

Was Whitewater switch a GOP trap?

by Edward Spannaus

About a month before the 1992 presidential elections, as the independent counsel of law was heading for expiration, a congressional staff member told the *Washington Times*: "There is some thinking that if Clinton gets in, it would be good to have this law to use against his administration in the same way the Democrats have used it against Reagan and Bush."

Republicans and the Bush administration were in an uproar over the independent counsel (special prosecutor) law at the time, particularly because of the long, expensive, and seemingly endless investigation being conducted by the Iran-Contra independent counsel, Lawrence Walsh. President Bush's Attorney General William Barr said in July 1992 that the statute should not be renewed, because it was being used as a political weapon. "There are elements in this town who are attempting to use the criminal process for political purposes," Barr said on Cable News Network on July 4, 1992. "It's a mechanism that's being manipulated for political purposes."

The independent counsel statute, first enacted in 1978, and renewed in 1982 and 1987, was allowed to expire at the end of 1992. Therefore, when pressure built for an independent counsel in the Whitewater matter, Attorney General Janet Reno used a different legal authority—namely, Justice Department regulations—to name Robert Fiske as independent counsel in January. Technically, Fiske was a Justice Department employee, although he operated independently of any Justice Department control of supervision.

A new independent counsel statute—providing for a court-appointed counsel—was passed by the Senate in May, with the support of Republican Senators who had previously blocked it. (Just what did they know?) On June 21, the House passed it, with Republicans objecting to its provision for possible reappointment of Fiske. The bill was signed into law on July 1. The next day, as she had promised, Attorney General Janet Reno applied to the three-judge panel which appoints independent counsels, to have Fiske designated as an independent counsel under the new law.

Judicial coup

On Aug. 5, that special panel shocked Washington and the nation by refusing to reappoint Fiske, and replacing him with a former high official from the Bush administration—the man who had been George Bush and William Barr's solicitor general from 1989 through early 1993. Fiske's replacement is Kenneth W. Starr—who has no experience as a prosecutor, but has plenty of Republican activist credentials.

Needless to say, partisan Republicans were elated at the judicial coup. "It demoralizes and destabilizes the administration, and one can assume the whole thrust of the investigation is going to change," GOP consultant Eddie Mahe told the *Washington Times*. "It's good news." Mahe went on to say that, although Fiske is a Republican, he is "one of those Northeast establishment types that has nothing to do with being a Republican. Starr's a real Republican. His credentials are golden."

It was regarded as no coincidence that the Fiske dismissal came at the end of two weeks of congressional Whitewater hearings which failed to do any serious damage to President or Mrs. Clinton. Many Republicans blamed Fiske for restricting the scope of their hearings.

A Reagan-Bush Starr

Although Starr has never been a prosecutor, he has other qualifications which seem to have endeared him to the special court panel which appointed him. After clerking for Chief Justice Warren E. Burger at the Supreme Court, Starr jointed the Washington office of the Los Angeles law firm Gibson, Dunn & Crutcher in 1977. This was the law firm of William French Smith, who became Reagan's first attorney general in 1981; Smith brought Starr into the Justice Department as his counselor.

Starr was then appointed by Reagan to the Court of Appeals for the District of Columbia in 1983. In 1989, he left the appeals court to become solicitor general for the Bush administration. The solicitor general argues for the United States in cases before the Supreme Court, and reviews all appeals in which the U.S. is a party.

The special three-judge panel which appointed Starr, called the "division for the purpose of appointing independent counsels," is hand-picked by Chief Justice William Rehnquist. For the past few years, it has been headed by David Sentelle, a judge on the Washington, D.C. Circuit Court of Appeals from North Carolina. Sentelle is a protégé of Sen. Jesse Helms (R-N.C.), and is also a good friend of the other North Carolina senator, Lauch Faircloth, one of the Senate's leading Whitewatergaters.

Sentelle was a 1987 Reagan appointee to the Court of Appeals. Joseph Sneed was appointed to the 9th Circuit in San Francisco by Richard Nixon in 1973. The third judge, John Butzner of the 4th Circuit in Richmond, Virginia, was appointed by Lyndon Johnson in the 1960s—when Virginia hardly had any Democrats—but he is now regarded as a Republican.

It was this same special panel which took the unprecedented step last December, of allowing all those names in the Iran-Contra special prosecutor's final report to submit their rebuttals, which were ordered to be published with the final report. Sentelle also cast the deciding vote in the decision which overturned the "Iran-Contra" convictions of Oliver North and John Poindexter.