C. SMALTZ
In re Secretary of Agriculture Espy

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December 5, 1997

CONFIDENTIAL

Hand-Delivered

The Honorable Janet Reno
Attorney General of the United States
United States Department of Justice
10th and Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear General Reno:

I write to express my extreme concern and indignation with recent press reports that attribute to high Justice Department officials statements impugning the competence and motives of independent counsels appointed at your request (myself included), and even of the Special Division of the United States Court of Appeals for the District of Columbia Circuit that appoints independent counsels. Such statements, aside from being extremely unprofessional, seriously impede the accomplishment of what should be our common goals, namely, effective law enforcement and the detection and deterrence of public malfeasance.

In some of these statements to the press, you and other top Justice officials have directly disparaged the abilities of the independent counsels and their staffs. For example, the *New York Times* of November 26, 1997, reported:

Ms. Reno's unwillingness to seek an independent prosecutor in the campaign finance case appears to be shaped by her experiences -- almost all bad from her point of view -- with other outside counsels appointed at her request since she took over in 1993

...
[I]n recent years, top advisors to Ms. Reno have complained bitterly about the quality of independent prosecutors

...
[Some Justice Department] officials regard four of the five independent prosecutors appointed under Ms. Reno as overzealous amateurs who have tried repeatedly to expand jurisdiction

...
[S]ome lawyers who have worked with the Attorney General in recent years have said she seems to impose a higher standard as dissatisfaction with the counsels has increased.

Such statements, coming as they do from federal prosecutors and apparently sanctioned at the highest level, are nothing less than shocking. They threaten to undermine the efforts of the independent counsels in the already difficult job of prosecuting public corruption. Imagine, for example, the possible effect of such statements on jurors in our trial in the District of Columbia of a former high official of the Department of Agriculture, which was in progress when this issue of the *Times* hit the stands.¹ Moreover, what will the future prospective venire imagine, suppose, or believe when they learn that the case they are summoned to hear is an independent counsel case?²

¹ Cf., ABA Model Rules of Professional Responsibility, Rule 3.6, Trial Publicity:

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

² This office currently has three indictments pending, two of which are in this District, with more to follow.

These remarks are also particularly unsettling because the overwhelming majority of the attorneys in the independent counsel offices are detailed from the Department of Justice and the United States Attorney offices, and a significant portion of the remainder are former Justice Department employees or AUSAs. Similarly, most of the investigators in the independent counsel offices are on detail from the FBI or other federal investigative agencies. Disparaging the quality of personnel in the independent counsel offices brings disrepute upon the department and those enforcement services from which they are drawn.

Equally disturbing is the public criticism of the Special Division, and especially Judge Sentelle, head of the Special Division, attributed to Justice Department officials. For example, the same *New York Times* article reported the following remarks:

[S]ome Justice Department officials have derisively dismissed the suggestion that the outside prosecutors selected by Judge Sentelle's panel are in fact any more independent than Ms. Reno.

Democrats have complained that Judge Sentelle, an appointee of President Ronald Reagan, is a North Carolina supporter of Republican Senator Jesse Helms

As officers of the court, we know that it is highly improper to attack members of the judiciary in the press, particularly because they are institutionally unable to respond in kind. The fact that an attorney does not agree with decisions made by a court or an individual judge, even those fulfilling extraordinary

functions such as the members of the Special Division, does not justify such *ad hominem* attacks.³

Finally, the recent news reports, including the December 1, 1997 *New Yorker* magazine article "Janet Reno, Alone,"⁴ show Justice Department officials attacking independent counsels by publicly airing past disputes between the departments and independent counsels, myself included. For example, the *New York Times* of November 29, 1997, reported:

[T]he independent counsel who is said by officials to most irritate the Justice Department is David M. Barrett . . . Law-enforcement officials said he had fought with Ms. Reno about expanding his jurisdiction and has delved into matters far from the original accusations against Mr. Cisneros. At one point Mr. Barrett wanted to investigate how Ms. Reno and her aides decided to deny him an expansion of his charter, officials said.

...
[A]fter repeated clashes with independent prosecutors, Ms. Reno and her advisors have grown disillusioned with many aspects of the independent counsel law, say Justice Department officials, current and former.

³ Cf., ABA Model Rules of Professional Responsibility, Rule 8.2. Judicial and Legal Officials:

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

⁴ This article, which relies in significant part on an interview[s] with you and others at DOJ, states: "Reno, meanwhile, has quietly -- and unsuccessfully -- made an effort to rein in some of those far flung prosecutions. *Some suggest that this setback to Reno's authority may be affecting her current decisions*" (p 45) (emphasis added)

...
Ms. Reno's disputes with independent prosecutors, waged largely in closed arguments and sealed court documents, are emerging as a sobering experience that is shaping her views

...
Mr. Smaltz has aggressively urged Ms. Reno to broaden his jurisdiction since his appointment in 1994 He tangled with her once over whether he could expand his charter to investigate Tyson to see whether it had given unlawful gratuities to other officials. Ms. Reno barred a broader inquiry.

As should be obvious, the proper place to resolve such disputes is in private and, if necessary, before the courts -- not in the press. That is how we have always attempted to resolve such disputes between our office and yours but, apparently, some members of your staff appear to believe that these are political matters to be decided by attempts to influence public opinion. The only conceivable result from such tactics can be to undermine respect for, and the effectiveness of, law enforcement and the fair administration of justice.

In this regard, I would remind you that we have had continuing concerns regarding leaks from your office to the press about confidential communications with our office. See my letter to you of February 24, 1995, a copy of which is attached. The quoted passages raise these same concerns once again.⁵

"Dear General Reno

I write to apprise you of a concern that has just come to my attention this afternoon which I believe requires immediate investigation by the Department.

