

Turning the tables: Starr is now under investigation

by Edward Spannaus

Independent inquisitor Kenneth Starr is now facing at least two separate investigations concerning leaks from his office to the news media; it is now a possibility that he and others in his office could be held in contempt of court or even jailed, if they are found to have illegally disclosed grand jury information.

"It's a nightmare," a former independent counsel, Michael Zeldin, told the *New York Daily News*. "You can't imagine a worst-case scenario for a prosecutor than to have this happen."

If Starr or his deputies are found to have illegally disclosed grand jury information, the consequences could be very serious, said Randy Jones, the president of the National Bar Association, on CNN's "Burden of Proof" on July 22. "He could be put in jail; he could be fined; he could be taken off the investigation."

Former U.S. Attorney Henry Hudson, one of Starr's staunchest defenders, had to agree. "It's serious," Hudson said on CNN. "It's serious for Ken Starr because someone could go to jail if [the judge] finds they're in contempt. Don't think they will, but they could."

Starr's admissions

The situation which is now coming to a head, has been building up for many months — going back to last February, when President Clinton's lawyer David Kendall filed a complaint against Starr with Judge Norma Holloway Johnson, the chief judge of the U.S. District Court in Washington, who supervises Starr's grand jury. Around that same time, Monica Lewinsky's lawyers filed a complaint with the Justice Department.

In a letter to Kendall, Starr called Kendall's complaint "strange and inappropriate," accused the White House of con-

ducting "an orchestrated plan to deflect and distract" his investigation, and he protested: "From the beginning, I have made the prohibition of leaks a principal priority of the Office. It is a firing offense, as well as one that leads to criminal prosecution."

That was February. On April 15, Starr was interviewed by editor Steve Brill. As Brill later wrote in his "Pressgate" article, Starr was disappointed with Brill's insistence that the interview *not* be off the record or on background. Describing the interview, Brill says he asked Starr a series of questions about discussions that Starr or his deputies may have had with reporters. "I make clear," Brill wrote, "that these questions are based not only on the obvious fact that many of the stories about the investigation seem to have been only able to have come from his office, but also on what reporters or editors at six different news organizations have told me and, in three cases, on documents I have seen naming his office as a source for their reporting about the Lewinsky allegations."

Brill reported that Starr acknowledged that he had often talked to various reporters without allowing his name to be used, and that his chief deputy in Washington, Jackie Bennett, had been actively involved in briefing reporters, particularly after the Lewinsky story broke. "I have talked to reporters on background on some occasions," Starr told Brill, "but Jackie has been the primary person involved in that. He has spent much of his time talking to reporters."

During May, a similar story was told by author Dan Moldea, who described a conversation he had with Hickman Ewing, Starr's top deputy in Little Rock, Arkansas. Ewing told Moldea that the Office of Independent Counsel (OIC) talks freely with reporters, including providing information which is not on the public record. Moldea was told by Ewing that this information is provided to approved reporters on

an off-the-record basis. As to who “approves” the reporters, Ewing said that it is Starr himself who decides which reporters get the leaks.

It is not known whether Moldea’s account had any direct influence on the probe now under way. But it is reported that Brill’s account of his interview with Starr definitely did have an impact; indeed, some reporters say that Judge Johnson was incensed by Starr’s admissions of providing background briefings to reporters.

The matter came to light on July 21, when Starr and lawyers from his office, plus the President’s lawyers and others, all appeared for a closed-door hearing in the U.S. Court of Appeals, two floors above where Starr’s grand jury was interrogating Secret Service agents.

The story that emerged is this: Chief Judge Johnson had recently ordered that Starr show cause why he should not be found in contempt of court for violations of grand jury secrecy. The court ordered a hearing, at which Starr and others from the OIC could be questioned, under oath, by the President’s lawyers; moreover, the OIC was also directed to provide documents to Clinton’s lawyers. Alarmed at the judge’s ruling, Starr and the OIC then sought a “writ of prohibition” from the Appeals Court to stop the show-cause hearing, or at least to prevent them from having to hand over documents to the President’s attorneys.

