

Will new scandals bring down Starr and Olson?

by Edward Spannaus

One reason that Kenneth Starr and his backers are right now in a frantic rush to wind up his investigation of the President and to submit his impeachment report to Congress, may be that Starr has a couple of major scandals and investigations about to catch up with him.

First, there is the investigation of his leaks to the news media. On Aug. 7, court documents were unsealed which showed that Judge Norma Holloway Johnson, who supervises Starr's grand jury, had found several *prima facie* violations of grand jury secrecy involving "serious and repetitive disclosures" to the news media.

Judge Johnson had originally scheduled a hearing for July 11, at which Starr would have been required to show cause why he should not be held in contempt of court. Starr then sought a writ of mandamus from the Appeals Court, temporarily blocking the hearing. The Appeals Court has now allowed the show cause hearing to go ahead, with the qualification that it is to be conducted by the judge alone, without the President's lawyers present.

If the court determines that a violation has occurred, then sanctions could be levied, which could range from a fine, or striking certain evidence, up to the jailing of Starr or his deputies for contempt of court.

The second investigation under way is the witness-tampering investigation involving Starr's key witness in Arkansas, David Hale. Richard Mellon Scaife, the "Daddy Warbucks" of the "Get Clinton" operation (and of the "Get LaRouche" operation a decade earlier) poured over \$2 million into the *American Spectator* magazine and the magazine's "Arkansas Project," to manufacture evidence and witnesses against Clinton. The result was not only a series of articles in the *American Spectator* and the *Wall Street Journal*, but also the creation of Hale as the primary witness against Clinton, former Governor Jim Guy Tucker, and James and Susan McDougal.

Starr has already acknowledged that there were "FBI-supervised" contacts between Hale and agents of the *American Spectator* and Scaife's Arkansas Project. Witnesses have said that Hale received cash payments and other amenities.

Potentially the biggest problem for Starr, is that the Arkansas Project was overseen from beginning to end, from top to bottom, by his close friend and 1970s law partner, Theodore Olson. Olson, it appears, manufactured the evidence for "Whitewater," and then may have put his crony Starr in place to "investigate" it.

'We object! We object!'

Arkansas author and columnist Gene Lyons has reported that there are telephone records showing Hale talking with Theodore Olson in late 1993—even before there was a Whitewater independent counsel. In an Aug. 12 column in the *Arkansas Democrat-Gazette*, Lyons pointed to an incident during the March-April 1996 trial of Gov. Jim Guy Tucker and James and Susan McDougal, when the issue of Starr's ties to Olson came up, and Starr's deputies "freaked out," as Lyons puts it, "claiming that the two scarcely knew each other."

EIRNS has now obtained a section of the transcript of the cross-examination of Hale by George Collins, attorney for Governor Tucker. Over frequent objections from Starr's prosecutor Ray Jahn, Collins had gotten Hale to acknowledge that he had retained Olson as an attorney in December 1993:

Mr. Collins: Did you know that Theodore Olson was a former partner of Kenneth Starr?

Mr. Jahn: Your Honor, Your Honor, that is outrageous. Counsel is engaging in unscrupulous conduct at this point.

Mr. Collins: That is not unscrupulous, Your Honor.

Mr. Jahn: It is, Your Honor. The Court has already sustained an objection to this line of questioning.

Mr. Collins: I think I'm entitled to know that he's personally represented by —

Mr. Jahn: They live in the same city. So what? We object to it, Your Honor. We object to it.

A judicial coup

Let us go back now to August 1994, when the first Whitewater independent counsel, Robert Fiske, was abruptly fired, and Kenneth Starr was appointed to replace him. Starr's appointment raised a few eyebrows at the time, since he had absolutely no experience as a prosecutor, and because he had already been involved in preparing an *amicus curiae* brief against President Clinton on behalf of Paula Jones.

Fiske was appointed by Attorney General Janet Reno on Jan. 20, 1994 to examine the 1980s Whitewater transactions. The allegations in the case were primarily the product of a local Little Rock, Arkansas municipal judge and con-man, David Hale, who was under Federal indictment and was trying to save his own skin by coming up with evidence which would link Bill and Hillary Clinton to alleged illegal financial dealings around the Whitewater land deal and the collapse of Madison Guaranty Savings & Loan.