Today, my office received a call from a respected member of the press. During the course of the conversation with Charles Bakaly, Deputy Independent Counsel, that press representative inquired:

'about a letter from me to you requesting an expansion of jurisdiction over Tyson Foods; and

[continued on next page]

In summary, I am deeply troubled at the recent efforts of you and your subordinates to disparage independent counsels and the Special Division in the press. If you are dissatisfied with an independent counsel and you believe you have good cause to fire him, that is a right you have under 28 U.S.C. § 596. Alternatively, you may have the Special Division terminate his investigation under § 596(b)(2). If you are dissatisfied with the Independent Counsel Statute, the place to address any perceived problems is in Congress.

Attacking the independent counsels and their staffs, who are carrying out to the best of their abilities the investigations that you earlier set in motion, by definition independently of the perceived needs and desires of the Department of Justice, serves to undermine the cause of law enforcement, generally, and the fair administration of justice, particularly. After all, Ms. Reno, we who are independent counsel in fact took the same oath you took and are certainly no less well-intentioned than you!

attributed to you a position similar to that expressed
in your letter to me dated February 17, 1995.'

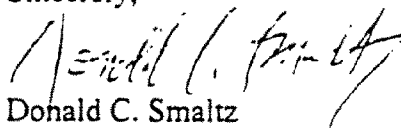
Our office has gone to great lengths to maintain our original letter from Elizabeth Taylor to Lee Radek (indeed we labeled it with a 6(e) designation). We similarly maintained your response in secret.

You are undoubtedly aware that Tyson Foods has been engaged in a well orchestrated campaign to convince the public, Congress and others that I am acting in excess of my jurisdiction in the course of my investigation. The unauthorized release of not only the fact but also the nature of communications between my office and yours concerning jurisdictional issues when 6(e) materials are involved may well constitute a federal criminal offense. Accordingly, by this letter to you I am requesting the Department of Justice to undertake an investigation as to the source of the release of this confidential information."

I sincerely request that in the future you direct the officials who work for you to temper their public remarks, and to present any concerns or criticisms to our office or the offices of the other independent counsels so that any genuine problems that arise can be addressed directly and not become the subject of political grandstanding.

Finally, I speak only for myself and copy only those persons whose names are shown below. I hope that we can resolve these concerns *inter se*.

Sincerely,



Donald C. Smaltz
Independent Counsel

DCS/jmd
Attachment

Confidential Copies:

The Honorable Kenneth W. Starr
The Honorable David M. Barrett
The Honorable Daniel S. Pearson
Michael E. Shaheen, Jr., Counsel,
Office of Professional Responsibility



DONALD C. SMALTZ
in re Secretary of Agriculture Espy

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CONFIDENTIAL

February 24, 1995

By Facsimile Transmission and U.S. Mail

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
9th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear General Reno:

I write to apprise you of a concern that has just come to my attention this afternoon which I believe requires immediate investigation by the Department.

Today, my office received a call from a respected member of the press. During the course of the conversation with Charles Bakaly, Deputy Independent Counsel, that press representative inquired:

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I appreciate your prompt attention to this matter.

Sincerely,

Donald C. Smaltz
Independent Counsel

Dispute at Justice Dept. Over Clinton Inquiry

Comes Into Sharper Focus

By DAVID JOHNSTON

WASHINGTON, Nov. 24 — Their argument sums up a problem at the heart of the campaign finance case: The F.B.I. Director, Louis J. Freeh, wants an outside prosecutor to investigate the tangle of shady events and powerful politicians that surround the immediate issue of whether President Clinton illegally made a fund raising call from the wrong phone at the White House.

Janet Reno, Mr. Clinton's Attorney General, seems to be ratcheting up the standard of proof required before she refers a case to an outside prosecutor, whose work often lasts for years, costs millions of dollars and sometimes ends up focusing on side issues.

In any case, she has said, legal questions have to be answered precisely, and whether Mr. Clinton used the wrong phone for the wrong call is exactly such a question.

These two views are at the root of an argument that is coming clearly into view between Mr. Freeh and Ms. Reno. The split between two of the country's most powerful law en-

forcement officials has been known for months. But the issue remained merely a mild embarrassment for Ms. Reno, as long as the investigation into Mr. Clinton and Mr. Gore moved forward.

But now as Ms. Reno seems poised to make a decision that would halt the inquiries into some fund raising activities by Mr. Clinton and Mr. Gore, the Justice Department and the Federal Bureau of Investigation have been thrown into sharp relief, although aides to both said that Ms. Reno and Mr. Freeh remain cordial and close associates.

Today, memos advising Ms. Reno to end the Clinton-Gore inquiries continued to circulate in the Justice Department.

Although she has until Dec. 2 to make a decision on whether to refer the Clinton-Gore investigations to independent prosecutors, her aides said they had hoped to reach a decision before she left for Mexico on Tuesday but had not made a final determination today.

Mr. Freeh's aides have complained that mid-level Justice Department lawyers were preparing

recommendations about the Clinton-Gore telephone solicitations of donors without adequately consulting the F.B.I. investigators on Ms. Reno's campaign finance team, despite a pledge by Ms. Reno that she would not close any line of inquiry without Mr. Freeh's concurrence.

Today, Justice Department officials scoffed at the F.B.I.'s complaints, saying that the agency's campaign finance investigators had been plugged into the decision-making.

Justice Department officials said the F.B.I. seemed to be trying to distance Mr. Freeh from a decision against an independent counsel to avoid the wrath of Republican lawmakers who have demanded an outside investigation.

