

# Starr loses big as McDougal is acquitted

by Edward Spannaus

On April 12, two days before he was to appear before a Senate committee considering whether to renew the independent counsel statute, Kenneth Starr suffered a stinging defeat, when a Federal jury in Little Rock, Arkansas acquitted Susan McDougal on obstruction of justice charges after a five-week trial. Beyond that, the jurors said that they were hopelessly deadlocked on the two other charges of contempt of court, involving McDougal's refusal to testify before Starr's grand jury in 1996 and 1998; the judge immediately declared a mistrial on those latter two counts.

McDougal was indicted—three times—because she would not give false testimony to corroborate the lying testimony of Starr's bought-and-paid-for key witness against President Bill Clinton, David Hale. Hale is one of the creations of the Richard Mellon Scaife-financed "Arkansas Project," run by Starr's longtime crony Theodore Olson. After coming under Federal investigation in 1993, Hale concocted a story about Clinton having received an illegal loan for the Whitewater real estate venture, and became a Federally protected witness. Starr's friend Olson was a lawyer for Hale, even before Starr was appointed as Whitewater independent counsel.

McDougal and her former husband Jim McDougal were both targetted as part of Starr's plan to use them as witnesses against the President. They were tried and, through David Hale's false testimony, were convicted in 1996. But before serving any of that sentence, Susan was called to Starr's grand jury, and when she refused to testify, was jailed for 18 months for civil contempt. As a result of collusion between Starr's office and prosecutors in California, she was also indicted and tried on embezzlement charges there, but was acquitted by a jury. Meanwhile, she was indicted again by Starr, this time on charges of criminal contempt and obstruction of justice.

McDougal has always said that Starr's deputies were not interested in the truth, but only wanted testimony that could be used against Clinton. She told the jury that she had feared that if she testified truthfully to the grand jury, instead of following Starr's script, she would have been indicted for perjury. To show the pattern of Starr's conduct, McDougal's lawyers called two other people who had been subjected to the same treatment.

The first was Steve Smith, a one-time Clinton staffer in Arkansas who is now a professor. Smith said that Starr's prosecutors gave him a "script" to read for his grand jury

testimony in 1995. "They asked me to implicate others in a criminal conspiracy," Smith testified. "It was one of the most intimidating things I have ever experienced."

The second witness was Julie Hiatt Steele, a Virginia housewife who was indicted by Starr after she contradicted Kathleen Willey, a former White House volunteer who claims that Clinton made an unwelcome sexual advance toward her in 1993. Steele told the jurors how she was indicted for obstruction of justice and making false statements, after she testified truthfully and refused to back up Willey's story.

After the trial ended, one of the jurors said that he had been swayed by the testimony of Smith and Steele. "They made the most effect on me because they backed up Ms. McDougal's story," juror Michael Nance said.

"The great thing for me was not the verdict," McDougal said after the acquittal and the declaration of the mistrial. "It was more that I got my day in court, and I got to tell everything I had been wanting to tell for years, and we got to put on evidence of the lives that Kenneth Starr has ruined."

## Starr grilled over McDougal case

The McDougal case was raised very pointedly during Starr's appearance before the Senate Governmental Affairs Committee hearing on April 14, when Sen. Robert Torricelli (D-N.J.) raked Starr over the coals over his handling of the case, with Torricelli citing in graphic detail the conditions under which McDougal had been held and transported from one prison facility to another.

Torricelli then offered his analysis of what happened with the jury in McDougal's trial. "I don't believe that that jury in Little Rock thinks that Susan McDougal did not commit civil contempt. I don't believe that Susan McDougal didn't commit civil contempt," Torricelli said. "I think 12 Americans came to the judgment, that as you balanced her offense against the excesses of power in the hands of the government and the Office of Independent Counsel, it was time to make a judgment." Torricelli added, "It is the finest statement about American democracy, that where the media may have been compromised, and the Congress did not make a strong judgment, and a statute was passed which never should have been enacted, . . . 12 ordinary Americans finally took a stand and said, 'No. Enough. Better the guilty should go free than the government should operate in this excessive power.'"

This came after Starr had delivered a statement to the committee, in which he blithely asserted—after having used and abused the independent counsel law to almost destroy Clinton's Presidency, and to create the biggest constitutional crisis in the United States since the Civil War—that the independent counsel law is unworkable and should not be renewed.