When the independent counsel law — which had lapsed in 1992 — was finally renewed and signed into law in July 1994, Reno applied to have the special three-judge panel which appoints independent counsels re-appoint Fiske under the statute. But Fiske was not sufficiently aggressive in the eyes of many of Clinton's enemies, and the judicial panel, headed by a conservative political activist from North Carolina named David Sentelle, stunned Washington and the country by dumping Fiske and naming Starr instead.

One person who was probably not surprised by that move was Theodore Olson.

Washington is a city with clusters of specialists and experts on just about anything and everything. One of Olson's roles in Washington is that he is a prominent figure in the institutional "independent counsel" network. He is the "Olson" of the famous 1988 *Olson v. Morrison* case, in which the U.S. Supreme Court upheld the constitutionality of the independent counsel law; Olson, himself the target of an independent counsel, had challenged the law as unconstitutional. His challenge was upheld by the U.S. Court of Appeals, in a decision written by Judge Laurence Silberman, but Olson lost at the Supreme Court level. Olson also was President Reagan's attorney, during the Iran-Contra investigation by independent counsel Lawrence Walsh.

There was much ballyhoo about the fact that Judge Sentelle had lunched with Senators Jesse Helms and Lauch Faircloth of North Carolina only days before he dumped Fiske and appointed Starr, but there are other channels of influence as well. During a panel discussion on the independent counsel law at a Fourth Circuit judicial conference last year, Sentelle said that the three-judge panel maintains a "talent book" of attorneys for possible consideration for appointment as inde-

pendent counsels, but he also matter-of-factly noted: "We get suggestions from attorneys and judges who just call us or mail us the names of people they think would be good." Olson, incidentally, was the wind-up speaker on the independent counsel panel at that conference.

Starr became friends with Sentelle while they sat together on the Court of Appeals in Washington, from the time of Sentelle's appointment in 1987, until Starr left to become George Bush's Solicitor General in 1989. Starr and Sentelle are both considered leading lights in the misnamed Federalist Society, a recruiting ground for law students and young lawyers, funded by Richard Mellon Scaife. And Olson is the president of the Washington chapter of the Federalist Society.

The likely possibility that Hale's lawyer and patron Ted Olson had a direct hand in Starr's appointment, demands investigation.

Scaife's Arkansas Project

Now, back to David Hale and the origins of "Whitewater." Hale, a municipal judge who was running numerous business frauds and scams on the side, had come under scrutiny by Federal authorities already in the 1980s, for questionable transactions involving the Small Business Administration (SBA). On July 20, 1993, the FBI raided his office in Little Rock. Hale immediately had his lawyer contact the U.S. Attorney in the city and claim that Hale could provide damaging information about the "political elite" in Arkansas. The Federal prosecutor was not interested in bargaining, so Hale then went to one of Bill Clinton's long-standing adversaries in Arkansas, "Justice Jim" Johnson; Johnson put Hale in touch with Floyd Brown of Citizens United; Brown's investigator David Bossie then put Hale in touch with NBC. The tale Hale was peddling, was that Bill Clinton and Jim Guy Tucker had pressured him to obtain a \$300,000 loan to the McDougals through the SBA. This story, which eventually made its way into the *New York Times* and the *Washington Post*, was instrumental in triggering the appointment of the Whitewater independent counsel in January 1994.

What has now emerged, through the efforts of journalist Gene Lyons and investigations by *Salon* magazine, is that Hale was put in touch with Olson in late 1993 by two longtime associates of Richard Mellon Scaife, Stephen Boynton and David Henderson.

Olson, Boynton, and Henderson were all key figures in the Arkansas Project, financed by \$2.4 million in Scaife money funnelled through the American Spectator Educational Foundation. Olson is also the Foundation's attorney, and a member of its Board of Directors. And, after a dispute at the *American Spectator* over the use of the funds, Olson fired the outside auditors and took over the internal investigation himself.

Although Starr is a man with many well-known conflicts of interest, those involving Olson may soon prove to be the most scandalous of them all.