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Supreme Court won't back Starr's impeachment drive

by Edward Spannaus

Independent Counsel Kenneth Starr's reckless and accelerated drive to bring down the President of the United States suffered a major setback on June 4, when the U.S. Supreme Court rejected Starr's demand that it intervene on an emergency basis to hear appeals regarding testimony to his grand jury. Starr had insisted to the Supreme Court that it was of the highest importance that it by-pass the normal appeals procedure, and immediately hear and decide the appeals involving his efforts to compel testimony by Secret Service agents and by White House adviser Bruce Lindsey.

In a filing just two days earlier, Starr had demanded that the Supreme Court undertake this extraordinary step, so that he could get his impeachment report to Congress as quickly as possible. This was the first time that Starr had raised the impeachment issue in court, and it reflected a frantic push by him and his Congressional allies to get an impeachment proceeding under way by mid-summer, well before the November mid-term elections.

The Supreme Court's June 4 decision, issued without dissent, indicated that the court did not wish to appear to be giving its institutional imprimatur to Starr's frantic impeachment crusade against the President.

Starr's offensive against Clinton

In the week preceding the Supreme Court ruling, Starr launched both a new legal and public-relations offensive against the President.

On May 29, he demanded the Supreme Court immediately hear and decide the appeals on executive privilege and the President's attorney-client privilege, by-passing the U.S. Court of Appeals.

On May 31, Starr took the unprecedented step of putting his spokesman Charles Bakaly on the television talks shows, to accuse President Clinton of delaying Starr's probe, and to threaten to subpoena—and even indict—the President. When Bakaly was asked on ABC-TV whether Starr could subpoena a sitting President, Bakaly said he could, and blustered that if the President were to refuse a subpoena, and resist getting all the information out, then "it's not a personal war against Ken Starr anymore," but that Clinton would be waging "a war against the American people."

Bakaly said that the other way of getting the evidence out, is by "getting as much information as you can up to Congress, sooner rather than later, and let them pursue their course."

Starr outdid himself in a speech he gave the next day in North Carolina, in which he accused the President and his lawyers of obstructing justice and Starr's search for the "truth." Starr—who prior to becoming independent counsel had never been a criminal prosecutor, much less a criminal defense lawyer—betrayed his own view that any vigorous defense of a client, and assertion of constitutional rights and privileges, constitutes "obstruction of justice." He asked rhetorically, "at what point does a lawyer's manipulation [sic] of the legal system become an obstruction of truth?"

Starr attacked the White House for attempting to assert an attorney-client privilege applicable to government attorneys, and he seriously misrepresented even the ruling just issued by Judge Norma Holloway Johnson in Washington. Starr had argued in court, as he contended in his North Carolina speech, that there is *no* privilege—i.e., assurance of confidentiality—in the context of a grand jury investigation; Judge Johnson ruled to the contrary, saying that a such a privilege "does apply in the Federal grand jury context," but that it is qualified, not absolute, and can be overcome by a showing of need by a prosecutor. But Starr accused the White House of trying to create new privileges to keep evidence out, and to obstruct his own search for "truth."

Of course, "truth" to Kenneth Starr does not mean what it

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means to normal people. "Truth" to Starr means his approved version of events; as Susan McDougal and Webster Hubbell, among others, have stated, Starr's prosecutors have repeatedly asked them to lie, to conform their stories to those of other witnesses, such as bought-and-paid-for Starr witness David Hale.

Refuse to tell the story that Starr and his deputies want to hear, and you are guilty of obstruction of justice. Exercise your constitutional rights as guaranteed under the Fifth and Sixth Amendments to the United States Constitution, and you are guilty of obstruction of justice. That is Starr's justice.

'Compelling interest'

The day after his North Carolina speech, Starr filed his motion with the Supreme Court, seeking to expedite the appeal on Secret Service testimony, and to consolidate this appeal with the attorney-client privilege appeal, on the grounds that President Clinton had "directly challenged the ability of the Federal grand jury to obtain evidence of possible criminal acts by the President and others." Shamelessly, Starr declared that this is, with the exception of the case around the Nixon tapes during Watergate, "without parallel in the history of the republic."

As if such hyperbole were not enough, Starr went on to explicitly raise the issue of indictments and impeachment. "We will be blunt," he proclaimed. "The nation has a compelling interest that this criminal investigation of the President of the United States conclude as quickly as possible—that indictments be brought, possible reports for impeachment proceedings issued, and non-prosecution decisions announced. This court's immediate review would powerfully serve that vital goal."

This was the motion which was unanimously denied by all nine Justices of the Supreme Court two days later.

Impeachment report

Starr had attempted to lay some groundwork for his June 2 motion to the Supreme Court, with the television appearances of his spokesman Bakaly, who offered the first public discussion by Starr's office of the impeachment report. Appearing on "Fox News Sunday," Bakaly complained that "we may not have the entire story by this summer," but if Starr's office has "crossed that threshold of substantial and credible information," then they may go ahead and give Congress what they have, in an interim report.

A couple of hours later, appearing on CBS television, Bakaly implied that Starr's office wants to get the impeachment report to Congress as quickly as possible, before the members of the House get involved in their own re-election campaigns this fall. Bakaly said that "we do have to be sensitive" on the timing, "because Congress has its own obligations and duties," and because if they waited for all the litigation, "it could be some time before we'd be able to even get the information."

After Starr's setback by the Supreme Court, there was much commentary and speculation as to what effect this would have on Starr's preparation of his report to Congress. However, it is generally thought that Starr will still proceed to submit an interim report during late June or July, accusing the President of engaging in obstruction of justice, perjury, and subornation of perjury around the Monica Lewinsky matter. Starr can engage in the time-worn prosecutor's subterfuge, of blaming the holes in his evidence on Clinton's alleged obstructionism.

Few observers have commented on the obvious: If Starr goes with a perjury case around Monica Lewinsky—concerning events which allegedly took place at the end of 1997 and early 1998—what does that say about what Starr has been doing for the past four years? He started with investigating a 1980s real estate transaction in Arkansas, went onto the Vincent Foster case, Filegate, Travelgate, and finally ends up with "Sexgate"—centering on events that took place four years after the first appointment of a Whitewater independent counsel!

'The rocket docket'

During the week prior to the Supreme Court ruling, information also resurfaced indicating that Starr is using a grand jury in the notorious Eastern District of Virginia. Shortly after the Lewinsky affair broke in the news media in January, there were a number of reports that Starr had opened a new grand jury in Alexandria—the famed "rocket docket" known for its quick trials and rapid convictions. There are reliable reports that Starr would like to indict Monica Lewinsky and others in Alexandria, where cases move to trial much faster than in Washington, D.C., and where defense motions are routinely denied, and the predominantly white jury pool is much more favorable to government prosecutors than in Washington, D.C.

This is reminiscent of what the Justice Department did in the Lyndon LaRouche case ten years ago. LaRouche and a number of his associates were first indicted and tried in Federal court in Boston, in a proceeding spread over four years. In May 1988, after five months of trial which were interrupted by hearings on government misconduct, a mistrial was declared; jurors took a poll among themselves and determined that they would have acquitted LaRouche and his co-defendants on all charges. So, the Justice Department moved the case to the Alexandria Federal court, where indictments were issued in October, the trial began in November, the defendants were convicted in December, and were in prison by the end of January.

While it is unlikely that Starr will attempt to indict Clinton personally, Starr would—if his past practice is any guide—use the indictments of others to pressure them to provide manufactured evidence and false testimony against the President. From Starr's standpoint, Alexandria is the ideal location for such a scheme.