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The first Ted Olson scandal

It didn't begin with the Clinton-smearing Arkansas Project. The solicitor general nominee's pattern of ruthlessness and deception began during his tenure in the Reagan administration.

By David Neiwert

May. 14, 2001 | Theodore Olson's nomination to be the nation's next solicitor general suddenly appears to be in deep trouble, because of concerns by members of Congress that he was less than forthcoming in his testimony before them.

It's not the first time Olson has faced congressional questions about his candor. In the mid-1980s, he became the focus of an independent counsel's investigation for much the same thing: giving misleading testimony to Congress -- some charged it was perjury -- that was intended to cover up his own misbehavior.

Olson's current problems stem from his failure to be forthcoming before the Senate Judiciary Committee, which is deciding whether to forward his nomination to the larger Senate, when he testified before the committee in early April. As Salon has reported, Olson gave evasive answers about his participation in dirt-digging expeditions into the Arkansas pasts of former President Clinton and his wife, Hillary.

But Olson's troubles with Congress shouldn't surprise anyone who has followed his career, because they bear remarkable similarity to the behavior that got him into hot water more than a decade ago, and almost led to perjury charges.

A careful examination of that episode raises serious questions about not merely his integrity but the legendary legal prowess to which even his critics defer. Indeed, the last time Olson served as a top presidential legal counselor, he left behind a political disaster area strewn with bad legal advice, wrecked careers and lingering scandals.

As assistant attorney general to President Reagan from 1981 to 1983, Olson advised the president to claim executive privilege to block an investigation by congressional Democrats into the scandal-plagued Superfund program, based on assertions that later proved fatally false -- largely because Olson, apparently eager to force a political fight with Congress, failed to double-check key information.

Olson's blunders eventually caused the resignation of Reagan's lightning-rod Environmental Protection Agency administrator, Anne Gorsuch Burford. And those events in turn wound up costing Reagan much of his administration's agenda for reshaping environmental policy.

Afterward, when Congress was investigating both the scandal and apparent attempts to cover it up, Olson gave what a colleague would later call "deliberately evasive" answers when questioned about this advice in testimony before Congress. He earned a full investigation by an independent counsel, for perjury and obstruction of justice, because of this testimony.

Olson was even cited for contempt of court while contesting the I.C. investigation -- a case he took all the way to the Supreme Court, where he lost decisively. However, he eventually avoided prosecution when the independent counsel scrupulously ruled that, though Olson's testimony was "misleading and disingenuous," it did not rise to the level of prosecutable perjury.

There is no small irony in that final outcome. Despite claiming martyrdom for himself at the hands of an abusive independent counsel, Olson later played a leading role in turning that office into a political weapon by aiding and abetting, at seemingly every turn, independent counsel Kenneth Starr's Whitewater/Lewinsky investigation of Bill Clinton.

Ultimately, Olson's complete record reveals a troubling portrait of a counselor willing to risk everything -- including the credibility of his president, and his political colleagues' careers -- in pursuit of a highly charged partisan agenda that seems more calculated to bolster his own reputation than the cause of the office he serves, and a lawyer who makes ironclad assertions that later turn out to be false and misleading. It is a record that raises serious questions about his judgment and competence -- as well as demonstrating the capacity for evasion and dissembling now being questioned in the Senate.

Ted Olson's career as a battling Republican lawyer really began the day he stood next to James Watt as the interior secretary defiantly declared executive privilege.

That was in October 1981, a few months after President Reagan had named Olson assistant attorney general for the Office of Legal Counsel. Watt had been subpoenaed by Michigan Rep. John Dingell, the Democratic chairman of the subcommittee assigned to look into environmental cleanup efforts, to provide Dingell's subcommittee with documents relating to that work. Watt had deemed these papers "enforcement sensitive" -- that is, making them public, he said, would compromise the department's ability to enforce cleanup laws.

However, Watt's privilege assertion and the controversy accompanying it did not last long. Sensing a political fiasco, Reagan's White House counsel, Fred Fielding, negotiated an access agreement with the Dingell subcommittee in early 1982. Olson strongly opposed the terms of the agreement, and he apparently viewed the compromise as a personal defeat.

