

Chief Justice rejects last White House appeal

Secret Service agents begin testimony against Clinton

Editorial Board
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Secret Service agents began testifying before the grand jury convened by Independent Counsel Kenneth Starr Friday, compelled by court order to give evidence, for the first time in US history, against a sitting president. Supreme Court Chief Justice William Rehnquist denied the last legal appeal by the Clinton administration in a brief six-paragraph opinion ordering the testimony to proceed.

On July 16 the federal Court of Appeals for the District of Columbia unanimously upheld a ruling by a three-judge panel that there is no Secret Service privilege permitting agents to refuse to testify about the day-to-day actions of the president. The Appeals Court followed up its ruling with an extraordinary order requiring the agents to testify immediately and rejecting a bid to delay their appearance until after an appeal to the Supreme Court. It was this order which Rehnquist refused to delay.

Arguing on behalf of the Secret Service, the Justice Department said that compelling agents to testify about non-criminal matters would erode the confidence of the president in his protectors and open the doors to a presidential assassination. The Appeals Court rejected this argument, claiming there was no evidence that 'irreparable harm will result.' It turned down the Justice Department's effort to stay the subpoenas until after an appeal to the Supreme Court, on the grounds that 'the Justice Department's likelihood of success before the Supreme Court is insufficient to warrant further delay in the grand jury's investigation.'

Independent Counsel Starr followed up his legal victory by sending out subpoenas to eight more Secret Service agents, including Larry Cockell, the head of Clinton's personal security detail, in addition to the

three subpoenaed earlier.

A prisoner in the White House

It is a fundamental democratic principle that no individual or officeholder enjoys the privilege of being above the law. Secret Service agents have long been obligated to give testimony if they witness criminal behavior while on duty, whether by the president or anyone else.

In the guise of upholding presidential accountability, however, Starr is seeking something else entirely: to convert the presidential security force into the eyes and ears of the special prosecutor or of any other politically motivated opponent of the White House who succeeds in gaining access to court processes.

The president is required by law to conduct all his affairs, public and private, in the presence of Secret Service agents. Starr would transform these officers into police spies in the service of Clinton's right-wing opponents. The aim is to create conditions where the effective functioning of the White House would become impossible.

This is not hyperbole. Among Starr's demands, in the name of gathering evidence of 'obstruction of justice,' is that the Secret Service turn over records documenting Clinton's whereabouts and movements from 6 p.m. to 6 a.m. on every evening that Monica Lewinsky worked at the White House and on each day that she visited the executive office after moving to a job at the Pentagon in April 1996.

Only a little more than a year ago the US Supreme Court decided unanimously that the Paula Jones case

should be permitted to go to trial, brushing aside arguments by the president's lawyers that the lawsuit would have the effect of disrupting the administration. Now Clinton is virtually incarcerated in the White House, with his own bodyguards ordered to provide 24-hour-a-day surveillance on behalf of his political opponents!

The subpoena for Larry Cockell has equally ominous implications for democratic rights. Cockell did not work in the White House when Monica Lewinsky did and therefore has no direct knowledge of her relations with Clinton during her internship. It is widely reported that Starr has subpoenaed him because the Secret Service agent was the only one present during Clinton's deposition by attorneys for Paula Jones last January 17, and rode back to the White House in the limousine with Clinton and his personal attorney, Robert S. Bennett.

Questioning Cockell about Clinton's conversation with Bennett would be a clear attack on attorney-client privilege, a basic principle of due process that Starr has already unsuccessfully sought to breach in another Whitewater-related legal action.

The role of Justice Silberman

The clearest expression of the politicized character of the courtroom conflict is the concurring opinion filed by Appeals Court Justice Laurence Silberman on the Secret Service appeal. In scathing language, Silberman not only rejected the legal arguments of the Secret Service, he challenged the right of the Justice Department to appear in court on behalf of the agency, declaring that the Independent Counsel, not the Attorney General, represents the United States government.

'It seems clear to me then that no one in the United States Government, speaking for the government, has standing to oppose the Independent Counsel in this proceeding,' Silberman wrote. 'It is up to the Independent Counsel--the surrogate Attorney General in this matter--to decide whether the 'privilege' asserted by the Secret Service as a government entity should be recognized. It might be thought that it is somewhat anomalous to permit an Independent Counsel to decide on his or her own whether the Secret Service should be compelled to testify before a grand jury investigating

the President of the United States. But the Ethics in Government Act contemplates that an Independent Counsel-performing the role of Attorney General--would determine the appropriate balance between national security and law enforcement interests in a particular case.'

Silberman's description of the Independent Counsel as the 'surrogate Attorney General,' entitled to decide policy 'on his or her own,' sums up the vast and essentially dictatorial powers which have been given to Starr. According to the judge--one of the three who selected Starr as Independent Counsel in 1994--this unelected prosecutor with a right-wing political agenda, and not the elected president, is the real representative of the United States government, with the power, not only to conduct a criminal investigation, but to decide issues of national security.

The appeals court judge concluded by denouncing the Justice Department--'The Attorney General is, in effect, acting as the President's counsel under the false guise of representing the United States'--and the White House--'the President's agents literally and figuratively 'declare war' on the Independent Counsel' and then asking, 'can it be said that the President of the United States has declared war on the United States?'

The feverish language of Silberman's opinion demonstrates that the court rulings won by Starr are not legal decisions by an impartial or disinterested judiciary. Rather they represent volleys fired at the White House by its enemies in the course of a raging political struggle.

See Also:

Who is Laurence Silberman?

The right-wing political career of judge in Secret Service decision

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