

Democrats retreat on nomination of anti-Clinton conspirator Theodore Olson

An inveterate dissembler

By Barry Grey
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Democrats on the Senate Judiciary Committee have accepted a deal brokered by the Bush White House to end the deadlock over the confirmation of Bush's nominee for solicitor general, Theodore Olson.

On May 17 the committee split 9 to 9 in a party-line vote after the Republican chairman, Orrin Hatch, rejected the Democrats' demand for an investigation into Olson's misleading testimony concerning his involvement in the Arkansas Project, an anti-Clinton dirty tricks operation that was carried out through the *American Spectator* magazine and funded by right-wing billionaire Richard Mellon Scaife.

Bankrolled by Scaife to the tune of \$2.4 million, the Arkansas Project was launched in 1993 to hire investigators and publish gossip concerning the activities of Bill and Hillary Clinton during Clinton's years as governor of Arkansas—the more salacious and sensational the allegations, the better. Arkansas Project operatives canvassed the Clintons' political and personal enemies, including unreconstructed segregationists who despised Clinton because of his relatively liberal record on civil rights. State troopers and others were paid to make statements damaging to the Clintons, which were then retailed in the pages of the *Spectator*. One *Spectator* article suggested that Clinton had a hand in the death of long-time Arkansas associate and White House attorney Vincent Foster, who committed suicide in July of 1993.

Olson was deeply involved in these intrigues. He served as legal counsel for *American Spectator* beginning in 1994 and joined its board of directors two years later. A well-known figure within ultra-right Republican circles, a friend and former law firm associate of Whitewater Independent Counsel Kenneth Starr, and a former assistant attorney general in the Reagan administration, Olson played a pivotal role in the conspiracy to destabilize the Clinton White House that culminated in Clinton's impeachment and Senate trial.

Olson was subsequently the lead lawyer in federal lawsuits filed by the Republicans to block manual recounts of disputed ballots in Florida during last year's election impasse. He argued the case before the US Supreme Court that resulted in a 5-4 decision to halt a recount of votes, as ordered by the Florida high court, thereby handing the state's electoral votes, and the presidency, to George W. Bush. Olson's legal case was a direct attack on the principle of popular sovereignty, based, in part, on the contention that the American people had no constitutional right to vote for the president.

The solicitor general, the chief lawyer of the US government, represents the government before the Supreme Court. The post is regarded as a potential stepping-stone to a position on the nation's highest court, and four past solicitors general have become Supreme Court justices.

The Democrats had threatened to boycott the May 17 Judiciary Committee confirmation vote, thereby insuring the absence of a quorum.

Instead they voted as a block against the nomination.

Normally, a tie vote in the Judiciary Committee would scuttle a nomination, preventing the person's name from coming before the full Senate for confirmation. But under special rules agreed to by the two parties in the upper chamber, which is split 50 to 50, the Senate majority and minority leaders have the option in such a case to bring the nomination to the floor for a vote. Republican Majority Leader Trent Lott promptly announced that he would move to do precisely that in Olson's case.

The Democrats could block Olson's confirmation by carrying out a filibuster on the Senate floor, which could be ended only if the Republicans mustered 60 votes. But Democratic leaders indicated they had little enthusiasm for waging such a struggle.

White House to Olson's rescue

For its part, the Bush administration has viewed the impasse over Olson with increasing alarm, because it threatens to expose before the public the Republican-led conspiracy that paralyzed and nearly toppled the Clinton administration. Olson personifies the political continuum between the highest levels of the Republican Party, powerful sections of the judiciary and legal establishment, and fascistic forces embracing the Christian right, white supremacists and assorted right-wing adventurers. All were involved in the quasi-legal coup attempt against Clinton, and Olson played a central role in coordinating their activities.

