2-22-2013

The Legacy of In re Neagle

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For generations, commentators have decried the fact that we live in an era of an imperial presidency. The second President Bush famously (or infamously) ignored Congress in subjecting suspected terrorists around the world to military commissions at Guantanamo Bay and citizens and suspected terrorists alike to warrantless surveillance of their phone calls. President Barack Obama, like his predecessor, has used executive power to shape rules and regulations that Congress had delegated to subordinates in agencies as opposed to the President directly. Both Presidents claimed broad power to circumvent the Senate’s power to consent to treaties and appointments. Congress and the courts have fought back to limit the scope of presidential power, at least in discrete contexts.

Somewhat lost in history, a comparable battle over executive power brewed one hundred and twenty-five years ago, culminating in the U.S. Supreme Court’s 1890 decision in In re Neagle, 135 U.S. 1 (1890). The case questioned the President’s inherent authority to assign a U.S. Marshal to protect the life of Stephen Field, a sitting United States Supreme Court Justice. Marshal Neagle confronted the potential assailant, David Terry, and killed him when he thought Justice Field’s life was in danger. California authorities were none too
pleased given that Terry had been so prominent in California political life and that Terry likely was unarmed. Local officials indicted and then imprisoned Neagle for killing the Californian.

Events leading up to the Supreme Court decision read like a soap opera, perhaps revealing more about the interplay of society and politics than does the decision itself. The history of the case starts with David Terry, who before the Civil War served on California’s Supreme Court with Justice Stephen Field. Terry gained notoriety by challenging Senator Broderick from California, a former friend who was also a friend of Field’s, to a duel, which left Broderick dead. The dispute centered over political rivalries, in part due to Terry’s sympathy with the Confederacy. Terry was acquitted and then left California to support the South in the Civil War. After the War, Terry returned to law practice and politics in California and, of relevance here, within twenty years fell within the orbit of an apparently glamorous but unstable woman named Sarah Althea Hill.

In the late 1870s, Hill became the companion of Senator William Sharon of Nevada, who had amassed great sums from real estate and mining investments. Sharon, who was much older than Hill, evidently sundered relations when he suspected Hill’s designs on his money. Hill continued to plot how to separate Sharon from some of his enormous wealth. She made a demand on Sharon for alimony, asserting that Sharon had married her some three years earlier when they had started their “companionship.” In so doing, she presented what likely were forged documents attesting to the marriage relationship. Sharon sued in federal court in California (due to diversity of citizenship) in 1883 for a declaration that no marriage had ever taken place. Hill then filed her own suit in state court in 1884 to demonstrate that the marriage was valid and requested a share of Sharon’s property. She hired Terry as one of her attorneys.

The state court bizarrely decided the case in Hill’s favor even though the judge labeled Hill a liar. Sharon immediately appealed to the California Supreme Court but died before the case was heard. His executor pursued the appeal.

In the meantime, the federal suit proceeded slowly, prompting more aberrant behavior from Hill. She sported a pistol at many of the proceedings, and waved it at witnesses. She threatened to have adverse witnesses and their counsel killed. Although Justice Field, by then serving on the U.S. Supreme Court, was not assigned to preside over the case, he was assigned as a Justice riding on circuit to hear several motions arising out of the case. During one proceeding, Justice Field in an effort to maintain decorum ordered that
Ms. Hill be disarmed, and he found her in contempt of court. At the end of the proceedings in 1886, the federal court determined that the marriage was a sham and the documents forged.

Terry then married Hill, manifesting an intriguing view of the attorney-client relationship. More importantly, the marriage placed pressure on his successors on the California Supreme Court to uphold the state court finding that Hill had been married to Sharon. A divided California Supreme Court acquiesced, affirming the trial court’s decision that a valid marriage had indeed taken place.

In a complicated procedural move, the estate then moved to revive the federal court decree and enjoin both Hill and Terry from maintaining the validity of the prior marriage, despite the state court ruling. At this point, the case was assigned to U.S. Supreme Court Justice Stephen Field, sitting by designation. Field in 1888 determined that Hill had obtained the marriage documents through fraud. As he orally delivered the decision, Hill caused a commotion in the courtroom protesting the ruling and had to be escorted out. Terry in a display of chivalry thereafter attacked the marshal for carrying out Field's order. Field ordered both Terry, his former associate on the California Supreme Court, and Hill imprisoned for contempt of court. Hill threatened Field’s life and Terry claimed that Field’s decision had been bought with Sharon’s money. Terry then sought a pardon from President Grover Cleveland, asserting in part that Field was retaliating against him for refusing to throw his support to Field in a prior presidential primary. Cleveland declined, and Terry served out his short term.

Upon release, Terry apparently became even more consumed by revenge, broadcasting widely his intent to harm Justice Field. When Justice Field traveled back west from Washington, newspapers speculated on when the confrontation would occur. Accordingly, President Benjamin Harrison through his Attorney General assigned Marshal Neagle to protect Justice Field.