"The idea that Louie Freeh or the F.B.I. is reluctant to make their views known to the Justice Department is ludicrous," one Justice Department official said.

But F.B.I. officials said their views were not incorporated into memos prepared for the Attorney General last week concluding that she should not seek an independent counsel to investigate the Clinton-Gore phone

calls.

"We are not playing games, it just didn't happen," an F.B.I. official said.

Mr. Freeh, a former prosecutor and Federal judge, has not disagreed with Ms. Reno's interpretations of the evidence. His main criticism has centered on her narrow legal focus.

In letters to Congress explaining her decisions in recent months not to seek outside prosecutors for donors' overnight stays at the White House or coffees with the President, for example, it has been evident that her judgments are based on a fine-filter analysis of the evidence and law.

Mr. Freeh, on the other hand, is said to have urged her to consider the issues more broadly, arguing that only an outside prosecutor can credibly investigate the messy allegations about the 1996 Presidential election that are inherently difficult for Mr. Clinton's Attorney General to impartially examine.

Over all, the campaign finance inquiry is fraught with national security implications because of the assertions that that China tried to improperly influence the process. In the F.B.I.'s view.

THE NEW YORK TIMES

TUESDAY

NOVEMBER 26, 1997

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The investigation involves dozens of politically influential Democratic fund-raisers and top officials like Mr. Clinton, Mr. Gore and Cabinet officers like Interior Secretary Bruce Babbitt and former Energy Secretary Hazel R. O'Leary.

On the other hand, Ms. Reno's unwillingness to seek an independent prosecutor in the campaign finance case appears to be shaped by her experiences — almost all bad from her point of view — with other outside counsels appointed at her request since she took over in 1993.

Early in her tenure, she expressed broad support for handing off inquiries that seemed to cast even a shadow of conflict over the department's ability to fairly investigate high Administration officials.

But in recent years, top advisers to Ms. Reno have complained bitterly about the quality of independent prosecutors, who are picked by a panel of three appellate judges headed by David B. Sentelle of the District of Columbia Circuit.

Democrats have complained that Judge Sentelle, an appointee of President Ronald Reagan, is a North Carolina political supporter of Republi-

can Senator Jesse Helms.

And in recent days, some Justice Department officials have derisively dismissed the suggestion that the outside prosecutors selected by Judge Sentelle's panel are in fact any more independent than Ms. Reno.

These officials regard four of the five independent prosecutors appointed under Ms. Reno as overzealous amateurs who have tried repeatedly to expand jurisdiction. The name of the fifth has never been made public.

Ms. Reno's aides have said she has applied the same standards to each appointment decision, but some lawyers who have worked with the Attorney General in recent years have said she has seemed to impose a higher standard as dissatisfaction with the counsels increased.

Only one prosecutor appointed at Ms. Reno's request has closed down: Daniel S. Pearson, who was named to investigate possible financial improprieties by former Commerce Secretary Ronald H. Brown, ended his work after Mr. Brown was killed in a plane crash.

THE NEW YORK TIMES
TUESDAY

NOVEMBER 26, 1997

pg 2 of 2

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JANET RENO, ALONE

The Attorney General's real legal battle isn't with the White House—it's with the F.B.I.

BY JANE MAYER

ON a quiet Friday evening earlier this month, the Attorney General of the United States, Janet Reno, indulged herself in a fantasy about life after the Clinton Administration. Outside the large windows of her office, the sun was setting over the Mall; most of the hundred and fifteen thousand federal employees who report to her were heading home. Some might consider her position—the most powerful job in the American legal system—fantasy enough, but at this moment her thoughts were far, far away from the squat building that houses the Department of Justice.

Other Washington dignitaries may dream of money to be made or ambassadorships to be garnered. Not Janet Reno. "I'd like to get in a truck," the Attorney General said. "That's what I'd like to do—get in a truck, and put in a cooler and a stove, and a little dresser drawer and a place for a cot. Then take a canvas, and have it hooked to the back so that it rolls out—I could use it as a tarpaulin—and take off across the country!" Reno's closest friend in the Cabinet, Donna Shalala, the Health and Human Services Secretary, says that Reno has talked with her about this notion. "I told her I'd drive," Shalala said.

If Janet Reno is entertaining fantasies of escape, no wonder. Reno came to Washington as someone whose integrity was beyond question and has seen herself cast as yet another Administration figure accused of lapses in ethical judgment. Because of her hesitation in appointing an outside counsel to investigate campaign financing, the *Times* has criticized her so frequently that its Reno-bashing editorials have come to resemble a running feature, like the skits showcasing "Janet Reno's Dance Party" on "Saturday Night Live."

Reno's mother once said of her, "She loves pressure more than prestige." But Reno, who is fifty-nine and is affected by the early stages of Parkinson's disease, seems close to having had enough of

both. During a grueling but masterly eight-hour appearance last month before the House Judiciary Committee, she could be glimpsed clutching her knees to conceal a tremor. She says that when she graduated from Harvard Law School, in 1963, she promised herself that she



A Justice veteran thinks Reno "outfoxed herself" by giving too much authority to Freeh.

would never stay in a job she did not enjoy. And although she says that she still finds being Attorney General "fun," and that she has much she wants to accomplish, she also says, "There are days that I can do without. Luckily, I'm good at going home and curling up with a good book, and just dropping out of whatever I was in."

THE appeal of settling in with a good book is obvious, after more than a year of investigating the seemingly inexhaustible supply of embarrassments generated by the fund-raising operations of the Clinton-Gore reelection campaign. As in all criminal probes, details of the Justice Department's investigation have been secret, but it has been clear all along that whatever the Attorney General de-

ANDREA VENURA

The New Yorker 12/1/97

ceded about referring a criminal investigation to an outside prosecutor would have enormous political consequences.