Another opportunity for Olson to again tackle the executive-privilege question presented itself in short order. In September 1982, another House subcommittee -- chaired by Rep. Elliott Levitas, D-Ga. -- sought access to EPA files involving enforcement of the so-called Superfund hazardous-waste cleanup provisions, particularly focusing on the activities of Rita Lavelle, assistant administrator for solid waste and emergency response. Dingell's subcommittee also asked for documents involving the same matter. EPA staff members were reluctant to disclose some information, again fearing the documents were "enforcement sensitive."

The information in question involved the handling of funding for three Superfund sites: Stringfellow

in California, Berlin and Farrow in Michigan, and Tar Creek in Oklahoma. There were concerns that "election tracking" -- the practice of timing key events, such as the announcement of cleanup funding, to assist the election campaigns of "friendly" (read: Republican) politicians -- had occurred in the funding of those three sites. Such activity by federal authorities had been outlawed in the post-Watergate ethical reforms passed by Congress.

There was also some concern that Lavelle -- who had been previously employed as an executive at Aerojet-General Corp., one of the polluters at the Stringfellow site -- was continuing to work on the Stringfellow case despite having been ordered away by her EPA superiors, largely because of the conflict of interest her work on that case represented.

EPA Administrator Anne Gorsuch Burford -- who was already embroiled in controversies over her reorganization of the department -- directed her staff to seek advice on the disclosure issue from Carol Dinkins, who headed up the Justice Department's Land and Natural Resources Division. Dinkins turned to Olson and his Office of Legal Counsel for help.

On Oct. 1, Olson led a meeting of EPA and Justice Department officials to discuss turning over the documents. Olson favored a "staged response" in releasing the documents, noting that they included some "politically sensitive" material. EPA officials, however, expressed an inclination to transmit all documents promptly. But Olson and other Justice officials were adamant that broader executive-branch interests were at stake, and argued vehemently against broad access.

Burford would later maintain that she had never requested that executive privilege be asserted in order to hold back the documents, and that she contended from the start that doing so was a political mistake. However, she had not reckoned on Olson and his apparent determination to fight this battle.

In her memoirs, Burford later wrote: "The people at Justice behind the push for executive privilege were all presidential appointees who, to be blunt, shared several characteristics: (1) they didn't have enough to do; (2) they weren't very good lawyers; and (3) they had tremendous egos. They wanted to make a name for themselves in Washington, and one way to do that while they were at Justice was to have their names on a Supreme Court case."

Tension increased between Olson and other Justice Department lawyers and EPA staff. Throughout the month, EPA staffers attempted to reach a compromise with Dingell's investigators, at one point proposing that the committee be able to review all the documents, but that they not be made public. Olson promptly shot down all those schemes and continued to proceed with plans to fight the documents' disclosure.

The Dingell panel issued a subpoena on Oct. 22, and within three days, Olson was putting the finishing touches on a memorandum to President Reagan recommending he assert executive privilege over the documents. During meetings to discuss the memo, Burford's position was again voiced: "Be sure these documents are worth it *before* we go through this."

Olson ignored that advice. His final memo to Reagan on the matter, dated Oct. 25, 1982, stated without qualification that the documents contained no evidence of wrongdoing by administration officials, which is one of the legal conditions for asserting executive privilege. It also informed Reagan: "The Administrator [Burford] concurs in this recommendation."

But in fact, Olson and his staff had failed to ascertain whether either assertion was true. In reality, Burford was far from concurring. She later testified that she failed to see how Olson could have been unaware of her reluctance -- that her hesitancy had been obvious, and that she had suggested that Olson explore alternatives to asserting privilege. There's no evidence, however, that Olson and Burford had ever discussed the issue directly; they had never met face to face.

The biggest flaw in Olson's Oct. 25 memo, however, was the statement that the documents he was seeking to keep from investigators contained no evidence of wrongdoing. In fact, Olson's staff had not even conducted a thorough review of the documents Dingell wanted -- some 51 pieces in all -- and would not do so until Dec. 9, well after executive privilege was asserted. There had been a preliminary review in early October, and even then red flags had been raised; the OLC lawyers forwarded them at that point to Dinkins' attorneys for more detailed review. There is no indication that review was ever completed; Dinkins conducted a cursory check and then apparently let the matter lapse.

The day he received the memo, Oct. 26, Reagan signed a directive to Burford to assert executive privilege over the subpoenaed documents. However, because the Dingell hearings had been postponed, the directive was left in a safe without ever being sent to Burford or anyone else. Nor was Burford ever told about the directive.

