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## Essay; Iraqgate Deadline Day

By **WILLIAM SAFIRE** DEC. 7, 1992

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Tomorrow, Dec. 8, is the day that the Attorney General of the U.S. has set for receipt of a report that will force a decision to obey the law or to continue to break the law.

The law, set to expire in one week, is the Ethics in Government Act. It upholds the ancient principle that no person shall be the judge in his own case.

That law directs the Attorney General to seek from a special panel of judges the appointment of independent counsel when requested to do so by the Judiciary Committees of the House and Senate, most particularly when evidence is developed that requires further criminal investigation of high government officials.

The officials suspected in the Iraqgate case of misusing appropriated funds, lying to Congress and then obstructing justice in the Banca Nazionale del Lavoro criminal case include former Secretaries of State and Agriculture, the national security adviser and White House counsel and the Attorney General himself, as well as his predecessor.

"I will not be buffaloed," Attorney General **William Barr** says, by the likes of editorialists and Congressional oversight committees into doing what is so clearly his duty. As evidence developed outside his corrupt Criminal Division has mounted, he

has sought to play out the string of the expiring statute, thereby to avoid prosecution of himself.

Part of the delaying tactic was his appointment of a friendly lawyer as supposedly special counsel. Former Federal Judge Frederick Lacey, long familiar to the intelligence community, has helped the Attorney General run out the clock by delaying his report until tomorrow.

**Mr. Barr** is set to respond on the same late day. They know that it takes the panel of judges that customarily chooses independent counsel at least three weeks to complete its task. In each case, potential conflicts of interest in candidates for independent counsel, as well as their law partners, must be closely examined.

Let us assume that **Mr. Barr** decides that refusing to carry out the law tomorrow would be tantamount to an admission of past obstruction of justice. But by dragging a foot until a few working days before the statute expires to seek the judicial panel's action, **Mr. Barr** apparently hopes to push its appointment of independent counsel past Dec. 15.

His defense strategy is transparent. If the appointment is made late, the entire case could be appealed on that ground after any convictions are obtained. If the appointment is rushed, and the independent counsel turns out to have a partner with a conflict, convictions could be overturned on those grounds. If time constraints force the panel to choose the patsy prosecutor already named by Attorney General **Barr**, a counsel with great "discretion" is assured.

The judicial panel, I presume, is aware of this subterfuge. We can hope it has a choice already vetted. According to career prosecutors and F.B.I. agents eager to offer evidence to genuinely independent counsel, **Mr. Barr** and his mentor, White House Counsel Boyden Gray, are fearful of this readiness -- and the prospect of a prompt countermove may tempt them to hang tough, defying the law and defiling their offices.

That's where the matter stands on the eve of decision. It's hard to believe that the Lacey report will be such a whitewash as to provide enough cover for further covering up.

**Mr. Barr** may be hopeful that a post-election attitude of "let bygones be bygones" would muffle any outcry if he decided to ignore the law. He may be counting on the general discreditation of conspiracy theorists by the Senate's long-expected finding that no "October surprise" existed in 1980.

But Iraqgate is no wild charge by political losers. Nor is its prosecutor likely to suffer from mistakes like those made in Iran-contra, where criminal convictions obtained against White House aides were overturned because public hearings influenced jurors.

Iraqgate is uniquely horrendous: a scandal about the systematic abuse of power by misguided leaders of three democratic nations to secretly finance the arms buildup of a dictator.

Tomorrow the dam to hold back independent investigation will either be shored up one last time or, as I think more likely, will burst -- and the court had better be ready to promptly appoint the un beholden prosecutor.

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