From the start, Reno said simply that she would base her decision on the law and the legal facts. But when we spoke earlier this month she conceded that neither the law nor the facts were as clear as one might wish. When I asked Reno if two experienced lawyers could reach opposite conclusions on the rightness of appointing an independent counsel—which is, remarkably, the case with Reno and Louis Freeh, the F.B.I. director—she sighed and said, "I think so."

Last week, officials close to the investigation told me that Reno had in fact decided not to name an outside counsel in the specific cases at hand, which involved the question of whether President Clinton and Vice-President Gore had violated the Pendleton Act of 1883 by soliciting campaign funds over the telephone from federal property. Rather, these officials said, justice is likely to indict at least one lower-level person—the former Little Rock restaurateur Yah Lun (Charlie) Tne—for campaign fund-raising violations, and perhaps will take other actions against more prominent figures in the future.

A finding by Reno that the allegations of wrongdoing against the President, the Vice-President, and other senior officials are not "specific and credible" enough to warrant an outside investigation is likely to further enrage her critics and, in addition, to telegraph to the country that the campaign-finance laws are not taken seriously. On the other hand, a decision to appoint an independent counsel would carry with it the potential to damage not only the legacy of President Clinton but also the future of his presumed heir, the Vice-President. The independent counsel Kenneth Starr's Whitewater investigation of what began as a small-time real-estate deal is now entering its fourth year, at a cost, so far, of more than twenty-five million dollars. One can only imagine what an inquiry into the entire fund-raising operation of the 1996 campaign would entail.

Despite the political issues, and the inevitable criticism, few people sincerely doubt Reno's integrity. The question, however, seems to be whether good intentions are enough to run the Justice Department in an era when so many political fights devolve into nasty legal showdowns. Reno's struggles sometimes

seem like a test of whether a strong-willed, self-contained individualist—someone who seems almost out of place in the twentieth century—can prevail simply by doing what she sees as the right thing.

Ironically, Reno is accused of protecting a President who, by most accounts, doesn't much like her. Indeed, after Clinton was reelected, he let it be known that he wanted Reno to resign. Reno announced that she planned to stay on nonetheless. Clinton, White House staffers say, didn't dare risk the political consequences of removing her, but, as Reno finishes her fifth year in the job, she is still regarded as being so alien to the Clinton Administration that one of those closest to the President refers to her in private as the Martian.

Reno certainly remains an unusually solitary person in gregarious official Washington. The phrases insiders use to describe her tend to focus on how out of place she is—"a different sort of animal" is one description—but such phrases may say less about the animal than about the zoo. Part of what makes Reno stand out, according to those who know her best, is that she appears to be indifferent to the judgment of others. Walter Dellinger, who served under Reno as Acting Solicitor General and has returned to teaching law at Duke University, says, "I sit down here in North Carolina reading in the paper that mounting pressure makes it inevitable that she will do this, or the opposite, but neither of these observations makes any sense in Janet Reno's world."

Reno lives alone in a small apartment a few blocks from the office, to which she walks each morning before seven and from which she usually returns home after eight. Her weekends are devoted to work, reading, and outdoor rambles—hikes along the C & O Canal (she estimates that she has walked about a hundred miles to date), or paddling on the Potomac River in a snub-nosed version of a kayak called a Poke Boat. She also enjoys felling trees with a chainsaw. Her sister, Maggie Hurchalla, a former official in Martin County, Florida, confirms that Reno finds this noisy pastime "more soothing than dealing with Congress."

In Florida, where Reno was raised, she has many devoted friends; she remains close to her brother and sister and their children. (Her parents are no longer alive.) But in Washington she functions

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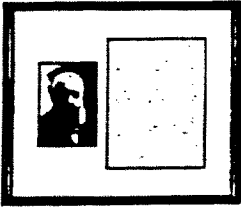


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Appendix C - Page 12

*"Well, my darling,
until tomorrow, kisses
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all my passion."*



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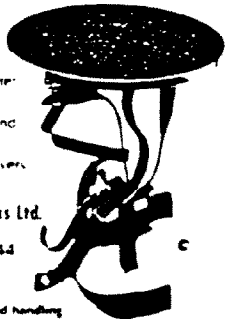
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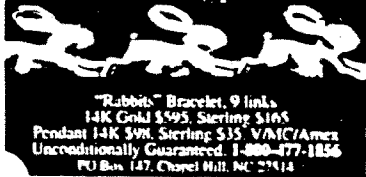
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without allies either in the White House or on Capitol Hill. She has close colleagues in the Justice Department but few, if any, real confidants; she does not, I was told by more than one person, seem to need friendship. She reads the newspapers carefully but is more likely to complain about the time-consuming volume of news concerning her than about the contents of the stories. Dellinger says, "She simply does not respond to the system of positive and negative incentives that works in Washington: fear of criticism and ambition for higher office. She's not driven by the need for approval," and he sees her as "the single most inner-directed person I have ever known, without a doubt."

There is a theory among some Clinton critics that Reno kept her job by striking a deal with the President during a private White House meeting in December of 1996, just before he announced her reappointment. However, if there is a "secret" about Reno's relations with Clinton it pertains not to any collusion between them but to the distance between them. In modern times, most Presidents have chosen trusted associates to fill the post of Attorney General: John Kennedy picked his brother Robert (Robert Kennedy's portrait hangs in Reno's private office); Richard Nixon picked John Mitchell, his law partner; Ronald Reagan picked his personal lawyer, William French Smith. When Reno arrived in Washington—she had been the Dade County, Florida, state attorney—she was the only one of Clinton's Cabinet choices who had not known him beforehand. Nor did she know any of the other Cabinet members. Moreover, she had never worked in the federal legal system.

