

# Who is David Sentelle?

24 February 2007

Both of the judges who upheld the Military Commissions Act's attack on habeas corpus in the 2-1 ruling handed down February 20 by the US Court of Appeals for the District of Columbia Circuit—David Sentelle and A. Raymond Randolph—have a record of decisions defending the interests of big business and attacking democratic rights. (See: "US appeals court upholds denial of habeas corpus rights to Guantánamo detainees").

Sentelle, in particular, epitomizes the type of arch reactionaries who have in recent years been elevated to the federal judiciary. He began his political career as a protégé of Jesse Helms, the North Carolina senator and former segregationist whose extreme right-wing views for years relegated him to the fringes of the US political establishment, until the general rightward trajectory of official American politics made his fascistic inclinations "respectable."

Sentelle was appointed to the US District Court for the Western District of North Carolina by Ronald Reagan in 1985. He was then appointed by Reagan to the US Court of Appeals for the DC District in 1987, replacing fellow reactionary Antonin Scalia, who moved on to the US Supreme Court.

The DC Court of Appeals is considered the second most influential court in the US, behind only the Supreme Court, and in his 20 years on the court Sentelle has consistently used his position to promote right-wing positions. He has, in particular, advocated a narrow interpretation of the US Constitution's Commerce Clause so as to attack government regulation of business on environmental and other matters.

In 1990, Sentelle joined in a ruling voiding the felony convictions of Oliver North and John Poindexter for their roles in the Iran-Contra scandal, in which officials in the Reagan administration were exposed as having secretly sold arms to Iran in order to illegally fund Contra death squads in Nicaragua who were seeking to

overthrow the left-nationalist Sandinista government.

Sentelle is most notorious, however, for his role in the Clinton impeachment. In 1994, he was appointed by then-Supreme Court Chief Justice William Rhenquist to head a three-judge panel with responsibility for appointing and overseeing independent counsels to investigate the executive branch. He was chosen for this post over 11 more senior judges on the DC Court of Appeals.

In July 1994, the panel fired Special Counsel Robert Fiske, who had been selected by Clinton's attorney general, Janet Reno, to investigate Clinton's involvement in the failed land speculation deal known as Whitewater. Fiske had released preliminary findings that indicated he would conclude there was no basis to indict Clinton for his role in the deal, which in any event predated his presidential term by more than a decade.

Sentelle intervened on behalf of extreme-right elements who had demanded the investigation in the first place as a means of destabilizing the Democratic administration. The three-judge panel replaced Fiske with Kenneth Starr, a former member of the DC Court of Appeals and former solicitor general in the administration of the senior Bush, who was more closely identified with the right wing of the Republican Party.

Only days before the action, Sentelle was seen lunching with Jesse Helms and Senator Lauch Faircloth, another North Carolina reactionary. Although both Helms and Faircloth had been vocal critics of Fiske and had demanded his replacement by a new special prosecutor, all three denied that this was the subject of their *tête-à-tête*.

According to the lone Democrat on the three-judge panel, Richard Cudahy, the only review that the panel undertook of Starr's activities as independent counsel involved "informal contacts" between Sentelle and Starr.

In the course of the Starr witch-hunt, the DC District Court of Appeals of which Sentelle was a part handed down a series of rulings undercutting Clinton's efforts to defend himself and giving Starr a free hand to question Clinton advisers and even members of the White House Secret Service staff.

Sentelle has ruled in a number of important cases since the impeachment. Among them was a 2-1 decision he authored in June 2003 reversing a lower court ruling that would have compelled then-Attorney General John Ashcroft to release the identities of immigrants rounded up in the immediate aftermath of September 11. Sentelle advanced the position that the judiciary had no business overseeing "national security" questions, writing, "America faces an enemy just as real as its former Cold War foes, with capabilities beyond the capacity of the judiciary to explore."

In February 2005, Sentelle authored a ruling overturning a lower court finding that tobacco companies could be forced under racketeering laws to forfeit profits earned as a result of illegal activity. Sentelle's ruling saved the tobacco companies, many of which are based in his home state of North Carolina, hundreds of billions of dollars in potential fines.



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