On Nov. 1, Olson and Burford met in Burford's office, along with EPA, Justice and White House staff, and there was immediate tension between them over the executive-privilege plan. Burford's concerns were perhaps more political than principled. She said she had been dismayed by the way the administration had failed to back up Watt in his executive-privilege bout. She backed down only after asking whether the president wanted her to exert executive privilege, and being told he did.

Strangely enough, not a single person at the meeting managed to tell Burford that Reagan in fact had already signed a directive ordering her to do so.

After the Levitas subcommittee issued its subpoena on Nov. 22, Olson and Burford met again. Burford again raised her concerns about being left to dangle in the wind like Watt, and Olson assured her that she had the full and committed support of the Justice Department. Ensuing events would indicate her fears were well-grounded.

She also asked Olson if Justice could take over the assertion of privilege, or whether at least Olson himself could make the assertion before Congress. Olson demurred, saying the job must be hers. Finally, on Nov. 30, President Reagan issued a directive to Burford to assert executive privilege in response to both subpoenas. Burford did so on Dec. 2 before Rep. Levitas' panel, and on Dec. 14 to the Dingell subcommittee. Each committee promptly cited her for contempt of Congress, and eventually the entire House voted to cite her.

It was not until Dec. 9 that Olson and his staff began reviewing the contents of the withheld Dingell documents. Olson aide Laurel Pyke Malson then discovered a document indicating that Rita Lavelle had in fact continued to participate in the Stringfellow case even after having been warned away. When she brought the document to Olson's attention, he warned her not to jump to conclusions. Nonetheless, a few days later, EPA counsel Robert Perry transmitted a copy of the document to the

Dingell subcommittee with a letter explaining that it did not fall within the executive-privilege claim.

This potentially explosive revelation severely damaged the effort to assert privilege. Olson and his deputy, Larry Simms, met on Dec. 12 because Simms had come to believe the Stringfellow document (as well as other factors) had doomed their claim.

Nonetheless, Olson proceeded full steam ahead with his plan of attack. When the full House cited Burford on Dec. 16, he and his team responded with an extraordinary civil suit in federal court contesting the constitutionality of Congress' contempt powers, charging that the invocation of privilege was proper and that the contempt citations should not stand. The suit, however, had a short shelf life; it was dismissed by the court on Feb. 1.

The Olson team's effort was "without a doubt the sloppiest piece of legal work I had seen in 20 years of being a lawyer," Burford later wrote in her memoirs. It only cited in its support nonbinding opinions from a single case -- former President Richard Nixon's suit against the House Judiciary Committee -- and Burford notes that no factual defenses were raised.

By this time, moreover, the full effect of the Stringfellow document was working its way through the Dingell investigation. It soon became clear that Lavelle's activities could trigger criminal charges. The Justice Department began to contemplate a full investigation of Lavelle.

The death blow for the executive-privilege claim came on Feb. 3, when Olson's staff, with updated instructions, conducted a more thorough review of the withheld material. Two documents prepared by a pair of attorneys working for Lavelle were found to contain clear evidence linking "election tracking" work to funding announcements. The staff presented them to Olson, who indicated he would take the notes to Deputy Attorney General Edward Schmults.

With that information in hand, Burford asked Lavelle to resign on Feb 4. When she refused, she was removed by President Reagan himself. Eventually, Lavelle would be convicted by a federal jury on two counts of perjury, one count of obstructing a congressional investigation and another count of submitting a false "statement of certification." She spent four months in prison and then served five years' probation.

On Feb. 17, Burford had two meetings with White House officials, arguing strongly for giving up the executive-privilege claim. She then met with Reagan himself, telling him "his interests were not [being] well served" by the assertion of executive privilege, pleading with him to let her release the documents. The next day an agreement was reached to release the documents to the Dingell and Levitas subcommittees. On Feb. 25, the withheld documents -- including those linking cleanup funding announcements to elections -- were turned over.

Within days, the revelations in the documents created a political firestorm on Capitol Hill and in the press, where calls began sounding for Burford's resignation.

Burford was officially hung out to dry at a March 3, 1983, meeting with Schmults, Dinkins, Perry and others. She says Schmults told her the Justice Department could no longer represent her in the legal arena because Justice was now forced to investigate EPA. Yet Schmults, recalls Burford, rejected her suggestion that simply withdrawing Reagan's order forcing her to assert executive

privilege could resolve the conflict.

