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Weinberger Gets a Taste of the System

■ Is prosecutorial hardball unfair only to Republicans?

Sympathy for the problems of criminal defendants has not loomed large among the public concerns of the past 12 years. In fact, it's hard to think of a cause less fashionable in the past two Republican administrations. The American Civil Liberties Union was derided as "the criminals' lobby" because of its concern for the rights of the accused.

But in its last hours, the Republican regime reveals itself as exquisitely concerned with criminal rights—in certain circumstances. Not only that, the pardon of Caspar Weinberger and the other Iran/Contra malefactors has been justified with complaints about the prosecution that go to the heart of America's system of justice.

The general accusation is that independent prosecutor Lawrence Walsh is "out of control." But most of the specific gripes relate to what is absolutely standard procedure in criminal prosecutions. If some of these procedures are unfair to those accused of crimes—and perhaps they are—it would have been nice if the people running the country had done something more about it than pardoning their own.

Consider a few particulars:

- Weinberger says indignantly, "I was told that they would drop all these heinous felony charges . . . if I would plead guilty to . . . just a small little misdemeanor." He complains about a prosecutor's "power to force, literally to blackmail people into accepting lesser pleas." Well, yes. Plea bargains are how justice is generally meted out. Defendants forgo their right to a trial in exchange for a lesser sentence. Undoubtedly, innocent people plead guilty to avoid the risk and cost of a trial.

- Weinberger also complains that the prosecutor only indicted him after he refused to give evidence against former

President Reagan. Once again, it is common for prosecutors to offer lesser sentences to lower-downs who agree to finger the higher-ups. This probably leads to false testimony sometimes. Should it be banned in general or only for Republicans?

- Early in these proceedings, Oliver North and John Poindexter complained that Walsh was violating their Fifth Amendment rights by using evidence "tainted" by their congressional testimony, given under a grant of immunity. The ACLU backed them up, and their convictions were reversed. "Tainted" doesn't mean there was anything wrong with the

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evidence; this was one of those constitutional "technicalities" that ordinarily so irk conservatives. After two decades of the Burger and Rehnquist Supreme Courts, convicted criminals rarely get off on technicalities. But North and Poindexter did.

- In TV interviews since the pardon, Walsh has been calling Weinberger a liar. Weinberger and his defenders say it is outrageous for Walsh to be pronouncing Weinberger guilty before he's been tried or convicted. If so, it's a familiar outrage. Guidelines that supposedly limit federal prosecutors to a deadpan recital of the indictment are widely ignored. In 1989, after Manuel Noriega was indicted, President Bush declared, "I want to see this man . . . brought to justice for poisoning the children of the United States of America."

Anyway, there will never be a trial of Weinberger because the man's been pardoned. The presumption of innocence wears a little thin when, at the defendant's own request, there will be no final reckoning. Is Walsh, foreclosed from trying Weinberger, also foreclosed for all time from saying what he thinks of him?

- Above all, the Iran/Contra defendants complain about the vast resources of time and money Walsh has spent pursuing them. Can anyone honestly suppose that the imbalance of power between the prosecutor and Caspar Weinberger is greater than that facing the ordinary criminal defendant? True, the best lawyers can be crushingly costly. Outrageous? That's the system, fella.

The Iran/Contra defendants had advantages the typical defendant could never dream of, including an executive branch eager to thwart the prosecution at every turn. Two major charges against North, for example, had to be dropped when the White House conveniently refused to allow use of secret documents North claimed he needed for his defense.

The main reason Walsh's investigation

has taken six years is that the people complaining loudest about the delay have put the most roadblocks in his path. From North's "shredding party" to Weinberger's and Bush's concealment of their notes, the players have tried to prevent the mystery from unraveling.

But now that he's off the hook, perhaps Weinberger can pursue his new appreciation of this country's unfairness to criminal defendants by volunteering for the ACLU.

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Paul Conrad is on vacation.