Lawsuit against Clinton poses constitutional issues

by Edward Spannaus

The latest developments in the British intelligence-run scandal mongering against President Clinton raise constitutional issues of tremendous gravity, particularly with respect to the question of whether a sitting President is subject to a civil lawsuit. Presidential pre-candidate Lyndon LaRouche has proposed a way to ensure both that justice is secured and that the institution of the presidency is defended, under the special circumstances of this case in which the suit is being instigated by a foreign power.

New admissions regarding the role of the British Hollinger Group media empire in coordinating this destabilization of the presidency have come from the pen of the London *Sunday Telegraph*'s Ambrose Evans-Pritchard—who seems unable to contain himself, despite the fact that *EIR* exposed his game at a well-attended Washington, D.C. press conference on April 6. In his May 8 column concerning the sexual harassment lawsuit which was filed two days earlier by Paula Jones, Evans-Pritchard acknowledged that he had had "a dozen conversations with Mrs. Jones over the past two months." He furthermore admitted that "I happened to be present at a strategy meeting last month on a boat on the Arkansas River" at which Jones's attorney "was weighing the pros and cons of legal action."

A week later, Evans-Pritchard admitted the actual motivation and purpose of the Jones suit. It doesn't "matter all that much whether Mrs. Jones ultimately wins or loses her case," he wrote on May 15. "The ticking time bomb in the lawsuit lies elsewhere, in the testimony of other witnesses."

"Put plainly," Evans-Pritchard blurted out, "the political purpose of the Jones lawsuit is to reconstruct the inner history of the Arkansas Governor's Mansion, using the legal power of discovery. In effect, the two lawyers and their staff could soon be doing the job that the American media failed to do during the election campaign and have largely failed to do since. . . . Testimony would be available to the public as court documents."

U.S. versus British law

Ambrose Evans-Pritchard and his co-conspirators are trying to take advantage of the acknowledged difference between the British and U.S. systems of law and government. It is a principle of the British system that the monarch is above the law and beyond its reach; but it is a fundamental principle of U.S. law that no man is above the law—that this is a government of laws, not men. It is unthinkable in Britain that the king or queen could be subject to a civil action brought by a private citizen in a court of law or equity. Thus, Evans-Pritchard is wetting his pants in glee, thinking he has found a vulnerability of "those stupid Americans" in allowing their chief magistrate to be dragged into court.

In obvious recognition of the true intent of the Paula Jones suit, President Clinton's lawyer Robert Bennett let it be known that he intends to challenge the Jones suit on the grounds that a sitting President cannot be sued during his term in office. "If you permit the President of the United States to be sued and permit the case to go forward . . . think of the consequences," Bennett said. "There could be thousands of lawsuits. . . . Your President would be tied down 365 days a year being asked questions by lawyers."

The U.S. Supreme Court has already held, in the 1982 case *Nixon v. Fitzgerald,* that a President is absolutely immune from a lawsuit for damages for acts performed in his official capacity. But there is no direct precedent on the issue of a civil suit against a sitting President for acts *prior* to

assuming office. The historical and legal evidence indicates that attorney Bennett has a point, under the outrageous circumstances of this case, but it may not be as sweeping as he suggests.

Historical precedents

This issue first came up in U.S. constitutional law in 1807, concerning the issuance of a *subpoena duces tecum* for relevant evidence to President Thomas Jefferson during the treason trial of Aaron Burr. In upholding the subpoena, Chief Justice John Marshall stressed the differences between the U.S. and the English systems. "It is a principle of the English constitution," said Marshall, "that the king can do no wrong, that no blame can be imputed to him, that he cannot be named in debate."

But, he continued: "By the Constitution of the United States, the President, as well as every other officer of the government, may be impeached, and may be removed from office on high crimes and misdemeanors." As to the issuing of a subpoena, Marshall observed that any individual charged with a crime has the right to compel the attendance of witnesses, and a President could be subpoenaed, "*provided the case be such as to justify the process*." In other words, even a President could be subject to the process of the courts—not for frivolous or trivial reasons, but if the case merits it.

In the 1982 *Nixon* case, the conservative majority, led by Justice Lewis Powell in a 5-4 decision, held that a President had absolute immunity from a suit for damages for his official acts. In light of his high visibility and the effects of his actions, "the President would be an easily identifiable target for suits for civil damages. . . . [This] could distract a President from his public duties, to the detriment of not only the President and his office but also the nation that the presidency was designed to serve."

But even so, the majority did not contend that the separation-of-powers doctrine bars every exercise of judicial power over a sitting President; rather, the court "must balance the constitutional weight of the interest to be served against the dangers of intrusion on the authority and functions of the Executive Branch. . . . When judicial action is needed to serve broad public interests . . . the exercise of jurisdiction has been warranted."

Dissenting from the majority's holding of absolute immunity for the President was Justice Byron White, joined by justices William Brennan, Thurgood Marshall, and Harry Blackmun. They argued that giving the President absolute immunity "is a reversion to the old notion that the king can do no wrong." They cited, as did the majority ruling, the debates in and around the Constitutional Convention; the dissenters also cited John Marshall for the principle that every citizen has the right "to claim the protection of the laws, whenever he receives an injury." They further referenced Marshall regarding the point that a President should be protected from "vexatious and unnecessary subpoenas," but that this was the responsibility of the court *after* such process had issued—i.e., that the court should fashion a remedy to protect a President from harassment or bad-faith actions.

LaRouche's proposal

In an interview with *EIR* on May 19, Lyndon LaRouche was asked about the suggestion that civil actions should not be allowed to be pursued against a sitting President. "I see it a little bit differently," answered LaRouche. "Generally, of course, I do not wish to have the presidency tied up with a scurrilous lawsuit of this type."

But, LaRouche suggested, there is one flaw in the argument that Paula Jones should have to wait for her suit until the President's term of office is finished. "What about the rights of a litigant? Does the litigant have an honest case?" asked LaRouche. "If so, will we deprive the litigant of their rights to justice for a period of 2-6 years if they suspend the case for that period of time?"

LaRouche proposed that there should be some "special rules" for such a case. "We've got to give the President a fair shake as a person, as well as President," particularly because of the problems of raising funds for a legal defense. The first thing to do, therefore, would be to require that Jones show two things in a preliminary deposition.

"First of all, she should be compelled to show that her collaboration with Ambrose Evans-Pritchard did not produce a lawsuit which is clearly politically motivated to destabilize the presidency (which is what Mr. Pritchard said the purpose of this operation is)."

If it turns out to be the case that she wouldn't have filed the suit without the instigation of Evans-Pritchard, a British intelligence-controlled agent, then "there are grounds for a summary dismissal or suspension of the suit, and I don't think the woman has any claims coming to her. . . . If she's got a claim, she can wait until the President is through with his business in office. Because she would not have made the suit at this time, but for foreign intelligence instigation."

If those are the facts, LaRouche continued, then either dismissal or postponement would cause no harm.

"If the case is shown to be frivolous, I think very stiff sanctions should be applied against those, including Mr. Ambrose Evans-Pritchard, who would instigate such a civil action dishonestly for a political purpose, particularly if it destabilized the government of the United States," LaRouche added. "In that case, the highest possible legal sanctions under the so-called Rule 11 type of situation should be applied, not merely to Mrs. Jones and her husband, if he's in the case, but also to those who have been *wittingly deploying* Ambrose Evans-Pritchard to do what Mr. Evans-Pritchard has claimed he has done; in that case, *very tough sanctions*. And once we've kicked someone in the head with tough sanctions for that kind of dirty operation (if that is shown to be the case), then I think you would dissuade other people from doing similar things."