Because the matter involves grand jury material, it is all under seal; news media organizations attempted to gain access to the July 21 proceedings, but could not.

D.C. Bar probe

The second investigation of Starr is reportedly under way in the District of Columbia Bar. *USA Today* reported that this investigation was initiated by the Bar Association of the District of Columbia; the paper said in its July 21 edition that Starr had been informed that both he and Jackie Bennett were under investigation. *EIR* cannot confirm the accuracy of that report, but we were told the following, by sources knowledgeable as to how such an action would be taken. Under standard procedures, a complaint would be referred to the Bar Counsel, which operates under the auspices of the D.C. Court of Appeals—the appellate court for the District of Columbia Superior Court—which is different than the Federal courts in Washington. Since Starr is admitted to the bar in the District of Columbia, he is therefore subject to the rules of conduct of the D.C. Bar, which are incorporated in local court rules.

Meanwhile, *Newsweek* has reported that Attorney General Janet Reno wants a Justice Department investigation of Starr’s leaks to the news media. *Newsweek* says that “Reno may soon notify Johnson in a sealed court filing of her intention to start her own probe—and has alerted Starr’s office as well.” Reno has been sitting on complaints about Starr’s leaks for months, and up to this point, whenever asked, has indicated that the DOJ is deferring to Judge Johnson before taking any action.

Beyond that, there is also an investigation of the witness-tampering allegations involving Starr’s key Whitewater witness, David Hale. These involve possible payments and other consideration provided to Hale by agents of the *American Spectator* and foundations funded by Richard Mellon Scaife. Starr has acknowledged that there were “FBI-supervised contacts” involving Hale and anti-Clinton operatives. The witness-tampering allegations are now being probed by Michael Shaheen, the former head of the Justice Department’s Office of Professional Responsibility.

Secret Service testimony

All this is going on while Starr’s public standing is sinking to new lows, because of his handling of the Secret Service issue and his efforts to penetrate President Clinton’s inner screen of security protection.

On July 16, the U.S. Court of Appeals in Washington refused to reconsider its ruling ordering U.S. Secret Service agents to testify before Starr’s grand jury. This was despite extensive evidence and affidavits submitted by the Secret Service, and from former Secret Service agents who were present during assassinations or assassination attempts, demonstrating that forcing Secret Service agents to testify would inevitably damage the relationship of trust between Presidents and their protective agents, and that this would eventually result in the assassination of a President.

One of Starr’s friends and colleagues, Judge Laurence Silberman, filed an extraordinary “concurring opinion,” in which he attacked President Clinton for having “declared war” on the independent counsel. It is not surprising that Silberman should jump to Starr’s defense, since both Silberman and Starr are reported to be regular participants in the “Get Clinton” salon at the Great Falls, Virginia home of Theodore and Barbara Olson. Theodore Olson is a long-time friend and law partner of Starr, and, in fact, Silberman walked the bride down the aisle at the Olsons’ wedding in May 1996.

After the Appeals Court ruling, the DOJ and the Secret Service immediately filed an emergency motion for a stay with the U.S. Supreme Court. Unfortunately, under the rules of the Supreme Court, this had to be filed with Chief Justice Rehnquist; it was Rehnquist who appointed David Sentelle to head the special panel that appoints independent counsels—the very panel which abruptly fired the previous independent counsel and appointed Starr to replace him in August 1994.

Shortly before noon on Friday, July 17, Rehnquist denied the motion for the stay. Even though his regular “Lewinsky” grand jury was not sitting that day, Starr quickly rushed three Secret Service agents before another grand jury to take their testimony. During the week of July 20, Starr brought more of the agents, including Larry Cockell, the now-reassigned head of the President’s personal security detail, before the grand jury to testify. Starr’s rush to cram in as much testimony as fast as possible, suggests that he may intend to submit his impeachment report to Congress by the end of the summer.