White House officials moved last Friday to fashion a modus operandi for moving the impasse out of the public view, while providing the Democrats with a cover to back down and allow Olson's nomination to go forward. At Bush's behest, Senator Hatch agreed to a limited inquiry by the Senate Judiciary Committee staff into the truthfulness of Olson's testimony, including interviews with certain witnesses whom the Democrats had asked to question and the provision of some documents that the Republicans had previously refused to provide. A spokesman for Senator Patrick Leahy, the ranking Democrat on the committee, announced Friday night that he had agreed to this procedure.

The staff investigation will in all likelihood take place behind closed doors, with no public access to any information uncovered concerning Olson's role in the Arkansas project and related anti-Clinton activities.

Senator Zell Miller, Democrat from Georgia, has already announced he will vote for Olson if and when his nomination comes to the floor of the Senate, assuring the Republicans they will have sufficient votes, short of a Democratic filibuster, to confirm the appointment.

What the Olson nomination says about US democracy

It is a measure of the decay of US democracy and the strength of authoritarian tendencies within American ruling circles that a man such as

Olson, whose legal career has been devoted to attacking the rights of workers, minorities and gays and who has functioned as a political provocateur and conspirator, should even be considered for an official position. (See accompanying article: "Theodore Olson: a record of political reaction and provocation.")

Olson testified, under oath, before the Senate Judiciary Committee on April 5 in a hearing on his nomination for the solicitor general post. He baldly denied having had any direct connection with the Arkansas Project. In subsequent written submissions he backtracked somewhat, admitting that he knew of the project, but only after 1997, when he was involved in an internal audit of the project carried out by the *Spectator*.

These statements were exposed by David Brock, a former reporter for the *Spectator* who authored the December 1993 "troopergate" article that detailed allegations of Clinton's extra-marital affairs in Arkansas and mentioned a certain state employee named "Paula." Brock's article became the pretext for Paula Jones to launch, with the backing of right-wing Republican organizations, her civil suit against Clinton.

Brock subsequently repudiated his reporting for the *Spectator* and publicly apologized to the Clintons. He revealed that Arkansas state troopers had been paid by the magazine to assert that they had helped Clinton procure women.

In statements earlier this month to the Judiciary Committee, Brock cited numerous dinners and other occasions beginning in late 1993 when Olson discussed anti-Clinton articles with *Spectator* reporters and editors. Brock's statements were supported by articles published this month in the *Washington Post* citing financial records of the Arkansas Project from 1994 that list more than \$14,000 in payments to Olson's law firm. Olson was also paid by the Arkansas Project for authoring anti-Clinton articles, including one piece that claimed Bill Clinton could face up to 178 years in prison for violating various federal and Arkansas laws.

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This is not the first time Olson has been caught giving false testimony under oath to Congress. In 1983, as an assistant attorney general in the Reagan administration, he misled a congressional committee that was investigating a corruption scandal in the Environmental Protection Agency (EPA).

The dispute centered on efforts by the White House to assert executive privilege to withhold documents from Congress. Olson wrote a memorandum that concluded with the statement that EPA administrator Anne M. Burford (then Anne Gorsuch), a conservative Republican and Reagan appointee, endorsed the view that executive privilege should be invoked. According to an article published last week by the *Washington Post*, Burford told the newspaper, "I had not been consulted by him, much less concurred. He out-and-out lied to me."

Lawyers in the Justice Department's integrity section conducted an investigation into Olson's testimony and concluded: "We think it is probable that Olson's testimony, literally and in context, was false." A special prosecutor was appointed to consider criminal sanctions and issued a report in 1988 stating that Olson gave "disingenuous and misleading" testimony. The special prosecutor concluded, however, that Olson's actions did not constitute a prosecutable offense.

In the current controversy, the entire Republican Party and the mouthpiece of the Republican right, the *Wall Street Journal*, have rallied to Olson's defense, dismissing the abundant evidence that Olson deliberately misled the Judiciary Committee. The *Journal* has published two editorials in recent days denouncing Senate Democrats for "demonizing" Olson and calling their demands for an investigation "payback" for Olson's role in the Florida court battles.