The confrontation arose in the summer of 1889 when Field traveled by train from San Francisco to Los Angeles. Terry and his wife boarded the train at a stop along the way and entered a dining room in which Justice Field was eating breakfast. Hill left the room—presumably to gather her pistol from her chamber—but her husband did not wait and circled behind Justice Field and delivered two blows to his head. Neagle, the marshal, announced his presence and called on Terry to stop. Terry made a move as if to draw a knife that he customarily carried, and Neagle responded with two shots from his pistol, killing the assailant.
A local constable arrested Neagle on the spot. Ms. Terry, upon her return to San Francisco, swore out a complaint for murder against both Field and Neagle. California authorities then arrested Field who was released under a bond. An eastern newspaper reported the following imaginary dialogue:

*Newsboy: “Man tried to kill a judge in California!”
Customer: “What was done about it?”
Newsboy: “Oh! They arrested the judge.”*

Field immediately filed for a writ of habeas corpus, and the federal court within a matter of days granted Justice Field’s writ, ending Justice Field’s stay at the other end of the courtroom.

Marshal Neagle was not as fortunate—he unquestionably fired the shots that killed Terry. He filed a similar writ of habeas corpus from a California prison, asserting that he acted within the line of duty in protecting Justice Field’s life. He was moved to San Francisco, but remained behind bars. He argued that, to the extent his actions were undertaken pursuant to federal authority, his conduct could only be challenged in federal court. The federal court eventually scheduled a hearing, and upheld the writ, reasoning in part that “upon general, immutable principles, the power must be necessarily inherent in the executive department of any government worthy of the name of government, to protect itself in all matters to which its authority extends; and this necessarily involves
the power to protect all the agency and instrumentalities necessary to accomplish the objects and purposes of government.” The Supreme Court accepted the case for review at California’s request.

On one level, *In re Neagle* reflects the generation-old conflict inherent in our system of federalism. Some Californians were resentful that the federal courts did not respect the state courts’ determination that a valid marriage had been entered into between Hill and Sharon. Moreover, authorities in California were more than willing to imprison and indict a U.S. Marshal, even when the Marshal was following presidential orders. Others in California believed that California courts should be trusted to determine whether Neagle’s defense was valid without interference from the federal courts. Whatever one thinks of the resurgent importance of federalism in our generation—including petitions for secession filed in the wake of President Obama’s 2012 victory—few proponents today would be so bold as to approve of California’s imprisonment of a U.S. Marshal who unquestionably was acting pursuant to the President’s orders, not to mention local authorities’ decision to arrest Justice Field himself. The story reminds us that, no matter how intense regional divides may be today, they pale before the tensions between states and the federal government over a century ago.

But, the facts underlying the case reveal more—a sordid tale of love gone awry, reminiscent of politicians’ struggles more recently, from Senator Gary Hart’s famed ride on the aptly named boat “Monkey Business” to President Bill Clinton’s fling with an intern, and from Wilbur Mills’ dalliance with the Argentinian stripper Fanne Foxe to Representa-
tive Anthony Weiner’s more recent debacle of sexting. Politicians’ affairs impact not only political races, but Supreme Court decisions as well. *Clinton v. Jones*, 520 U.S. 681 (1997), was not the first Supreme Court case on presidential power sparked by politicians’ sexual misconduct.

The doctrinal legacy of *In re Neagle* endures. A divided U.S. Supreme Court, with Justice Field recusing himself, held that the President enjoys a residuum of authority under Article II of the Constitution to take steps to protect the nation even if those steps are not spelled out by Congress. In presaging presidential power debates of the last decade, the Court concluded that the President could rely on powers not directly rooted in the text of the Constitution in safeguarding the country. The Court explained, “In the view we take of the Constitution of the United States, any obligation fairly and properly inferrible from that instrument” is appropriate, including the duty to protect a Supreme Court Justice, even in the absence of explicit congressional authorization. The Court continued that “it would be a great reproach to the system of government of the United States, declared to be within its sphere sovereign and supreme, if there is to be found within the domain of its powers no means of protecting the judges, in the conscientious and faithful discharge of their duties, from the malice and hatred of those upon whom their judgments may operate unfavorably.” Presidents can “infer” powers from the Constitution—including the duty to protect Justices from harm. In the case, those non-statutory or “inferrible” powers displaced California’s authority to try Neagle for murder and provided Neagle a complete defense to the charge. Although the accumulation of powers and responsibilities over the last 125 years has radically transformed the presidency, the debate over the scope of presidential powers under Article II is not new. There is a residuum of authority under Article II—even if the extent remains in bitter dispute—permitting presidents leeway to ensure protection of the government and the nation itself.

**Sources and Further Reading**


**Harold J. Krent** graduated from Princeton University and received his law degree from New York University School of Law. He has been teaching full-time since 1987 and has focused his scholarship on legal aspects of individuals’ interaction with the government. Dean Krent joined the IIT Chicago-Kent faculty in 1994. He was appointed Associate Dean in 1997 and Interim Dean in 2002 before assuming the deanship on January 1, 2003.