

Starr fails to make a case for Clinton impeachment

by Jeffrey Steinberg

Independent Counsel Kenneth Starr's marathon appearance before the House Judiciary Committee on Nov. 19-20, failed to give new life to the British-directed impeachment drive against President Clinton. Even as the "\$50 Million Dollar Man" was finishing his televised diatribe, his own ethics adviser was handing in his resignation, in protest over Starr's violations of the Independent Counsel statute.

As of Nov. 20, Sam Dash, the former Watergate prosecutor who has served as Starr's ethics adviser throughout most of his tenure as independent counsel, resigned, in protest over Starr's decision to appear before the House Judiciary Committee as an advocate for the impeachment of President Clinton. "I resign for a fundamental reason," Dash explained, in a two-page letter. "Against my strong advice, you decided to depart from your usual professional decision-making by accepting the invitation of the House Judiciary Committee to appear before the committee and serve as an aggressive advocate for the proposition that the evidence in your referral demonstrates that the President committed impeachable offenses.

"In doing this," Dash continued, "you have violated your obligations under the independent counsel statute and have unlawfully intruded on the power of impeachment which the Constitution gives solely to the House. . . . By your willingness to serve in this improper role you have seriously harmed the public confidence in the independence and objectivity of your office. Frequently you have publicly stated that you have sought my advice in major decisions and had my approval. I cannot allow that inference to continue regarding your present abuse of your office and have no other choice but to resign."

The same day that Dash submitted his resignation letter,

the *Wall Street Journal* reported that the American Bar Association (ABA), which helped write the Independent Counsel statute, and has aggressively defended it for years, has prepared a task force report, concluding that the bill is "seriously flawed" because it fails to prevent prosecutors from pursuing "trivial or innocuous" matters, a clear reference to Starr's pursuit of intimate details of President Clinton's personal life, a pursuit he took up long before he was given the mandate to follow up the Monica Lewinsky matter.

"We conclude, therefore," the ABA task force document states, "that the act should be allowed to expire and should not be renewed." The act runs through March 1999. Joseph DiGenova, former U.S. Attorney for the District of Columbia, confirmed that the Independent Counsel law has been so contaminated by recent events that "it's dead. The statute has no constituency. Republicans and Democrats, uncertain of who will be the next President, will not want to foist this statute on their party's President." The ABA task force report, in citing the out-of-control nature of the system created by the Independent Counsel act, pointed out that Starr has spent more money than the entire annual budget of the United States Supreme Court!

President is exonerated

During frequently heated exchanges between Starr and House Judiciary Committee Democrats, minority counsel Abbe Lowell, and President Clinton's personal attorney David Kendall, Starr was forced to publicly acknowledge, for the first time, that his investigation has exonerated President Clinton on two of the substantive cases brought against him: the "Filegate" probe of hundreds of FBI files that were found in the White House Office of Security; and, the "Travelgate"

probe of the circumstances surrounding the firing of the head of the White House Travel Office.

Although Starr's office had determined that there was no evidence of wrongdoing on the part of the President in either of these cases, Starr waited until after the Nov. 3 elections, until his appearance before the Judiciary Committee, to make the exoneration public. Starr also admitted that he has uncovered insufficient evidence to justify any indictment of the President or the First Lady, Hillary Rodham Clinton, on matters relating to the collapse of the Whitewater real estate deal or the Madison Savings and Loan. He said that on two occasions, in 1997, and again this year, he attempted to draft referrals on Whitewater, but, each time, concluded that there was not sufficient evidence to justify indictments.

Starr under fire

Starr had a more difficult time answering questions about the ethical conduct of his own staff. Under repeated fire from the Democrats, Starr on several occasions lashed out, with angry denials that his office had leaked sealed grand jury material to select media, or had lied about the date that they first became aware of the Lewinsky affair.

In fact, evidence became public after the release of Starr's referral to the House of Representatives, that prosecutors in Starr's office may have been tipped off to the existence of the Linda Tripp/Monica Lewinsky tapes as early as November 1997. A law partner of Starr had called a top prosecutor in the Independent Counsel's office in early January 1998, to inform the office about the Clinton/Lewinsky affair. If confirmed, this might suggest a serious illegal collusion between the Starr office and attorneys for Paula Jones, to set a perjury trap for the President of the United States!

Yet, when Starr went to Attorney General Janet Reno to get permission to expand his probe, he neglected to mention these earlier reports, citing the Jan. 12, 1998 approach by Tripp as the first time he learned of the Lewinsky/Clinton relationship. He also neglected to inform the Attorney General that he had done *pro bono* work for a conservative women's group, preparing a friend-of-the-court brief in the Paula Jones civil suit against President Clinton, or that his law partner, Richard Porter, had helped Jones hire her lawyers, after Starr's own firm turned down the request to represent her.

When Rep. Zoe Lofgren (D-Calif.) posed a direct question to Starr, about early indications of the Tripp-Lewinsky tapes, he dodged the question:

Lofgren: In or about November 1997, did you discuss with any person the possibility that a tape recording might exist on which a woman claimed to have had sexual contact with President Clinton?

Starr: I am not recalling that. The specificity of your question suggests that there may be information and I'm happy to respond to information if that is—if that's—

Lofgren: Is there any possibility that the answer is yes?

Starr: I have no recollection of it, but I am happy to search

my recollection. This is the first time anyone has asked me such a question, and you are asking.

Lofgren: It was possible it was before January then?

Starr: Yes. But you said very specifically November of 1997, so that's—

'I love the Justice Department'

In one of the most nauseating moments of the Starr testimony, especially for members of the Judiciary panel who joined in the fight to pass the McDade-Murtha Citizens Protection Act of 1998, the Independent Counsel launched into a defense of the Justice Department permanent bureaucracy. "I love the Justice Department," Starr began. "I served there two times, and I loved every moment when I was there, even during the rough times, and there were plenty of those, because it was a great department. And so I tried to create the Department of Justice [in the Independent Counsel's office], and, frankly, felt that I had. Unfortunately, a number of my prosecutors are being calumniated and criticized. It's one thing to criticize the Independent Counsel. It goes with the territory. But to criticize and calumniate the men and women with whom I'm privileged to serve, many of whom are on detail from the U.S. Department of Justice, is, I think, wrong, and I think it is unfair and it's unfortunate."

House Republicans oppose impeachment

On Nov. 19, Rep. Peter King (R-N.Y.) told National Public Radio that he had already decided that he will vote against the impeachment of President Clinton, if the House Judiciary Committee votes out a bill to the full the House. King explained that he has studied the Starr referral and the thousands of pages of documents, and has concluded that, while there may be criminal misconduct by the President, it does not rise to the threshold of "high crimes and misdemeanors" set by the Founding Fathers as the criterion for impeachment.

King said that, to his knowledge, there are 20-30 House Republicans who have also decided that they will vote against impeachment if a floor vote is called. Many share his belief that the offenses cited in the Starr referral do not meet the constitutional standard. Others have been delivered an overwhelming mandate from their constituents not to support impeachment.

If King is accurate (and sources close to the White House and to leading Congressional Democrats concur with his assessment), then House Judiciary Committee Chairman Henry Hyde (R-Ill.) is going through an exercise in mud-slinging, aimed at doing as much damage to the reputation of the President as possible. At the close of the full day of Starr testimony on Nov. 19, Hyde tried to ram through a new series of subpoenas: to the attorney for Kathleen Willey, a Virginia Democratic volunteer who claims she was sexually accosted by the President; to White House deputy counsel Bruce Lindsey; and to President Clinton's personal attorney in the Paula Jones case, Robert Bennett.