During much of Clinton's first term, he and his White House counsels seldom dealt with Reno directly except in formal settings, such as Cabinet meetings. And one former White House official says, "Even there, I was struck that she was almost reclusive." By dint of her title, she was seated close to the President, this official adds, but "unless she was asked about an issue she sat there and said very little." When I asked Reno if she considered herself to be a friend of Clinton's, she replied, "He's always treated me as if I were." But she has been invited to just one state dinner, and, as she acknowledges, she has never been included in informal White House social gatherings.

Clinton conceded on an overseas trip earlier this fall that he rarely talks to his Attorney General.

"The President and she just never clicked," a current White House official says, citing both Reno's evident discomfort with Clinton's outgoing style and her more liberal views on criminal-justice issues. What may have done her more damage than her views or her inability to schmooze with the White House crowd, though, is her sometimes impolitic directness. (When the former White House Counsel Lloyd Cutler pined down a children's issue she had championed, Reno is reported to have said, "Lloyd, you don't know what you're talking about.") One senior White House official regards Reno as so stubbornly perverse in her distaste for politics that he says, "I always thought that if we were soft on crime she would be hard on crime." The former White House political adviser Dick Morris, whose only concern was politics, says, "She was obstructionist, liberal . . . and she spent most of the time in a snit."

A number of Reno's decisions have angered the White House. One of them, surprisingly, was her forthright acceptance of blame for the more than eighty deaths that followed the storming of the Branch Davidian compound in Waco, Texas, in 1993. The mea culpa transformed Reno into a folk hero after she'd been on the job only a month, and a top aide to Clinton has told me that the President and others felt her candor to be a rebuke to Clinton, making him seem weak and equivocating by comparison. The Justice Department's habit of announcing major policy decisions—such as changing the government's stance on the landmark *Piscataway* affirmative-action case—without first checking with the White House has also rankled. But nothing Reno has done, a confidant of the President says, has made Clinton angrier than her record number of referrals of investigations to independent counsels, most particularly in the case of Henry Cisneros, the former Housing and Urban Development Secretary and a Clinton friend. "The President is still mad at her about that one," the confidant says. Cisneros was accused of making false statements to the F.B.I. during his routine background check—specifically, underestimating the amount of money that he

had paid to a former mistress. At the time, Reno noted that her decision to appoint the counsel had been a close call: several people familiar with her decision say that she was torn about it but that the F.B.I., whose agents were incensed at having been deceived, persuaded her to go forward.

It was generally assumed that the Cisneros probe would take a few months. Instead, it has lasted two and a half years, has cost at least three million eight hundred thousand dollars, and isn't over yet. The questioning has gone so far afield, two sources say, that the independent counsel, David Barrett, has even tried to investigate other women whom he thought might have been linked to Cisneros in the past. A spokesman in Barrett's office declined to comment on that subject, as did Cisneros's lawyer, Cono Namorato. Cisneros resigned from the Cabinet in November, 1996, and an indictment of him is expected by the end of the year.

It does not help Reno that she is thought by some to be a bad manager, and no one knows this better than Louis Freeh, whose agents have been working with Reno's attorneys on the investigation of campaign finances. In the chain of command at the Department of Justice, the F.B.I. head reports to the Attorney General, but Freeh has shown a talent for bureaucratic maneuvering that far surpasses Reno's.

At the root of Reno's management problems, according to several top-level officials who have worked closely with her, is a difficulty in setting priorities. Her staff frequently mentions her "get back" lists—compendiums of hundreds of items that she thinks need attending to. The lists, former and current staffers say, can give equal weight to an unhappy constituent's letter and to a revamping of the federal criminal code. "It wasn't just a forest-and-trees problem," someone who dealt with the office told me. "It was a forest, planets, trees, and leaves problem." In Florida, everything ran smoothly when Reno had a strong deputy; when she didn't, things tended to fall apart. This has been the pattern in Washington, too. Unfortunately for Reno, her talented No. 2, Jamie Gorelick, left last March.

Almost from the time a task force was appointed, a little more than a year ago, the Justice Department's investigation into campaign fund-raising has been

mired in dissension and confusion. The task force was riven along institutional lines—between career attorneys from the Justice Department's Public Integrity Section and F.B.I. agents assigned to assist them.

Underlying the rivalry, according to sources from both the F.B.I. and the Justice Department, was a dispute over how serious the matter was and how senior the ultimate target ought to be. The F.B.I., taking its cue from Freeh, saw the President as the target, and aimed its investigation accordingly. Justice Department attorneys, taking their cue from Reno, wanted to focus on uncovering specific acts of wrongdoing rather than on particular persons. The two approaches were evident from the start. Justice assigned only four attorneys to the case, most of whom were following up on newspaper stories. According to an F.B.I. source, Lee Radek, the head of the Public Integrity Section, believed that the independent-counsel statute undercut his department's role, and was not convinced that the matter constituted a criminal case. "He told us there was nothing there, and that the whole thing should be wrapped up in ninety days," the source says.

The F.B.I., meanwhile, had designated the matter "Major Case Number 133," placing it in the same league as the T.W.A. Flight 800 investigation. "This was very unusual," an attorney familiar with the case says. By last spring, the F.B.I. believed that Justice attorneys should stop focussing on campaign-finance-law intricacies, and instead try to make the case that there was a criminal conspiracy within the White House and the Democratic National Committee to evade campaign-finance laws. "It was mush," one attorney close to the task force complains. "But," this attorney says, "the F.B.I. was beginning to show itself target-driven, and the target was the President."

