Response to Complaints Is Ruled Out for Walsh

Iran-Contra Prober Told to Wrap Things Up

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A special federal court panel ordered independent counsel Lawrence E. Walsh yesterday to prepare a volume of comments by those criticized in his final report on the Iran-contra scandal and then hang up his hat.

The judges split in a 2 to 1 ruling on the question of whether Walsh should have the opportunity to respond to demands for corrections and other complaints made by those Walsh has mentioned unfavorably in his three-volume report. Their comments, the last of them due Friday, will constitute the final volume. It will be up to the court to decide how much to make public.

There was no indication that Walsh wanted to respond, but the judges took sides on the question as a matter of law. They said that former president Ronald Reagan wanted the office terminated completely and was apparently "concerned" that Walsh might want to reply to criticisms.

The majority, U.S. appellate court judges David B. Sentelle and Joseph T. Sneed, said they feared that giving Walsh a right to amend his report in light of criticism would just trigger another round of responses.

Judge John D. Butzner said in dissent that the court was exceeding its authority under the independent counsel law and that the ruling would deny "both Congress and the public insight into those portions of the report in question."

In his dissent, Butzner gave a hint of the complaints already filed, saying some asked Walsh "to correct either factual information contained in his report or the inferences that he has drawn from the facts." Other comments, Butzner said, "may raise new matters," apparently by complaining of omissions in Walsh's report.

The ruling left open the question of whether Walsh could respond to legal motions—for example, attempts to suppress portions of the report. Walsh had asked for "authority to respond to further inquiries from the court," but the majority said that if that became necessary, the court would let him know.

There have been hints from lawyers representing individuals involved in Walsh's seven-year inquiry that Walsh's report is so harsh on some of them that at least some portions of it should not be made public.

Under the law, Walsh's final report must contain a full description of his work, including "the reasons for not prosecuting any matters within" his prosecutorial jurisdiction. His investigation was effectively ended last year when then-President George Bush pardoned former defense secretary Caspar W. Weinberger and five other individuals involved in the scandal. Weinberger was about to be tried on charges of lying to Iran-contra investigators.

Acting in response to a motion by Reagan's lawyers, the court directed Walsh on Nov. 2 to show cause why his office should not be shut down except for "ministerial" functions. Walsh replied that he still had duties relating to the final report that could get beyond ministerial work, including responding to legal motions.

The Justice Department sided with Walsh, saying that "any proceedings before the special division concerning the final report" should be handled by Walsh. Deputy Attorney General Philip B. Heymann also said that Walsh was "the appropriate party to respond to comments" submitted under the law by those criticized.

Judges Sentelle and Sneed said they were limiting Walsh "in what probably is an excess of caution" since they did not believe Walsh was asking them for authority to make "revisions or additions" to his final report. Butzner, in his dissent, argued they had no authority to impose "this prior restraint," particularly in light of a 1988 Supreme Court decision affirming the constitutionality of the independent counsel law.

"The statute does not give this court authority to terminate the independent counsel's office piecemeal by picking and choosing what duties regarding his report the independent counsel shall perform or by ordering how he shall perform them," Butzner said.

The special court ducked the controversial question of continued funding for Walsh's $35.7 million inquiry. Walsh had asked the court for permission to "contract with private persons, and to expend funds from appropriations heretofore available to him."

The judges said Walsh's request on this score "would at least potentially" go beyond the scope of the law, but at the same time, they noted that Walsh may have the authority to expend funds "where it is necessary to complete the tasks remaining."