Burford recalls her response: "This is bizarre. You're saying that an administration official acting under orders of the president is not entitled to Department of Justice counsel."

It became clear at that point, Burford says, that resigning was the only way she could avoid another contempt citation. When a Reagan confidant told her a few days later he wanted her to step down, she did so. And shortly after officially tendering her resignation on March 9, she saw the contempt citations withdrawn.

Dingell's assessment of the episode was scathing. "Shameful behavior," he says in Burford's book. "The Justice Department, having asserted these extraordinary postures in their briefs, then absented themselves and left these people, who were doing what they were instructed to do, to suffer the consequences, including potential criminal liability and other liabilities without the advantage of counsel to which they were fully entitled."

Ted Olson's difficulties had just begun, though. Already, the House Judiciary Committee -- chaired by Rep. Peter Rodino Jr., D-N.J. -- had signaled it intended to inquire into Justice's handling of the Superfund documents.

Rodino wrote in late February and early March to Attorney General French Smith seeking documents pertaining to OLC's advice to the president on this assertion of executive privilege. Olson participated in drafting responses to the two letters. Then, on March 10, 1983, Olson appeared before the Subcommittee on Monopolies and Commercial Law of the House Judiciary Committee, and presented testimony that would continue to haunt him for another four years.

The hearing was often contentious and partisan in nature, with congressional inquisitors frequently interrupting Olson and snide remarks punctuating many of the exchanges. At a key point, Rep. John Seiberling, D-Ohio, questioned Olson:

"Mr. Olson, the question of whether EPA wanted to turn over the documents at some point before the decision was actually made not to do so, and who advised them not to, is a very important one. And I'd like to ask whether, to your knowledge, at any time EPA did indicate its willingness to turn over the documents during the course of your consideration of the Subcommittee's request."

Olson's answer: "I don't recall having been told that by anybody associated with EPA. I did read the newspapers, and it seemed to be that through -- that that sentiment seemed to be being expressed, especially in the last week or two. But that's all I know."

This response would, in today's context, be hailed as "Clintonian" -- evasive and misleading, though technically true. Olson had been told that EPA officials were willing, conditionally at least, to turn over the documents -- but by his own staff, not by anyone from EPA. Olson deputy Larry Simms, who was present during the testimony, later testified that he couldn't understand why Olson responded to Seiberling's question in a way suggesting he had never been told about EPA officials' willingness to compromise on the documents.

There were other evasions as well: Rep. Jack Brooks, D-Texas, asked Olson about unanimity within

the executive branch concerning the privilege claim. Olson responded that everyone involved "agreed that this was a proper occasion for the invocation of the privilege," adding: "Whenever other people or some people in that process may have changed their mind later because of developments or allegations or because it became uncomfortable, I don't know."

This was again a masterful display of disingenuousness. "Other people" -- a reference, apparently, to Burford and other EPA officials -- didn't ever change their minds. As Burford later observed: "Until told directly by Mr. Hauser, deputy legal advisor to the President, that the President wanted to assert executive privilege, it was my policy at EPA to give Congress 'access' to any and all documents requested ... To interpret my acquiescence in an order from the President to assert executive privilege as a 'recommendation' that he assert the privilege is convoluted and revisionist at best."

Rodino asked Olson whether Justice had provided all the documents regarding the advice to President Reagan on the executive-privilege claim, and was not withholding anything. Olson's response:

"Well, Mr. Chairman, we tried to provide everything that we have that pertains to the advice that we have given. Most of those documents are published. I don't include handwritten notes of my own. I make Xerox copies of cases and make notes in the margin. There are scraps of paper probably everywhere. I'm not sure that we've included everything. We've included everything that we think is relevant to the questions that you've asked and to the advice that we've given."

The most troubling aspect of this testimony was Olson's apparent suggestion that the only documents not yet turned over were primarily "scraps of paper" and the like, while omitting any mention of his Oct. 25 memo to President Reagan, which had not yet been produced (it eventually was, two weeks later). That memo, in fact, was probably the definitive document in the framework of Rodino's request.

As the day wore on, the exchanges grew more contentious. At one point, Seiberling suggested that Reagan should "get another lawyer," and he urged both Olson and Attorney General William French Smith to resign. Olson's combativeness was understandable, but even his associates at the Justice Department were troubled by his lack of candor.

