

The Virgin Islands Consortium

Op-Ed: The Saturday Night Massacre-Echoes Of Watergate

Opinion / **Published On August 07, 2015 10:58 PM /**

Staff **August 07, 2015**



By way of introduction and background I was a prosecutor for 36 years retiring in 2011 with 32 of those years as a federal prosecutor. From 2005 through 2009 I served as the First Assistant and the acting and interim U.S. Attorney in the United States Virgin Islands. I teach Criminal Procedure at the University of St. Thomas Law School in Minneapolis, MN. Obviously, I write only as a private citizen and in no official capacity to express an opinion on the requirement that Attorneys General must be independent of all political control and influence.

Governor Mapp has made himself the prime witness for proving that Virgin Islands Attorneys General are not the independent and impartial law enforcement officials they

are supposed to be. He explicitly has stated that the Office of the Governor controls the Office of the Virgin Islands Attorney General. Everyone suspected it. But no one could prove it. Now everyone knows it is true because the Governor said it is so.

The critical question is the extent of a governor's control. When a Virgin Islands Attorney General or a Virgin Islands Inspector General, is engaged in a sensitive investigation of fraud, waste and abuse, by a government official, are governors being briefed on the investigation? Are governors giving direction on how the investigation should proceed or not proceed, who should be investigated, how they will be investigated if at all, and who will be charged? When either of those offices is engaged in a politically explosive investigation that has political implications for a governor, are governors influencing the investigation, the outcome, and having input on how the law is applied?

The Governor is quoted, presumably accurately, as stating:

"No commissioner, no member of a cabinet can expect — whether in the Government of the Virgin Islands, in a state government, in the national government — that they would be given a department as its head, and then they would do whatsoever they will in that department," the territory's leader went on." (Source: VI Consortium)

Every defendant and every defense attorney in the Virgin Islands must ask if the Attorney General's Office made an independent, impartial decision to bring charges against them or their client or were there communications with a governor which influenced the prosecutorial decision or the disposition of their case. Governor's offices everywhere are by their very nature creatures of the political process. Attorney General's offices are supposed to be, by their very nature, apolitical. The two can never collaborate in prosecutorial decisions because seeking justice by the fair and impartial application of the law is the only goal of such decisions. Politics always poisons the process of justice.

The duty of an Attorney General is to represent the People. They do not represent any elected official interests, including a governor's, and especially not their political interests. When an Attorney General is faced with a decision that is adverse to the position, especially the political position of an elected official and the correct decision is favorable to the People, the Attorney General must act for the People and adversely to the position of the elected official. A governor's control of an Attorney General can bring disaster to the justice system. First, by creating the appearance of a lack of impartiality on the part of the Attorney General. Second, by actually destroying the Attorney General's impartiality. Third, by destroying the Attorney General's credibility as an impartial enforcer of the law.

The mere fact that a governor can fire an Attorney General for no reason, and makes it clear that is the case undermines the Attorney General's independence. Attorneys General do not do the bidding of governors.

Attorneys General are no ordinary commissioner overseeing roads, schools, sewers, water, fire departments, or the budget. Attorneys General are the guardians of fair and impartial justice. They, unlike other commissioners, have the power to take away a citizen's freedom. Politics, even the slightest hint of politics, has no place in Attorneys General decision making process. If an Attorney General consults with a governor's office on the decisions it is making in representing the People, there is at least an appearance of impropriety.

If an Attorney General is seeking the approval from a governor for what should be independent decisions on the enforcement of the law, then the inference of impropriety is inescapable. Certainly, defendants will want to know if there has been consultation between an Attorney General and a governor on charging them or the disposition of their case. Undoubtedly some defendants in the Virgin Islands will move courts for orders to find out this information based on the Governor's statement.

The American Bar Association, [Criminal Justice Standards Section](#), has issued standards of conduct for prosecutors. These standards illustrate why Attorneys General are unique from all other members of any governor's cabinet, local, state, or national. These standards demonstrate why Attorneys General must conduct their office completely independent of any governor or President. Even a governor that appoints them and especially independently from a governor who can fire them for no reason.

The prosecutor is an administrator of justice, an advocate, and an officer of the court and the prosecutor (not a governor) must exercise sound discretion in the performance of his or her functions. The duty of the prosecutor is to seek justice. Standard 3-1.2 The Function of the Prosecutor.

It is the responsibility of the prosecutor to decide if charges are warranted based on the evidence and the law. Standard 3-3.4 Decision to Charge. Politics has no place in this process.

When making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved. Standard 3-3.9 Discretion in the Charging Decision. If a prosecutor is consulting with a governor seeking approval for their decisions or for fear that they might get fired or because they are concerned with the political fallout of their decisions, that consultation is contrary to their sworn duties. Quite simply it should never happen.

The Saturday Night Massacre demonstrates that, with regard to the position of Attorney General, the Governor is wrong. The person holding the Office of Attorney General can, should, and in fact must, expect that once they are appointed as head of the Justice Department that they will be able to do "whatsoever they will in that department" to seek justice and represent the People. Their only guide is seeking justice. If their decisions are not to the liking of the politically elected officials, so be it. If they get fired, so be it. If they must resign to maintain the integrity of the office, so be it. They must do what justice and the law demands without regard to the consequences for them personally or the political consequences to elected officials.

The Saturday Night Massacre arose from the Watergate breaking which took place in June 1972. Archibald Cox was appointed as the special prosecutor on the case. He issued a subpoena to President Richard Nixon for the production of audio tapes from the Oval Office. Nixon refused to produce the tapes. On a Saturday night Nixon ordered Attorney General Elliot Richardson to fire Cox. Richardson resigned as U.S. Attorney General rather than obey Nixon's order. Deputy Attorney General William French Smith also refused to fire Cox and he resigned. Sadly Robert Bork complied with the order and fired Cox and as history has demonstrated, attained infamy for doing so.

Richardson and Ruckelshaus resigned because they had a duty of fidelity to justice and the law. Nixon's order was in conflict with those duties as it undermined their independence. It did not matter that the Attorney General had the legal authority to fire Cox or that technically Nixon had the authority to give the order. The order was inconsistent with their obligations to justice, to the law, and with the standards of conduct that guide their work. Government officials often have the power to do something, to give an order, to control others conduct of their duties. That alone does not mean it is right to do it.

On a local level Soraya Diase-Coffelt, like Richardson, had no choice but to [resign](#) if as Attorney General she could not conduct the business of the Virgin Islands Justice Department independently seeking justice on behalf of the People of the Virgin Islands. The question now is will other Virgin Islands DOJ attorneys, if circumstances require it, follow in the footsteps of Richardson and Ruckelshaus or in the footsteps of Robert Bork?

Submitted by:

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