

Behind the Clinton impeachment trial

Profile of a right-wing conspirator: the case of Theodore Olson

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Theodore Olson, the lead attorney in the Bush campaign's effort to obtain a federal court order barring a hand count of Florida votes, is typical of the extreme right-wing operatives who have come to dominate the Republican Party. The World Socialist Web Site is reprinting here, in edited form, a political profile of Olson first published February 13, 1999.

Last November, at a conference of the Federalist Society at Washington's Mayflower Hotel, attorney Theodore Olson welcomed his audience to "the vast right-wing conspiracy. In fact, you're at the heart of it."

This was not merely a cynical jest. There is a network of right-wing political operatives, lawyers and judges which conspired to bring down the Clinton administration and nearly succeeded. Their goal is not simply to remove Clinton, but to impose a reactionary agenda which is opposed by the vast majority of the American people, an agenda which can only be advanced through anti-democratic methods: dirty tricks, political provocations, back-room legal and judicial maneuvers.

The career of Theodore Olson provides an instructive example of the origins, political motivations and methods of those who comprise the right-wing conspiracy. While Olson is only one of several dozen key political actors behind the scenes, his name pops up over and over again at various stages of the campaign to destabilize the Clinton administration.

The 59-year-old Chicago-born lawyer took his law degree from the University of California at Berkeley in 1965, the year of the Free Speech Movement which marked the onset of a decade of radical student protest on American college campuses. Olson was part of the right-wing reaction against the protest movement. He joined the prestigious Los Angeles law firm of Gibson Dunn & Crutcher in 1965, as soon as he had passed the bar. A senior partner in the firm, William French Smith, was the personal attorney for Ronald Reagan, who was elected governor of California a year later.

After Reagan's victory in the 1980 presidential election, William French Smith was chosen as attorney general in the new Republican administration. Following Smith to Washington were two up-and-coming right-wing lawyers from his law firm. Kenneth Starr became Smith's chief of staff. Theodore Olson signed on as assistant attorney general and head of the Office of Legal Counsel, essentially the attorney general's attorney.

In 1982 Olson was drawn into the political controversy over the Reagan administration's sabotage of the enforcement of anti-pollution laws by the Environmental Protection Administration (EPA). An investigation into the activities of the EPA led to the forced resignation of EPA Administrator Ann Gorsuch and of Rita Lavelle, who was in charge of toxic waste cleanup for the agency. As the scandal unfolded, the Reagan administration claimed executive privilege to withhold agency documents from congressional committees investigating the EPA.

Olson was summoned to testify under oath before a congressional committee in March 1983 about advice which the Justice Department had

given the EPA on the withholding of documents. He subsequently left the Department of Justice and returned to Gibson Dunn & Crutcher, working out of the firm's Washington office. In 1986 the Reagan administration was compelled to appoint an independent counsel, Alexia Morrison, to determine whether charges should be brought against Olson for his role in covering up the EPA scandal.

A protracted legal battle followed. Olson filed a legal challenge to the Independent Counsel Act. He won a decision from the US Court of Appeals for the District of Columbia that the law was unconstitutional, a decision written by Laurence Silberman, who served in the Nixon Justice Department and is another prominent member of the right-wing legal fraternity in Washington.

This decision was appealed to the US Supreme Court, which handed down an 8-1 decision in 1987 upholding the constitutionality of the independent counsel law. The sole dissenting vote came from the most conservative justice, Antonin Scalia.

Morrison then proceeded to complete her investigation of Olson, concluding in August 1988 that no charges should be brought. Her 225-page report makes ironic reading in light of the Clinton impeachment trial, since she concluded that Olson's testimony about the legal advice he gave the EPA, while "disingenuous and misleading," was not perjurious. In language later echoed by Clinton himself in his 1998 grand jury testimony, Morrison wrote that Olson's testimony "while not overly helpful," consisted of statements which were "literally true" and therefore within the law.

The perjury investigation did not harm Olson's subsequent legal career. He went on to handle some of the most politically sensitive cases for the Republican Party. After Reagan left office in 1988 Olson became his lawyer in the Iran-Contra affair, dealing with the office of Independent Counsel Lawrence Walsh and monitoring Reagan's testimony in a series of trials of White House aides and other administration officials.

Olson became part of a tightly knit network of right-wing political operatives in the nation's capital. He was on the board of directors, and at one point secretary-treasurer, of the right-wing magazine *American Spectator*.

He also belonged the Federalist Society, an association of several hundred ultraconservative lawyers co-chaired by Robert Bork, whom Reagan unsuccessfully attempted to place on the Supreme Court in 1987. Olson heads the Washington branch of the Federalist Society and also chairs the executive committee of its Practice Group. The Federalist Society supplied the bulk of the lawyers who worked on the Paula Jones suit and the Starr investigation.

After the election of Clinton in 1992 stripped the Republican Party of its control of the executive branch, the focus of the right-wing attacks against civil rights laws, environmental protection and other regulations on business shifted to the court system, where hundreds of ultra-right-wing

lawyers had been appointed to federal judgeships during the 12 years of Reagan and Bush.

Olson played a prominent role in the ongoing legal-political warfare. He argued the successful lawsuit that resulted in the 1995 Hopwood decision in Texas, overturning affirmative action rules at the University of Texas Law School. This case was brought with the backing of the Center for Individual Rights, a right-wing legal aid center financed by Richard Mellon Scaife, the multimillionaire whose name has surfaced repeatedly in connection with the campaign to drive Clinton from the White House.

The court system was not only an avenue for pursuing politically motivated litigation, but a base for launching direct attacks on the Clinton White House. But first it was necessary to manufacture the pretexts. Two of them were presented: the Clintons' real estate dealings in the late 1970s (Whitewater) and the Paula Jones case.