One of Olson's aides who attended, Laurel Pyke Malson, afterward said she viewed Olson's testimony as "deliberately evasive." She later clarified this observation: "Mr. Olson appeared to construe questions as narrowly as they reasonably could be interpreted."

Though the tensions eased somewhat when Attorney General Smith personally assured the Judiciary Committee on March 15 that all the requested documents would be produced, the cloud over Ted Olson would only darken in the coming months.

Things seemed to be going smoothly for Alan Parker, the committee's chief counsel, who went about the work of overseeing the document production from April 1983 to April 1984. During the entire process, Parker believed the Justice Department was providing everything contained within the requests.

However, Deputy Attorney General Schmults had in fact decided that no handwritten documents

would be handed over to the committee -- and that Parker was not to be informed they were being withheld. Some Justice staff advised Schmults to inform Parker, but he refused. So throughout the gathering process, a number of handwritten notes were withdrawn from files being produced, at the instruction of Michael Dolan, deputy assistant attorney general for the Office of Legislative Action.

But Schmults left Justice to return to private practice in January 1984, and Ted Olson, too, chose to go back to his former employer, D.C. powerhouse Gibson, Dunn & Crutcher, later that spring. As the months wore on, Dolan realized that Parker was still unaware that some notes had been withheld. He began discussing internally how to deal with it, and it was agreed that at some point Dolan had to break the news to Parker.

So on April 17, Dolan disclosed to Judiciary Committee staff that handwritten notes had been withheld. He was later chastised by Olson for being "too forthcoming" -- perhaps because the revelation produced more well-publicized condemnations from Rodino. Nonetheless, after several more months of tussling and negotiating, all the handwritten notes eventually were turned over, ending in early 1985.

The storm broke on Dec. 5, 1985, when the Judiciary Committee issued its final report. In scathing language, it recommended that Attorney General Edwin Meese seek appointment of an independent counsel to investigate possible criminal conduct it found, including possible perjury and obstruction of justice. And it was clear that much of the focus was on Ted Olson and Ed Schmults.

Over the next four months, the matter would be reviewed by the career prosecutors in the Department of Justice's Public Integrity Section. They released their findings in April 1986, and identified cases of misconduct by four Reagan administration officials: Edward Schmults, Theodore Olson, Carol Dinkins and Deputy White House Counsel Richard Hauser.

The Public Integrity Section recommended that Schmults be investigated for obstruction of justice, for his role in withholding the handwritten notes from congressional investigators. Olson was targeted for a perjury investigation for his congressional testimony on the executive-privilege assertion and the withholding of documents. Dinkins and Hauser allegedly certified their respective reviews of the withheld EPA documents falsely.

Most significantly, the Public Integrity Section described the circumstances around these acts as "a seamless web of events, germinating from the original decision to withhold EPA documents ... Accordingly, in our view, splitting off narrow areas for investigation by an Independent Counsel is artificial and may impede the Independent Counsel's ability to fully explore the allegations."

Public Integrity thus recommended to Meese that jurisdiction of the independent counsel "be broad enough to allow the Independent Counsel to investigate or prosecute any matter within the scope of this report." This recommendation was ignored -- though the division's analysis of what would happen if Meese limited the scope of the investigation proved prophetic.

Meese shortly announced he was appointing William Weld, then U.S. attorney for Massachusetts, to handle an independent review of the matter, since everyone at the assistant attorney general level or higher at Justice (including Meese) was forced to recuse himself from consideration of the matter. Each had been involved with the events or was a close friend of Olson.

On April 4, Weld delivered his recommendations: An independent counsel should be appointed to investigate both Schmults and Olson, he said, but not Dinkins or Hauser.

But Meese overruled both Weld and his own Public Integrity Section the next week, instead handing down a very narrow referral limiting the scope of the independent counsel's review to the behavior of Olson.

So when Alexia Morrison -- the Securities and Exchange Commission's enforcement chief and a former assistant U.S. attorney -- was named independent counsel to investigate Olson that May, she immediately was forced to confront the problem of Meese's referral. She quickly came to concur with the Public Integrity Section's assessment: This case involved a "web" of events that could not be separated one from the other, and the narrow referral meant she could not explore the matter properly. As her report put it:

On the one hand, it began to appear that, viewed in total isolation from the complex of surrounding events and based on evidence we had collected to that point, Mr. Olson's March 10 testimony probably did not constitute a prosecutable offense because it was literally true, even if potentially misleading in certain respects. Viewed in the context of those surrounding events, however, it appeared his actions might have been part of a larger pattern of conduct, involving high-ranking members of the Department, intended to obstruct the Committee's inquiry. In short, if Mr. Olson was culpable at all, it was probably only as part of a larger concerted effort involving the conduct of others.