Given this difference of opinion, it did not take long for some of the Justice Department's attorneys to suspect that Freeh, who had been widely criticized by Republicans in Congress, was using the investigation as a means of repairing political damage he himself had suffered. Others thought that he was being political in another sense: trying to protect himself and the Bureau from direct blame for what would inevitably be a controversial—perhaps explosive—investigation. "From the

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start, I think the Bureau wanted an independent counsel," one Justice Department attorney says. "Freeh is really the fix of this whole thing."

Not surprisingly, the conflicting goals of the F.B.I. and the Justice Department generated mutual distrust. Although the Justice Department had secured office space in downtown Washington for agents and attorneys to work together, higher-ups at the F.B.I. preferred to keep all subpoenaed documents at Bureau headquarters, prompting complaints from the attorneys that they were unable even to look at documents crucial to their potential cases. F.B.I. officials claimed they were merely processing the documents into a computerized data system. A senior F.B.I. official concedes, though, that the data system was a quagmire. It was taking the agents ten days to process a single box of documents. By midsummer, the task force had subpoenaed thousands of such boxes. At one point, the rivalry grew so fierce—and so petty—that a struggle broke out over whose framed portrait photograph would be larger in the task force office, Freeh's or Reno's. The attorneys, who at first were trumped by the

F.B.I.'s big Freeh, sent for a jumbo Reno.

Because Freeh, unlike Reno, is by all accounts extraordinarily sensitive to public image, that increased the strains between the two agencies. Each time a new story broke in the press, the task force was asked why it had not known about it first. Last summer, when Fred Thompson, the Republican senator from Tennessee, was preparing for public hearings on the fund-raising issue, Freeh insisted that the task force interview every witness first—a demand that some of the attorneys viewed as little more than an exercise in self-protection. Freeh, who has a reputation as a first-rate investigator, apparently had reason to be concerned. The task force was unable to keep up with the flood of complicated leads that turned up in the news and the hearings. Before long, leaks sympathetic to his viewpoint began to appear in the press.

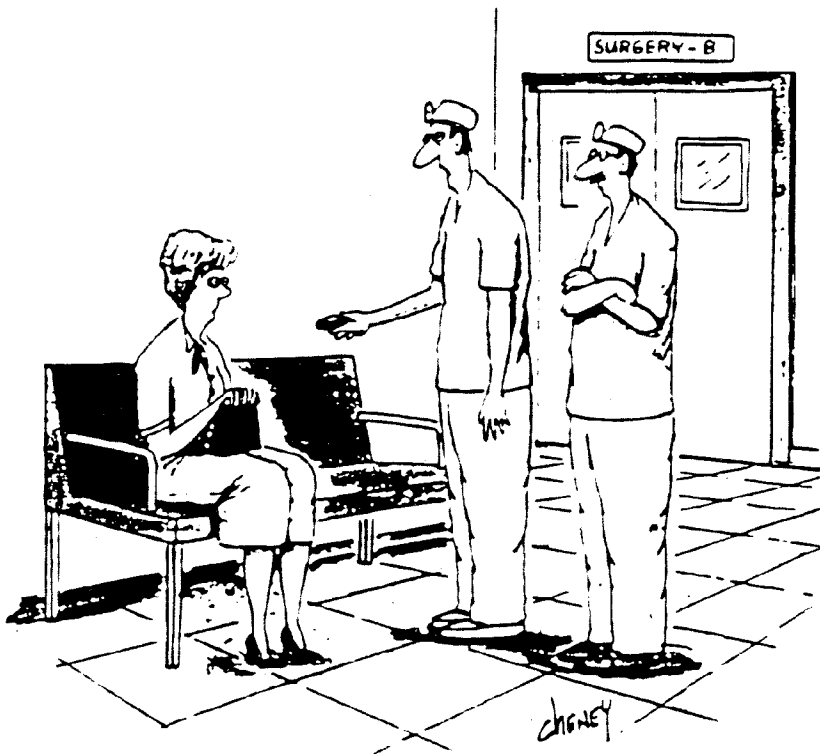
This fall, after a series of public humiliations, tensions got worse. First came a Bob Woodward story in the *Washington Post* reporting that some of the money raised by Al Gore in phone calls from his office went into the Democratic National

Committee's "hard money" bank account, not just into the "soft money" accounts, which are unregulated by most laws. Gore says that he had no knowledge of this. Legally, the distinction probably doesn't matter much. But Reno's admission that she learned of it from the press was enormously embarrassing.

Then, in mid-September, in a closed meeting with several Republican senators, Reno and Freeh admitted that they knew less about the Chinese government's alleged involvement in the fund-raising scandal than did the director of the C.I.A., George Tenet, who was also in the meeting. Worse, Tenet said he had learned what he knew from the F.B.I., leaving the senators to conclude that both Reno and Freeh could not keep abreast of their own investigations. Senator Arlen Specter, of Pennsylvania, who attended the meeting, acknowledges that he was furious with both Reno and Freeh. They, too, left the meeting livid. Reno, whose temper is volcanic, was having what her staff had come to refer to as a "double veiner," so flushed were her face and neck. It later turned out that Reno had had at her disposal the information about the Chinese which the senators quizzed her on, but that she had either forgotten it or not read it. Freeh's underlings had the information, too, but had evidently failed to inform him.

