

WILL HERNDON'S LANDMARK FOUNDATION RESCUE STARR?

By William Nicoson

The Landmark Legal Foundation of Herndon, in a daring sally, has hurled its shock troops onto the judicial field of battle to defend Independent Counsel Kenneth Starr from attack by the big guns of the Attorney General. In an unusual order, the 3-judge panel to which Starr reports has required General Reno and Starr to file by March 8 responses to Landmark's application for a writ prohibiting the AG's proposed investigation of Starr's office. The order is unusual because courts seldom act on applications by non-parties to the dispute to be litigated. It's a fair inference that the court found the reasoning in Landmark's application to be highly persuasive.

Starr has likely been the target of as many judicial investigations as those he's been authorized to conduct against high-profile targets accused of criminal conduct. It's hard to be sure because investigations directed by judges are seldom made public. But the D.C. court before which his grand jury is empaneled has looked into numerous allegations made by President Clinton's lawyers (leaking grand jury testimony, holding and interviewing Monica Lewinsky unattended by counsel, undisclosed conflicts of interest involving the Lewinsky matter) without taking any disciplinary action whatever against Starr's office.

Frustrated, the president's lawyers have apparently turned to the president's attorney general to plow much the same ground which the D.C. court found barren. Is the object of this exercise to harass and distract the office of independent counsel from its obligation to investigate their client and perhaps to lay the groundwork for Starr's removal before he can secure First Family indictments? The AG has, after all, contended that her authority to investigate Starr, though nowhere explicitly conferred by the independent counsel statute, is implied by her authority to fire Starr. Landmark argues that the AG "intends to usurp...the statutory authority" of the 3-judge panel. Will Landmark, with the conservative tenacity and courage common to Herndon institutions, free Starr to return to his duties?

This is not the first time Landmark has pointed the judiciary in directions hazardous for the president. On September 2, 1998, Landmark filed with the Little Rock court of Judge Susan Webber Wright a statement of judicial notice, detailing the president's misleading responses in his deposition before the judge in the Paula Jones case and urging the judge, "sua sponte" (on her own initiative), to open an inquiry as to whether the president should be held in contempt of court. In an order issued later that month, the judge mentioned in a footnote the possibility of contempt proceedings.

After the case was settled and the impeachment process had run its course, the judge has done exactly what Landmark urged: instituted, on her own initiative, a hearing on the president's possible contempt of court. A contempt citation would be unhappy news for the president, not only because it might entail his personal liability to pay some of Paula Jones' legal expenses, but because it might lead to his disbarment from legal practice.

Landmark has thus effectively fed the twin Hydra-heads of the president's legal nightmares: the Starr investigation and the Paula Jones suit. In both cases, Landmark's standing to be heard by the courts has depended solely on the quality of its legal arguments. Yet its influence in the battle has been critical. Not bad for the hometown brigade.

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