

Congress must first investigate Starr!

by Edward Spannaus

When President Clinton's lawyers emerged from a meeting with counsel for the House Judiciary Committee on Oct. 21, they reported that the procedures being planned by the majority Republicans on the Judiciary Committee violate fundamental standards of fairness. Gregory Craig, the President's attorney for impeachment matters, said that the procedures being followed by the committee "would not be adopted by any court in America," and that "they should not be adopted by the Congress in one of the most somber and important constitutional processes you can have."

Speaking to reporters after the meeting, Craig said that the President's attorneys had raised three fundamental concerns.

"The first was that, like any American, the President deserves and has the right to know precisely what the charges are against him.

"Secondly, like any American, the President has the right to know what the standards are that are going to be used to judge his conduct.

"And thirdly, the nation has a right to a quick and rapid disposition of this process."

Craig's points are correct, but they do not go far enough. In truth, the rules of the game have already been rigged by the Judiciary Committee's uncritical acceptance of the Starr report. Fairness and compliance with the United States Constitution require much more of the House of Representatives.

The House's constitutional responsibility

In a normal criminal case, defense attorneys are permitted to submit pre-trial motions, such as seeking a bill of particulars to specify the charges against a defendant, challenging the indictment on various grounds, and seeking to suppress evidence on grounds that it was illegally or improperly obtained.

In the case of an impeachment proceeding in Congress, of course, the rules and procedures of the criminal justice system do not obtain. However, the fundamental guarantees of the Constitution for fairness and due process cannot be tossed out the window.

Moreover, the Constitution vests the responsibility for impeachment *solely* with the House of Representatives. (The Senate tries an impeachment, once articles of impeachment have been voted by the House.)

What flows from this, is that the House of Representatives cannot abdicate this responsibility to any other agency or branch of the government. The House cannot simply take a referral from the independent counsel and vote it up or down; it must, to conform to the requirements of the Constitution, "start from scratch," so to speak, by independently evaluating any "evidence" originating outside the House of Representatives.

The independent counsel is not an agent of the Congress; he is—or is supposed to be—an agent of the Executive branch, subject to dismissal by the Attorney General. Having created the Office of Independent Counsel (OIC) by statute, Congress has *oversight* responsibility for the conduct and performance of the OIC, but an independent counsel cannot be an evidence-gathering arm of the Congress. Under the Constitution, the House and only the House can initiate an impeachment, and the House must take responsibility for the probity and reliability of any evidence dumped in its lap by the OIC.

Therefore, the first thing which the House should do is to "investigate the investigator"—to determine if the evidence provided by Starr was gathered improperly or illegally, and whether pervasive prosecutorial misconduct taints the entire case presented to the House by the OIC.

Areas of inquiry

Following are some suggested areas of inquiry which ought to be the first order of business, before any evidence is considered by the House Judiciary Committee:

1. Was independent counsel Starr operating under a conflict of interest, or a political bias, which tainted his investigation from its inception?

What was the extent of Starr's involvement with the Paula Jones civil suit prior to his appointment as independent counsel, and of his declared political bias against President Clinton? What sort of conflicts arise from Starr's relationship with Washington attorney Theodore Olson, Starr's former law partner and current close friend and associate? Olson was the attorney for the *American Spectator's* anti-Clinton "Arkansas Project," financed by funds from Starr's benefactor Richard Mellon Scaife. Also to be examined is Olson's representation of David Hale, a former municipal judge and con-man, who became Starr's key "Whitewater" witness against Clinton.

Was any influence exerted on the special division of the U.S. Court of Appeals which appointed Starr, by Olson or others tied to anti-Clinton political or legal activity?

2. How did the Whitewater independent counsel obtain authorization to enlarge his jurisdiction to include matters involving Monica Lewinsky and President Clinton regarding the Paula Jones civil suit?

What did Starr disclose to the Justice Department when he first went to the Attorney General on Jan. 15, seeking permission to expand his investigation to include possible perjury and obstruction of justice by President Clinton in the Jones case? Did Starr disclose the fact that he had both consulted with Paula Jones's lawyers, and that he had planned to write a legal brief on behalf of the Independent Women's Forum, a conservative women's group which overlaps Starr's own personal and political circle of friends?

What was the role of Lucianne Goldberg in creating a "back-channel" to the OIC through a circle of lawyers who are all members of the Federalist Society—an organization in which Starr and close friends of Starr's such as Olson, have played a prominent role?

When did the OIC first come into possession of any information concerning Monica Lewinsky or Linda Tripp's discussions with Monica Lewinsky? (Starr's friend Olson was reportedly approached about Tripp in December 1997.)

On what authority had Starr already expanded his investigation into President Clinton's private life, beginning in late 1996? Why were FBI agents and prosecutors working out of the OIC already questioning Arkansas state troopers and others, in 1996-97, about extramarital affairs which Clinton was rumored to have had, including questioning about Paula Jones?

3. Was crucial evidence in the Lewinsky matter ob-

tained illegally or improperly? It is unlawful under the Code of Maryland (Sec. 10-402) to willfully intercept any electronic communication, or to *disclose* or *use* the contents of such an interception. Although the OIC promised Linda Tripp that she would not be prosecuted under Federal law, this does not legalize the taping, nor does it legalize the disclosure and use of the contents of her taped conversations.

On what authority was the FBI permitted to wire Linda Tripp to secretly record her conversation with Monica Lewinsky on Jan. 13—three days before Starr received authorization to expand his investigation into the Lewinsky matter?

Why was Tripp allowed to meet with Paula Jones's lawyers the night before the President's deposition, after Tripp had spent the day with Starr's prosecutors and FBI agents? Why was Linda Tripp not given the usual instructions to not disclose secret or sensitive information about the Starr investigation to others?

4. Is the independent counsel's investigation so infected with prosecutorial abuse and misconduct, as to poison any evidence or recommendations coming from the OIC? Areas which should be examined by Congress include the following:

- Illegal leaks of grand jury material to the news media; this is currently the subject of a contempt-of-court inquiry against the OIC by the Chief Judge of the U.S. District Court in Washington, as well as a separate inquiry by the Justice Department's Office of Professional Responsibility (OPR).

- Possible witness tampering or improper contacts between Federally protected witness David Hale, and opponents of the President tied to the *American Spectator's* "Arkansas Project" of Theodore Olson and Richard Mellon Scaife; this is the subject of an investigation being conducted by former Justice Department OPR official Michael Shaheen, which includes testimony being taken from Scaife and others by a Federal grand jury in Fort Smith, Arkansas.

- The OIC's vindictive and repetitive attempted prosecutions of Webster Hubbell and Susan McDougal.

- Improper use of a Federal grand jury and the subpoena power to harass and intimidate witnesses, both in Little Rock and later in Washington, D.C.

- Improper use of a Federal grand jury—a secret, one-sided proceeding in which the target has no legal rights—to gather evidence to initiate an impeachment proceeding—which is the sole prerogative of the House. And further, then providing thousands of pages of raw, salacious grand jury testimony to the House, in the almost certain knowledge that this normally secret material would be released to the news media and the general public.

- Starr's repeated violations of Justice Department policies and guidelines, despite the requirement of the independent counsel statute and of the Supreme Court's holding in *Morrison v. Olson*, that an independent counsel is obligated to abide by Justice Department policy.