



REP. HENRY A. WAXMAN
RANKING MINORITY MEMBER
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
JANUARY 18, 2006

Fact Sheet

Disclosure of Independent Counsel David M. Barrett's Final Report

In August 2004, the office of Independent Counsel David Barrett submitted its final report regarding its investigation of allegations relating to former Secretary of Housing and Urban Development Henry Cisneros. Commentators on the far right falsely have claimed that language in a recent appropriations measure reflects efforts by congressional Democrats to suppress from public view information in Mr. Barrett's report that is potentially embarrassing to the Clinton Administration.¹ This fact sheet provides relevant background on the appropriations measure.

The Appropriations Measure Ensures Prompt Disclosure of the Barrett Report and Subsequent Closure of His Office

The language at issue is in the appropriations bill that funds the Departments of Transportation, Treasury, Judiciary, and other agencies, which the Senate and House passed with bipartisan votes and the President signed into law in November 2005.² The measure provides that the three-judge panel overseeing Mr. Barrett's investigation must release Mr. Barrett's final report publicly within 60 days (by the end of January 2006) and that Mr. Barrett close his office within three months of the report's release and publication.³

Nothing in the Measure Prohibits Release of Mr. Barrett's Report

The only language in the appropriations measure that relates to potential redactions of the Barrett report is a provision stating that the three-judge panel "shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution."⁴ This language is simply a restatement of the pre-existing Independent Counsel statute that has governed the release of Independent Counsel reports in the past.⁵

As noted by Rep. Joe Knollenberg, a member of the congressional conference committee on the appropriations measure and Republican chairman of the relevant subcommittee of the House Appropriations Committee, "In no way does the legislation suppress relevant — and potential damaging — information about the Clinton administration."⁶

DISCLOSURE OF INDEPENDENT COUNSEL DAVID M. BARRETT'S FINAL REPORT

The Measure Evolved in a Bipartisan and Public Manner

The origin of the final appropriations measure was an amendment to the Senate version of the bill that was sponsored by Republican Charles Grassley and cosponsored by Democratic Senator Byron Dorgan. With respect to potential redaction, the Grassley amendment provided that the three-judge panel shall release the report “except for any such portions that contain information of a personal nature that the division of the court determines the disclosure of which would cause a clearly unwarranted invasion of privacy that outweighs the public interest in a full accounting of the investigation.”⁷ This language is similar but not identical to the pre-existing Independent Counsel law.⁸

Some members of the conference committee raised concerns that the Senate amendment could be interpreted as an instruction to consider privacy concerns to an extent greater than was contemplated under the Independent Counsel statute and suggested dropping the language altogether. Other members of the conference expressed concern that without any language on the topic of redaction, the measure could be interpreted as an instruction to ignore the existing statute’s requirements. To address both of these concerns, the conference committee determined the measure would simply incorporate the relevant language of the existing Independent Counsel statute.

Contrary to assertions of far-right commentators that the conference committee language was “altered behind closed doors,”⁹ the conference committee deliberations regarding the Barrett language were open to the public.

Runaway Costs Prompted Congressional Concern

Congressional Democrats involved with legislation concerning Mr. Barrett’s investigation have always strongly supported expeditious public release of Mr. Barrett’s report. Their support for legislation directing the closure of his office has been driven by concerns about whether Mr. Barrett has been meeting his statutory responsibility to conduct a “prompt, responsible, and cost-effective” investigation.¹⁰ To date, Mr. Barrett has spent over a decade and over \$21 million in taxpayer dollars on his investigation. More than half of these expenditures have been incurred in the six years since the main target of the investigation, Mr. Cisneros, pled guilty to a misdemeanor in 1999. Even after the three-judge panel overseeing the investigation ordered in March 2003 that the office close down, Mr. Barrett continued to expend taxpayer funds at a rate of \$2 million a year. Since March 2003, Mr. Barrett has stated that his expenditures have “principally relate[d] to preparing the final report for submission to courts and to closing the office,”¹¹ yet in that time frame his office has spent over \$125,000 on travel, over \$600,000 for contractual services, and over \$1.7 million on personnel compensation and benefits.

¹ E.g., Robert Novak, *Maneuver Keeps IRS Secrets Safe*, Chicago Sun-Times (Dec. 15, 2005).

DISCLOSURE OF INDEPENDENT COUNSEL DAVID M. BARRETT'S FINAL REPORT

² Pub. L. 109-115. The House approved the measure on November 18, 2005, by a vote of 392-31, the Senate approved the bill by unanimous consent on November 21, 2005, and the President signed it into law on November 30, 2005. *See* legislative history of H.R. 3058 (online at congress.gov).

³ Pub. L. 109-115 at § 408.

⁴ *Id.*

⁵ Specifically, the statute provides that the three-judge panel shall “make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution.” 28 U.S.C. § 594 (h)(2).

⁶ *Imminent Independent Counsel Report Gets Sliced Up*, Fox News (Jan. 3, 2006).

⁷ S. Amdt. 2160 (109th Cong.).

⁸ *See supra* note 5 for the language of the statute.

⁹ Robert Novak, *Maneuver Keeps IRS Secrets Safe*, *supra* note 1.

¹⁰ 28 U.S.C. § 593(b)(2).

¹¹ *See, e.g.*, Government Accountability Office, *Independent and Special Counsel Expenditures for the Six Months Ended September 30, 2004*, 11 (March 2005) (GAO-05-359).