

Close the Starr Chamber - Clinton should move case into political arena

By Harvey A. Silverglate

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Bill Clinton seems determined to pursue, before independent counsel Kenneth Starr's grand jury, the same Paula Jones-case strategy that got him into this mess in the first place - telling his story, and sticking to it no matter what.

His apparent decision to give sworn testimony to the grand jury tomorrow risks getting him indicted for grand-jury perjury or, if Starr decides he cannot indict a sitting president, impeached for that offense.

The reported negotiations between Starr's office and Clinton's lawyer - resulting in an agreement that Clinton will testify from the White House rather than in the grand jury room, and that he will be allowed to have his legal counsel present - is little more than rearranging the deck chairs on the Titanic.

The grand jury - indeed, the entire judicial system - is Starr's playing field, as it is for any federal prosecutor. There is no way Clinton can win in that arena. Even if Clinton could truthfully tell the grand jury he did not have sex with intern Monica Lewinsky, by now Starr has been able to pressure enough witnesses and document a sufficient array of suspicious circumstances that he would probably be able to make a persuasive perjury case against the president no matter what the testimony. If Clinton admits having had sex, he effectively admits committing perjury in the Jones case; if he denies it, he faces a formidable accumulation of evidence to the contrary. The grand jury, in the hands of an overzealous prosecutor willing to push his enormous power to its limits, is, for Clinton, as for every American whether he or she has something to hide, a tar pit. Clinton will not emerge a winner. His only way out is to boldly drag the whole mess from the judicial into the political arena. His lawyers should advise him to do so immediately. That advice should result in the following presidential speech:

"Fellow Americans:

"I am today granting pardons to every individual being prosecuted or investigated by the grand juries convened by the Office of Independent Counsel, with the sole exception of myself. Because my action deprives the grand juries of any legitimate function, they should be disbanded forthwith. The independent counsel should

immediately write and deliver his report to the House, so that the House Judiciary Committee might promptly convene public hearings into whether Articles of Impeachment should be drawn up.

"At the Judiciary Committee hearings, I will voluntarily give public testimony, under oath, on the subjects raised in the independent counsel's report. The committee could then vote on whether my conduct warrants sending articles of impeachment to the Senate.

"I have undertaken this course of action because I fear that if the present course is allowed to continue, grave damage will be done to the institution of the presidency as well as to other legal and political institutions and important civic values. The independent counsel has pursued a scorched-earth policy in seeking to destroy my presidency. In the process, it has done grave damage not only to my presidency, but to other principles of law and civilized conduct rightly held dear by free citizens.

"Mr. Starr has forced a mother to testify against her daughter. He has damaged the right of a citizen to confer with his lawyer without fear the lawyer would be forced to disclose the content of those discussions. He has issued a grand-jury subpoena to a targeted president for the first time in American history. He has seriously damaged the ability of the Secret Service to protect the life of the president by turning the president's protectors into spies and informers. He has questioned White House employees about their perfectly lawful discussions with journalists.

"Were this allowed to continue, there is no way of predicting how much damage would be done to our institutions. The independent counsel's conduct is vivid evidence of the wisdom of our Founding Fathers in insisting that suspected presidential misconduct be the subject not of inquiry by a grand jury in a criminal investigation but rather of an impeachment inquiry by the House of Representatives. My pardoning of all those involved, except myself, is meant to take this battle out of the judicial system, where it does not belong, and place it in the political arena, where it does belong.

"My pardoning those affected by the grand jury investigation serves yet another salutary purpose. It relieves people who got into their present difficulty only because they had the misfortune to be involved with me at a time when I have been the target of an implacable foe. I wish, by my action today, to take full responsibility for whatever it is that I did. I want to relieve others of the burden of having to answer for, or suffer by virtue of, my own conduct. If your representatives choose to file articles of impeachment on the grounds that I engaged in personal conduct distasteful to many of them, and that I then tried to avoid compromising my privacy and the privacy of

others, I will stand trial before the Senate and will seek to defend myself and the right to privacy that should be enjoyed by all Americans.

"God bless you all, and God bless America."

Starr might counter this strategy and attempt to keep his grand jury alive by announcing that he intends to seek an indictment of Clinton, and hence the grand jury would still be in business until that work was completed.

In response, Clinton could pardon himself and seek to justify that extraordinary step by pointing out that since Starr has forced the issue, a self-pardon is the only way for the whole mess to be sent promptly to the House, where it belongs. In this way, Clinton could lay the blame for his need to pardon himself on the fanaticism of Starr and on Starr's desperate attempts to retain control rather than relinquish it to the House. In short, even Clinton's pardoning of himself takes on the aura of being necessary to preserve institutional integrity.

This strategy gives Clinton the kind of fighting chance he could never have in the judicial system. There is no guarantee, of course, that he would avoid impeachment, but if it turns out that he's done nothing more than lie about his sex life in a civil deposition and then encourage his paramour to do the same, it is unlikely that the House would conclude that impeachment is appropriate.

Besides, public hearings before the Judiciary Committee would serve another salutary public purpose - it would enable our elected representatives to question Clinton on some issues that really do matter in terms of possible abuse of power - the misappropriation and possible misuse of some 900 FBI files on prominent Republicans, for example. And, of course, if Clinton cannot explain, then surely he deserves to be impeached, and none of us should be expected to shed a tear for him.