That weekend, Reno and Freeh shook up the task force, removing its top Justice Department supervisor, Laura Ingersoll, and installing a new head, Charles La Bella, a San Diego prosecutor close to Freeh. Soon afterward, in an attempt to regain the confidence of Congress and the public, Reno announced that she would give Freeh equal say in overseeing the investigative aspects of the probe, and that she would foreclose no avenue of investigation until he was satisfied. Her move was seen as a risky gambit: to stanch the flow of leaks that seemed to be coming from the F.B.I., she was undercutting her own authority. One Justice Department veteran close to the situation wonders if Reno, by handing so much authority to Freeh, has "outfoxed herself."

Curiously, when Reno was asked about her relationship with Freeh, she said that all is well: they meet and talk often, and they are mutually respectful. Odder still, she denies that Freeh ever told her she ought to appoint an independent counsel in the fund-raising matter. "He has not



"I'm afraid there wasn't anything we could do to save him, but we did manage to recover his black box."

said it to me," she says. An F.B.I. spokesman said that Freeh declined to comment.

It is generally agreed that Reno was reluctant to recommend an outside counsel because she sees no clear criminal case against the White House, and trusts herself to be fair. In addition, a few of the people who know her best believe, she has begun to have second thoughts about the independent-counsel process itself. Reno would not discuss her opinion, but she is surely aware that there is mounting, and bipartisan, sentiment within the legal community that the mechanism is out of control. As Warren Rudman, the former Republican senator from New Hampshire, put it to me, independent counsels are "kings in a land that doesn't believe in kings."

Since the independent-counsel legislation was enacted, in 1978, as a post-Watergate effort to encourage good government, the investigations launched under it have expanded sharply in number, cost, and scope. In the first eight years, six counsels served, at a cost of \$4.5 million. By contrast, in the past eight years eight known independent counsels (the existence of others may be under court seal) have reportedly spent almost twenty times that much—\$80.7 million. Between March, 1990, and March, 1997, the existing independent counsels spent twenty-one million dollars.

One current independent counsel, Donald Smaltz, has moved from California, and bought a house in the Washington area. Smaltz, the Starbucks of prosecutors, has had branch offices in New Orleans, Jackson, Mississippi, and San Francisco. In more than three years, he and his staff of four have spent \$11.9 million to investigate allegations that Mike Espy, the former Agriculture Secretary, accepted around thirty-five thousand dollars' worth of football tickets and other illegal gratuities from companies that he regulated. Although Espy has been indicted, he has not been charged with giving preferential treatment to his benefactors, but Smaltz has argued that this doesn't matter. Smaltz's spokesman, Charles Bakaly, says that when Congress created independent counsels it may not have realized how all-powerful it was making them. "These officials are very, very powerful," he says. "There's no budget, and there are no limits. All the ingredients for disaster are there."

Reno, meanwhile, has quietly—and unsuccessfully—made an effort to rein in some

of these far-flung prosecutions. Sources close to the Espy investigation say that about a year ago Justice Department attorneys tried to deny Smaltz the right to expand his probe further. To Reno's consternation, the department was overruled by the three judges who oversee the implementation of the independent-counsel act. Some suggest that this setback to Reno's authority may be affecting her current decision.

In July, Eric Holder, formerly the United States Attorney for the District of Columbia, joined Reno as her top deputy, bringing new stability to the Justice Department. But top officials there are nonetheless bracing for the reaction to a decision not to go outside the department on the campaign-finance investigation. No reaction, however, is likely to match Reno's experience back home, in May of 1980, when, following a series of well-intentioned missteps, her office botched the prosecution of five white policemen in such a way that all of them were acquitted of having beaten a black insurance salesman to death. Reno was so certain of her own fairness that she could barely fathom the response to the acquittals: there were days of riots—and twenty deaths—in Miami's largest inner-city black neighborhood, Liberty City, and Reno was stunned to find herself being castigated as a racist for having lost the trial. As stores were looted and burned, the rioters shouted, "Reno! Reno! Reno!"

"The thing that's most important for me is to know that it's not the end of the world," Reno said to me. After the riots, Reno, instead of giving up, threw herself into a remarkable community-relations effort. She met with virtually every critic, no matter how furious; defended herself on radio shows that broadcast to large black audiences, and attended every community meeting she was invited to. In a matter of months, she went from being compared to Hitler to being overwhelmingly reelected. She won four consecutive elections.

Walter Dellinger believes that Reno will come to be appreciated in Washington, too. "At the end of the day," he suggests, "I think President Clinton will find himself well served by Janet Reno—someone he didn't know and who is not close to him. Reno's really a fire wall, and these days it's better to have a stranger as Attorney General." If Dellinger is wrong, there's always the open road. Reno's sister, Maggie, says, "I've told her I'll find her a dog." ♦

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Experience Sours a Once-Enthusiastic Reno on Applying the Independent Counsel Law

By STEPHEN LABATON

WASHINGTON, Nov. 28 — When Janet Reno became Attorney General, she championed the independent counsel law as a way to assure the impartiality of investigations into top Administration officials. Not anymore.

Nearly five years later, after repeated clashes with independent prosecutors, Ms. Reno and her advisers have grown disillusioned with many aspects of the independent counsel law, say Justice Department officials, current and former.

In recent months, when reporters have asked what she thinks of the law, the Attorney General has pointedly declined to comment.

Ms. Reno's disputes with independent prosecutors, waged largely in closed arguments and sealed court documents, are emerging as a sobering experience that is shaping her views as she nears the deadline of next Tuesday. By then, she must decide whether to seek the appointment of a new counsel to investigate fund-raising telephone calls in the

After clashes with the prosecutors, disillusionment.

White House by President Clinton and Vice President Al Gore.