At the same time, it was our view that if any single act had obstructed the Judiciary Committee's inquiry, it was the undisclosed withholding of the handwritten notes and other documents, for which Mr. Olson bore at most secondary responsibility. Accordingly, we feared that our jurisdictional mandate may have excluded those who, if any conduct was criminal at all, bore responsibility at least as great as, and possibly greater than, Mr. Olson's.

Morrison wrote to Meese on Nov. 14, 1986, and asked him to reconsider expanding her jurisdiction to include the charges against Schmults and Dinkins, pointing to "certain new information" her investigators had obtained that heightened the need for investigating those areas. Morrison even took the unusual step of asking Meese to refrain from participating in further decisions in the case because of the appearance of a conflict of interest.

Meese did not reply for three weeks. Finally, on Dec. 17, Deputy Attorney General Arnold Burns responded to Morrison, saying Meese refused to recuse himself from the matter -- and also refused to expand her jurisdiction.

Morrison fought Meese's decision by filing with the Special Division of the D.C. Circuit Court for expansion of her jurisdiction. Meese defended his decision by saying that Schmults and Dinkins "lacked the requisite intent under pertinent criminal statutes." This was an unusual finding, since intent (or lack thereof) is typically beyond the scope of the statutory preliminary inquiry -- that's what an investigation would examine.

As Morrison noted, the allegations against Schmults and Dinkins both clearly reached the relatively

low statutory standard for referral. Eventually, to close this loophole Meese relied on, Congress in 1987 would explicitly bar such considerations as intent for refusing a referral under the I.C. statute.

But in this matter, Meese won out. On April 2, 1987, the Special Division, citing Meese's referral, refused to expand Morrison's jurisdiction. However, it noted that Morrison could investigate whether Olson had engaged in conspiracy with others (including Schmults and Dinkins) to obstruct the Judiciary Committee's work.

So in late spring of 1987, Morrison issued grand jury subpoenas to Olson, Schmults and Dinkins. All three moved to quash the subpoenas on the grounds that the independent counsel statute itself was unconstitutional.

A protracted court battled ensued, all the way to the U.S. Supreme Court. Morrison won the first round in District Court, and when Olson, Schmults and Dinkins refused to comply in order to appeal the case to the D.C. Circuit of Court of Appeals, they were cited for contempt of court.

On Jan. 22, 1988, a divided D.C. Circuit panel, in an opinion authored by Olson's friend and Federalist Society cohort Laurence Silberman, ruled 2-1 that the independent counsel statute was unconstitutional. But the Supreme Court granted expedited review, and on June 29, the Supreme Court reversed the panel in an 8-1 vote. The case, Morrison vs. Olson, established once and for all that the statute was constitutional. Justice Antonin Scalia -- who would later prove invaluable when Olson represented George W. Bush before the Supreme Court, seeking to squash the manual Florida recount -- offered the lone dissent.

Within two months, Morrison was able to announce the result of her investigation. Her report said the investigation had reviewed five areas of Olson's testimony under question, considered carefully the requirements of perjury statutes, and found that while Olson's testimony may have been "less than forthcoming," it did not rise to the level of prosecutable perjury.

Throughout the report, Morrison was scrupulously evenhanded and restrained in her prosecutorial style. For instance, when examining Olson's reply to Rep. Seiberling about the EPA's willingness to produce the documents, she found that the answer was "literally true" -- but only by applying a narrow reading of Seiberling's question as asking whether the EPA was willing to provide all documents unconditionally -- something Seiberling didn't ask. In that context, everything Olson said was accurate, since this was a position Burford never supported; her willingness to produce the documents was always conditional on their remaining secure and not public.

But Olson's response to Peter Rodino about document production was "by far the most troubling aspect of his testimony," Morrison found, since it specifically omitted any mention of his Oct. 25, 1982, memo to Reagan. As Morrison noted, "Olson ... had a substantial apparent motive to conceal that document in March 1983." After all, that memo contained two assertions to the president that later turned out to be false -- that the documents contained no evidence of administration wrongdoing, and that Burford supported the claim of executive privilege.