Appearing on ABC Television's *This Week* news program May 20, Kenneth Starr said complaints about Olson's "evasive" testimony amounted to "flyspecking." Senate Majority Leader Trent Lott, appearing

on *Meet the Press*, all but admitted that Olson ~~NBC~~ sought to mislead the Judiciary Committee, but dismissed such conduct as irrelevant. "What if [Olson] did have an involvement in the Arkansas Project?" Lott declared. "Is there something illegal about that?"

This indifference to deceptive testimony under oath underscores the cynicism of the Republicans' impeachment campaign against Clinton. From Starr, to the Republican Congress, to media commentators stretching from the *Wall Street Journal* to liberal organs such as the *New York Times* and the *Washington Post*, the endlessly repeated mantra was that Clinton had disgraced his office by lying under oath. House Judiciary Committee Counsel David Schippers argued in the impeachment hearings that Clinton's less than candid answers in the sexual harassment suit of Paula Jones and before Starr's grand jury had undermined the entire edifice of American democracy.

Clinton was testifying about a private relationship, politically and personally embarrassing, but in no sense injurious to the Constitution or the democratic rights of the American people. Olson, on the other hand, has been caught giving deceptive testimony to Congress about his involvement in a political conspiracy to destabilize and bring down an elected president. Yet the same forces that insisted on Clinton's removal are not troubled in the least by Olson's mendacity.

Olson's defenders are not limited to Republicans and right-wing extremists. Leading liberal personalities and newspapers have rallied to his defense. Laurence Tribe, the Harvard professor and authority on Constitutional law, wrote to the Judiciary Committee warmly endorsing Olson. Tribe played a despicable role in last fall's Supreme Court case over the Florida recounts. In the initial hearings he argued for the Democratic camp of Vice President Al Gore, but refused to directly challenge the attack by the Court's right-wing justices on the democratic right of the people to vote and have their votes counted.

Another leading liberal who has called for Olson's confirmation is Floyd Abrams, generally described in the media as the nation's foremost expert on First Amendment rights. Abrams disgraced himself in the summer of 1998 when he authored a report urging CNN to retract a television documentary it had broadcast exposing the use of deadly nerve gas by American special forces during the Vietnam War. The documentary provided eyewitness accounts of a secret incursion into Laos carried out in 1970 and dubbed Operation Tailwind.

Abrams' supposedly independent analysis was actually co-written with a top CNN official. It provided the network with the fig leaf it desired to cave in to pressure from past and current military brass and government officials, including Colin Powell and Henry Kissinger, and repudiate its own investigative report.

The *Washington Post* has also joined the Olson camp, publishing an editorial last week rebuking the Democrats and calling for Olson's confirmation, while the *New York Times'* editorial board has maintained a deafening silence on the issue.

Bush's nomination of Olson places his talk of ending "the politics of personal destruction" in its proper light. Olson is the consummate practitioner of precisely this brand of politics, pursued in the interests of a deeply anti-democratic and reactionary agenda. The rise of such elements to the highest levels of the state has enormous political significance. It is an unmistakable symptom of a political system that is degenerating in the direction of authoritarian rule.

The ultimate target of Olson and his fellow conspirators is the democratic rights of the working class. Once again, as in the impeachment coup of 1998-99 and the hijacking of the 2000 election, the Democrats and liberals are demonstrating their indifference to these rights and their organic inability to wage a struggle in their defense. From Clinton and Al Gore on down, the Democrats' main preoccupation is to conceal the dimensions of the threat to basic rights from the American people. There are two main reasons for this: first, within the financial oligarchy to which

they are ultimately accountable, there is a growing contempt for the traditional forms of bourgeois democracy; and second, they themselves fear the emergence of a popular movement that could threaten the edifice of capitalist rule.

The complicity of the Democrats and the liberal media in the elevation of Olson underscores once again a basic political fact: the working class can defend its democratic rights only through the construction of its own mass political party.

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