

Indictment of an Ex-President?

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The Post's Aug. 20 editorial "Mr. Starr's Endgame" does not give sufficient attention to two issues critical to a fair evaluation of Kenneth Starr's "endgame."

First, the editorial contends that Judge Starr should simply announce a decision not to criminally prosecute the president. That suggestion rests on a faulty premise. During the impeachment ordeal, the president's congressional supporters and foes agreed -- consistent with the Constitution, which appears to preclude indictment of a sitting president -- that the government should consider indicting Bill Clinton after he leaves office. Since then, U.S. District Judge Susan Webber Wright has found that Mr. Clinton's testimony under oath was "intentionally false," that he provided "false, misleading and evasive answers that were designed to obstruct the judicial process" and that he "undermined the integrity of the judicial system."

Given that background, the next president (and his or her attorney general or special prosecutor) will have to decide in 2001 whether to seek an indictment of Bill Clinton, decline prosecution or pardon him. Contrary to the editorial's suggestion, it would be irresponsible for Judge Starr to reach out now to purport to make that choice and thereby prejudice the next president's decision. At a minimum, the editorial's cavalier treatment of this question belies the importance of the constitutional and policy issues at stake.

Second, the editorial overlooks the Justice Department's role in Judge Starr's "endgame." Only a few months ago, the department was quite eager to dump on the independent counsel statute and trumpet its own ability to handle sensitive matters. But the department now seems scared of its shadow in actually managing its responsibilities in the post-independent-counsel-statute world. In particular, the department reportedly has balked at Judge Starr's effort to refer certain matters back to the department -- even though the law expressly authorizes him to do so. The Post should focus its criticism on the Justice Department, not on Judge Starr, for this apparent obstacle to closure of his investigation.

The Post should grant Judge Starr the credit and leeway he deserves as he brings his stewardship of his "unusually productive" investigation (to use the words of the court that oversees him) to a constitutionally proper end.

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