Ultimately, Morrison cleared Olson of the charge, largely on the basis of his answer when she asked why he didn't bring up the Oct. 25 memo: "I forgot." Morrison could not find any evidence to the contrary. Nonetheless, Morrison said, the substance of Olson's answer to Rodino was "disingenuous

and misleading ... The impression conveyed by Olson's claim that the Department tried to provide a complete response to the Committee's request, save for 'scraps of paper' and 'copies of cases,' was woefully inaccurate."

Morrison's report at the time was noted for its "defensiveness," largely due to the fact that it was completed more than five years after Olson's testimony. For good reason, too; Olson for a while made a minor career out of presenting himself as a martyr to an out-of-control independent counsel statute, and still is portrayed that way by conservative analysts.

However, Morrison's explanation makes clear that the lengthiness of her investigation was due to circumstances well out of her control. First there were jurisdictional disputes that held up her ability to call a grand jury; and more significantly, there were the lengthy legal battles filed by Olson that ended up in the Supreme Court.

Indeed, it might appear that Olson deployed a run-out-the-clock strategy in pursuing that avenue, since the statute of limitations on perjury is five years (and in fact Morrison had to negotiate an agreement with Olson in order to suspend those limitations). However, Morrison says today she is satisfied that her investigation was as thorough and complete as any could have been -- given the limitations imposed on it by Edwin Meese.

At the time the report was released, Olson decried the personal cost of the investigation. The ordeal, he said, was "an extremely difficult burden to undergo, particularly for such a long time. The cost of that emotionally, financially and psychologically is enormous."

Others decried what they saw as the criminalization of policy differences. "Public officials discharging their official duties were threatened with a criminal charge, which in reality was based on a political controversy or a separation of powers dispute," declared Jacob Stein, Dinkins' attorney and himself a former independent counsel.

However, Olson still has never adequately explained his questionable counsel to Reagan -- particularly the false assertion that the documents contained no evidence of wrongdoing -- since that fell outside of Morrison's purview. In general he has tried to rewrite the history of that episode. In a 1985 interview with *Legal Times*, Olson airily dismissed Burford's view of the EPA fiasco: "The idea that we were interested in a test of executive privilege is silly," he said. As for his critics, Olson sniffed that they were "prone to hyperbole and irresponsible statements."

Olson's retelling of the episode to the *Legal Times* was somewhat at variance with the reality as well. He said EPA officials approached the Justice Department about withholding the documents, and claimed Burford only expressed reluctance about limiting access to the documents "months after the executive privilege had been claimed," and even then it was just to shed the spotlight.

However, the scandal and ensuing investigation apparently did little to harm Olson's subsequent career. He represented Reagan during the Iran-Contra scandals, and continued to build a reputation as a skilled litigator. In recent years, Olson's attention has turned to such conservative causes as defending Virginia Military Institute's attempts to keep women from enrolling at the school and overturning affirmative-action rules at the University of Texas law school.

But Olson's activities have revolved with a striking avidity around the pursuit of Bill Clinton. So naturally, the subject of Olson's relatively recent involvement in the Clinton scandals was the focus of much of the questioning he faced during his confirmation hearings in April before the Senate Judiciary Committee. Several senators wondered if his partisan past would color his conduct as a key presidential advisor.

When Sen. Jeff Sessions, R-Ala., asked whether he would be able to deliver advice to the president that might be contrary to his agenda, Olson himself brought up his involvement in the executive-privilege attempt in the 1980s. Referring to his experience with Anne Burford, he replied: "I did have experience as assistant attorney general, as you know, in the Office of Legal Counsel. One of the responsibilities of the person holding that position frequently is to say no to the White House or to other parts of the executive branch. It's never pleasant to do that, but --"

He went on: "One of the things that I learned when I was serving in the Justice Department before, that it's exceedingly important for the president for other officials in the Justice Department and in the executive branch to give some people in the administration the responsibility and the burden of calling them as closely as they can call them with respect to what the law is and what the law can permit, and as best as possible, to set aside policy considerations and to be willing to say no."

Olson's actual record in that period raises doubts about even this answer. His single-minded effort to assert executive privilege actually overlooked what the law permitted, and it wound up costing President Reagan dearly. One is only left to wonder what dubious legal tangles he has in store for President Bush's agenda.

-- By David Neiwert

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