Starr criticized the independent counsel law for creating a situation where investigations are likely to be seen as political, where respect for the judiciary is eroded, and where vigorous oversight by Congress is discouraged. Starr also said that the

statute “tries to cram a fourth branch of government into our three-branch system,” and he called the result “constitutionally dubious.”

During the question period, Sen. Arlen Specter (R-Pa.) told Starr: “I’m a little surprised at the forcefulness of your denunciation of the independent counsel statute: ‘structurally unsound,’ ‘constitutionally dubious,’ ‘overstating the degree of institutional independence,’ ‘disingenuous.’ ”

Specter, a proponent of modifying and retaining the law, then said that he wanted to “ask you about your status to continue as independent counsel, in light of your condemnatorial language of the statute you operate under.” (In other words: Why are you still here?)

Starr responded: “Well, Congress frequently passes laws,

the wisdom of which individuals may question. But their duty as law officers is to live up to their legal obligations.” After babbling on for a while, Starr added: “But it is the law. And, Senator, so long as it is the law, we are dutybound as law officers to faithfully enforce it and as cheerfully as we can. That doesn’t mean we like it.”

“Well, if it’s as bad as you say it is, maybe we ought to abrogate it now,” Specter retorted. Starr suggested that that would be “unwise.”

One reason that Starr undoubtedly believes it “unwise” to abrogate the law right now, has to do with his answer to Specter’s other question—which was whether Starr believes he has the jurisdiction to criminally prosecute President Clinton after the President leaves office. Starr averred that he does.

---

# Judge rules that Texas prisons are unconstitutionally cruel

by Marianna Wertz

While the British-American-Commonwealth crowd in the United States fulminates about human rights violations in China’s prisons, a Texas judge ruled recently that the entire Texas prison system is still—after more than 27 years under Federal jurisdiction—in violation of the U.S. Constitution’s prohibition against the use of “cruel and unusual punishment.” On March 1, U.S. District Judge William Wayne Justice issued a judgment in the continuing litigation over conditions in the Texas prison system, denying a defense motion to allow Texas to re-take jurisdiction over its prisons, jurisdiction which was removed by Judge Justice in 1972 in the civil action *David Ruiz, et al., Plaintiffs, v. Gary Johnson, Director, Texas Criminal Justice System—Institutional Division (TDCJ-ID), et al.*

Judge Justice is Senior United States District Judge, Southern District of Texas, Houston Division. He found that the state’s administrative segregation units—modern-day dungeons where inmates are deprived of virtually all human contact—are in violation of the Constitutional protections against cruel and unusual punishment. These “supermax” prisons are springing up all over the country. For example, Virginia’s Gov. James Gilmore (R) recently announced the opening of the Commonwealth’s second “state-of-the-art” supermax prison, Wallens Ridge, in southwest Virginia’s Wise County; this, he said, will mean 400 jobs and a \$13.5 million payroll for the depressed county, formerly a coal-mining center.

Judge Justice also found that the Texas prison system as

a whole continues to allow inmates to be raped, beaten, owned, and sold by more powerful ones. Finally, he found a prevalence of use of unnecessary and excessive force and intimidation of inmates by correctional officers in their day-to-day interaction.

The evidence presented by plaintiffs, on which Judge Justice’s ruling was based, included expert testimony on medical and use of force cases. Prison cardiac cases “viewed collectively, identify a consistent problem in multiple medical encounters of failure to adequately evaluate significant and serious disease processes,” the judge said. Expert witness Dr. Robertson concluded, “This review of deaths presents a troubling pattern of systemic problems in the health care delivery to inmates in the Texas Department of Criminal Justice. Of a total of 59 charts reviewed, 20 (34%) were found to have received poor to very poor medical care. . . . Of particular concern was the finding that 16 of the deaths (27%) could be deemed as ‘preventable.’ ”

Expert witness Dr. Breed found in Texas more use of excessive force, in quantity and degree, than in any other state system he has seen. Breed testified that, in forming his opinions about use of force in TDCJ, he found a high proportion of excessive or unnecessary force among the hundreds of use of force instances he reviewed.

On April 8, Republican Presidential candidate and Texas Gov. George W. Bush said that China should “adopt more humanitarian measures.” Maybe Bush ought to be reminded of his own state’s prisons’ need for such measures.