The Whitewater realty deal was first reported (or misreported) by the *New York Times* in March 1992. It was revived as an issue in the fall of 1993 when a former Little Rock judge, David Hale, facing prosecution for fraud, began to allege that he had awarded a \$300,000 loan to Susan McDougal, one of the Clintons' partners in Whitewater, at the urging of the then-Arkansas governor. A media firestorm followed, and Clinton was compelled to authorize the appointment of a special prosecutor in January 1994.

At about the same time, in December 1993, the *American Spectator* magazine published its notorious "Troopergate" article alleging that Arkansas state troopers had procured women for Clinton during his years in Little Rock, and giving the first name of one woman, "Paula," who had allegedly been willing to be Clinton's girlfriend.

Three months later, at the Conservative Political Action Conference in Washington, Paula Jones, whose last name was never mentioned in the *American Spectator* article, held a press conference denouncing Clinton and declaring she would file a sexual harassment lawsuit against him. This suit immediately became the rallying point for all the Clinton haters on the extreme right.

There is considerable evidence to suggest that Olson was involved in the launching of the Jones suit. According to press accounts, Richard Mellon Scaife approached the *American Spectator* in 1993, within months of Clinton's inauguration, and agreed to give \$2.4 million to finance an investigation to dig up dirt about Clinton's past.

Three lawyers, two of them linked to the magazine—Theodore Olson and David Henderson—and the third, a right-wing activist in Virginia, Stephen Boynton, met at the *American Spectator's* offices in November 1993 to work out the plans for what became known as the "Arkansas Project."

Boynton and Henderson were to head up the effort, which expended the huge sums supplied by Mellon Scaife to hire investigators and operatives in Arkansas, and to pay fees to those who were willing to provide derogatory information about Clinton, regardless of its veracity or reliability. A pipeline was opened up from extreme-right and racist elements in Arkansas, including segregationists and ex-Klansmen, leading directly to the *American Spectator*, the editorial pages of the *Wall Street Journal* and the news pages of supposedly more objective publications, including the *New York Times* and *Washington Post*.

David Hale, the principal "cooperating witness" in the Whitewater investigation, was one of those who received cash payments from the Arkansas Project. In the spring of 1986 the Senate committee investigating Whitewater subpoenaed Hale to testify. Hale declined to appear without a grant of immunity, which committee investigators and Chairman Alfonse D'Amato were reluctant to offer, since it would detract from the credibility of his testimony. Hale needed a Washington attorney to handle the negotiations with the committee, and, through his Arkansas Project handlers, he obtained one of the very best—Theodore Olson.

Joining Olson in the talks with the Senate committee was another Gibson Dunn & Crutcher attorney, John Mintz, who was recently retired

as the assistant director of the FBI. How Hale, a bankrupt Little Rock ex-judge and convicted con man, was able to afford the services of a former assistant attorney general and a former assistant FBI director has never been explained.

Throughout this entire period Olson remained on close personal terms with his former law partner Kenneth Starr, who had served on the US Circuit Court of Appeals and then as Solicitor General under the Bush administration. In August 1994 Starr was appointed Independent Counsel in the Whitewater case, after a three-judge panel, headed by right-wing Republican David Sentelle, a former aide to Republican Senator Jesse Helms, fired his predecessor, Robert Fiske.

Starr was himself a member of the Federalist Society, and a far more conservative and politically active Republican than Fiske. Nonetheless, the media downplayed the extraordinary intervention of the three-judge panel—whose chairman, Sentelle, was seen lunching with ultra-right-wing North Carolina Senator Lauch Faircloth shortly before he fired Fiske.

One of those frequently quoted by the media in its efforts to portray Starr as a respected moderate who would conduct the investigation fairly was his longtime associate and former law partner. Typical was an exchange with a critic of Starr published in the online magazine *Slate* in January 1997. Olson wrote, "I have known Starr since he joined my law firm as a young associate in the early '70s," and concluded, "I believe if Clinton had to be investigated, he should be grateful that his investigator is Kenneth Starr."

At the same time, Olson was working closely with the Paula Jones lawyers. In early 1997 he and Robert Bork held a moot court—a mock trial proceeding—to help prepare the Jones lawyers for their arguments before the Supreme Court, which culminated in the ruling which cleared the way to compelling Clinton to give deposition testimony about his sex life.

In the two years since then, Olson has remained in contact with both the Paula Jones lawsuit and the Starr investigation. During this time another Olson, his wife Barbara, has become one of the most prominent media defenders of Starr. A regular on the talk show circuit, she is invariably described as a "former federal prosecutor," rather than as a rabid Republican partisan married to one of Starr's closest friends.

Barbara Olson was the lead counsel to the Government Oversight committee which investigated the "Filegate" and "Travelgate" affairs—both matters referred to Starr's office. Mrs. Olson recently discussed her relations with the Independent Counsel, revealing that the Olsons still socialize regularly with the Starrs, although they—of course—never discuss the Clinton investigations.

Barbara Olson now works for the Independent Women's Forum (IWF), a right-wing group funded by Richard Mellon Scaife. To complete the circle, the Independent Women's Forum in 1994 discussed filing a friend of the court brief in support of Paula Jones's lawsuit. The attorney with whom the IWF discussed the brief was—Kenneth Starr, then a million-a-year partner at the Chicago-based law firm of Kirkland & Ellis. Starr did not divulge this contact a few months later, when he was selected as Independent Counsel, just as he did not reveal his contacts with the Paula Jones lawyers when he approached the Justice Department in January 1998, seeking jurisdiction over the Monica Lewinsky affair.



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