Starr's attack on First Amendment rights

Martin McLaughlin
27 February 1998

The decision of independent counsel Kenneth Starr to subpoena White House officials about their contacts with the press raises a direct challenge to First Amendment rights. The special prosecutor has indicated that he may bring charges of obstruction of justice against Clinton aides who criticized his office or spread reports tending to discredit it.

White House aide Sidney Blumenthal, a former reporter for the *Washington Post* and *New Republic*, was subpoenaed and asked to supply records of all his contacts with the media concerning Starr's investigation into Whitewater and Clinton's relations with former White House intern Monica Lewinsky. Blumenthal appeared on Thursday before the Washington grand jury impaneled by Starr.

Terry Lenzner, a private investigator employed by Williams & Connolly, the law firm defending Clinton in the Lewinsky case, was called earlier in the week before the grand jury and questioned about his role in circulating negative information about Starr and his principal assistant prosecutors.

Other subpoenas have been issued to close advisers and attorneys for Clinton working on the Lewinsky case. Lanny Breuer, the principal attorney handling White House responses to the Whitewater inquiry, was subpoenaed last week. Earlier, White House assistant Robert Weiner was hauled before the grand jury after he pressed Maryland authorities to prosecute Linda Tripp for illegally recording telephone conversations with Monica Lewinsky. Last December Tripp handed over her tapes to Starr, and then agreed to wear a wire and work with the independent counsel to set up a sting on Lewinsky.

News of the subpoenas touched off a storm of controversy, much of it sharply critical of the special prosecutor's office. The American Civil Liberties Union and the president of the American Bar Association issued statements denouncing Starr's action, and numerous Washington-based reporters condemned it as an attempt to intimidate the press.

"What Sidney Blumenthal was doing is called politics," said Doyle McManus, Washington bureau chief of the *Los Angeles Times*. "The independent counsel has already been accused of criminalizing the political process. This looks perilously close to taking that one step further and potentially criminalizing the journalistic process."

Nina Totenberg, National Public Radio's legal correspondent, said of Blumenthal, "Here's a guy whose job it is, in part, to talk to the press." If he is charged in the Lewinsky case, she said, "we really are living in a police state."

The Blumenthal case involves, not the illegal leaking of secret grand jury testimony, which Starr's own office has consistently done, but rather legal and even commonplace contacts between press spokesmen and reporters, involving material that is on the public record.

Both Blumenthal and Lenzner have freely admitted that they researched the professional backgrounds of officials in the independent counsel's office and made the information available to the Washington press corps. Much of this consisted of press clippings critical of Starr's ties to the tobacco industry and detailing the previous records of two of his assistants, Michael Emmick and Bruce Udolf.

Both men are former federal prosecutors and Udolf was also a district attorney in Georgia. In 1985 he was fined for violating the civil rights of a defendant, a fact reported in a column in the *Atlanta Journal-Constitution*, which the White House photocopied and distributed to reporters.

Starr defended his conduct in subpoenaing White House officials about their contacts with the media, denying that it represented an attack on freedom of the press. He declared, "The First Amendment is interested

© World Socialist Web Site

in the truth. Misinformation and distorted information have come to us about career public servants."

This is a remarkable interpretation of the First Amendment, which in fact protects freedom of speech and the press regardless of whether the content of a statement or a given press report is true. Even in the case of demonstrably false speech, the sanctions are civil and not criminal, and American libel laws, under the influence of the First Amendment, provide virtually unrestricted scope for criticism of public figures like Starr.

Starr's suggestion that public criticism of an independent counsel constitutes obstruction of justice has no precedent. By that standard, Reagan and Bush administration officials and their press defenders like the *Wall Street Journal* should have been prosecuted for their attacks on special prosecutor Lawrence Walsh, who was regularly denounced for taking too much time and spending too much money in his investigation of the Iran-contra affair

Starr's position has the most ominous implications, laying down a legal principle that would outlaw or inhibit important forms of political expression. It asserts the right to grill and prosecute for obstruction of justice anyone who seeks to bring before the public information or opinions critical of a judicial investigation. At the same time, it aims to intimidate reporters, editors and media outlets from accepting such material and publishing it, implicitly holding over their heads the threat of professionally and personally damaging legal entanglements, massive lawyers' fees, and even criminal indictment.

This chilling effect would logically apply to public criticism of congressional hearings as well, since these, like the activities of a special prosecutor, involve subpoenas, sworn testimony and potential criminal liability. Certainly those who opposed the witch-hunting of the McCarthy-era House Un-American Activities Committee were guilty of "obstruction of justice" by Starr's standard, to say nothing of those who fought against FBI persecution of the Black Panthers and other groups which faced political repression in the guise of criminal investigation. People who campaign today against police brutality or capital punishment could similarly be construed to be engaged in "obstruction of justice."

Whatever the immediate outcome of this round in the legal warfare between the White House and the independent counsel, it is clear that the Whitewater/Lewinsky case has brought to the surface powerful tendencies within the state to ride roughshod over the most elementary democratic principles. If such measures are resorted to in a conflict within the ruling class, such as that between Starr and Clinton, it must be anticipated that even more ferocious methods will be used against any mass movement of working people that challenges the political establishment.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site