While her aides have recommended that she not seek such a counsel, Ms. Reno has shown no sign that she is close to a decision. She has been spending her Thanksgiving holiday in Florida with her family and resting after a brief trip to Mexico, where she was briefly hospitalized earlier this week after complaining of nausea and dizziness.

Justice Department lawyers have had many complaints about independent counsels and they are acutely aware of bitter White House complaints that Ms. Reno has turned to the statute too often, and at times, for seemingly trivial matters.

Those counsels appointed at Ms. Reno's request have run up expenses into the tens of millions of dollars and forced relatively peripheral figures — in some cases Government employees — to spend thousands of dollars in legal fees. Yet not one of the independent prosecutors appointed during Ms. Reno's tenure has yet won a conviction against the principal Clinton Administration figure they were originally appointed to investigate.

One counsel, Donald C. Smaltz, has

brought charges against his main investigative subject, former Agriculture Secretary Mike Espy. Another, Kenneth W. Starr, has won several significant convictions and plea bargains, including against James B. and Susan McDougal, the former business partners of the Clintons; Webster L. Hubbell, the former Associate Attorney General, and Jim Guy Tucker, the President's successor as Governor of Arkansas.

Only two outside prosecutors sought by Ms. Reno have actually completed their work. The first is a still unidentified counsel who declined to prosecute Eli J. Segal, the former head of President Clinton's Corporation for National Service. The other, Daniel S. Pearson, referred his inquiry back to the Justice Department after the focus of his investigation, Commerce Secretary Ronald H. Brown, was killed last year in a plane crash near Dubrovnik, Croatia.

Some of Ms. Reno's aides have denied that her approach to the law has hardened because of her experience. They said that she approached each counsel decision on its own merits and added that the department lawyers were accustomed to enforcing statutes passed by Congress that they did not fully support.

But a shift in the Attorney General's thinking about independent prosecutors seems apparent in her own words. On May 14, 1993, two months after she took office but many months before she sought her first independent counsel, Ms. Reno said: "The reason that I support the concept of an independent counsel with statutory independence is that there is an inherent conflict whenever senior executive branch officials are to be investigated by the department and its appointed head, the Attorney General. The Attorney General serves at the pleasure of the President."

Contrast that statement to Ms. Reno's remarks last April, when she turned down requests for an independent counsel to examine whether Mr. Clinton or Mr. Gore violated Section 607 of the Federal criminal code, which makes it a crime for Federal officials to raise money on Government property.

"First," she said, "the law applies specifically only to contributions as technically defined by the Federal Election Campaign Act (F.E.C.A.) — funds commonly referred to as 'hard money.' The statute originally applied broadly to any political fund-raising but in 1979, over the objections of the Department of Justice, Congress narrowed the scope of Section 607 to render it applicable only to F.E.C.A. contributions."

One former Justice Department

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official said. "I've never heard her say it, but I think everyone over there feels it hasn't worked the way they would have liked."

By law, Ms. Reno is the Administration official who decides whether to refer a case to an outside prosecutor and what the prosecutor's charter will be. But prosecutors are then selected by a three judge panel that throughout the Clinton Administration has been headed by Judge David B. Sentelle of the United States Court of Appeals for the District of Columbia Circuit. Judge Sentelle is a conservative Republican from North Carolina who is widely viewed as a close ally to some of President Clinton's most vocal critics in Congress.

Mr. Smaltz has aggressively urged Ms. Reno to broaden his jurisdiction since his appointment in 1994 to investigate whether Mr. Espy illegally received gifts from several agricultural companies, including Tyson

Foods, the giant Arkansas chicken producer. He tangled with her once over whether he could expand his charter to investigate Tyson to see whether it had given unlawful gratuities to other officials. Ms. Reno barred a broader inquiry.

But in another instance, Mr. Smaltz won approval from the three-judge panel over the strong opposition of the Justice Department, to an expansion of his charter to prosecute a top aide in Mr. Espy.

Still, the independent prosecutor who is said by officials to most irritate the Justice Department is Donald M. Barrett, the Miami lawyer named to investigate whether former Housing Secretary Henry G. Cisneros lied in a background investigation about how much money he had paid to a former mistress.

"We thought this would be a quick analysis of whether his statements were material to his getting the ap-

pointment," a former senior Justice Department official said. "We thought maybe two months, if his statement didn't make any difference in his getting the job then there would be no case."

But Mr. Barrett, appointed in May 1995, shows no sign of when he will complete his investigation. Law enforcement officials said he had fought with Ms. Reno about expanding his jurisdiction and has delved into matters far from the original accusations against Mr. Cisneros. At one point Mr. Barrett wanted to investigate how Ms. Reno and her aides decided to deny him an expansion of his charter, officials said.

With Mr. Starr, the Attorney General seems to have generally gotten along, although there have been occasional disagreements.

Ms. Reno has repeatedly expanded the jurisdiction of the Whitewater investigators, even after the three-

Judge court replaced her choice, Robert B. Fiske, Jr., with Mr. Starr. Indeed, when former Governor Tucker tried to challenge one of his indictments on the ground that Mr. Starr lacked the authority to bring the case, Mr. Starr successfully argued before a Federal appeals court that he had the authority because it had been conveyed to them by the Attorney General.

But one major public fissure between the Justice Department and the Whitewater counsel erupted earlier this year at the Supreme Court. The department unsuccessfully opposed the Whitewater counsel's efforts to obtain the notes of White House lawyers of discussions with Hillary Rodham Clinton about matters under investigation. The Whitewater prosecutors prevailed when the Supreme Court declined to intervene and the White House turned over the lawyers' notes.

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